



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

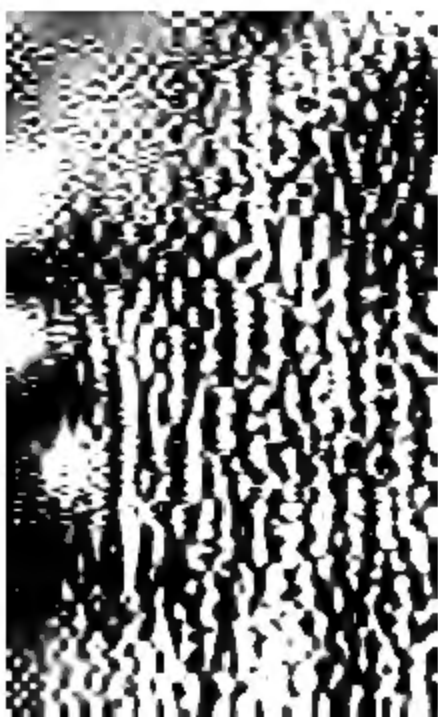
















AN  
**ANALYTICAL DIGEST**

OF THE CASES PUBLISHED IN THE

NEW SERIES OF THE

**LAW JOURNAL REPORTS**

AND OTHER

**Contemporary Reports**

IN

THE HOUSE OF LORDS, THE PRIVY COUNCIL,  
THE COURT OF APPEAL,

THE CHANCERY, QUEEN'S BENCH, COMMON PLEAS, EXCHEQUER,  
AND

PROBATE, DIVORCE, AND ADMIRALTY DIVISIONS  
OF

**The High Court of Justice,**

THE COURT OF BANKRUPTCY,

THE COURT FOR CROWN CASES RESERVED,  
AND

THE ECCLESIASTICAL COURTS.

FROM MICHAELMAS SITTINGS 1875 TO TRINITY SITTINGS 1880.

WITH REFERENCES TO THE

STATUTES PASSED DURING THE SAME PERIOD.

---

BY CECIL C. M. DALE, Esq.

BARRISTER-AT-LAW,

ASSISTED BY

GEORGE A. STREETEN, Esq.

BARRISTER-AT-LAW.

---

LONDON:

PRINTED BY SPOTTISWOODE AND CO., NEW-STREET SQUARE.

PUBLISHED BY EDWARD BRET INCE, 5 QUALITY COURT, CHANCERY LANE.

1881.



58,283

THIS DIGEST (containing Cases from Michaelmas Sittings 1875 to Trinity Sittings 1880) is in continuation of ELEVEN OTHERS, published at different times, containing the Cases reported in the LAW JOURNAL REPORTS, and other Contemporary Reports, since the year 1822, each of which may be had as published, at the following prices :—

First,	1822 to 1828, price 1 <i>l.</i> 11 <i>s.</i> 6 <i>d.</i> boards.
Second,	1828 to 1831, price 15 <i>s.</i> boards.
Third,	1831 to 1835, price 1 <i>l.</i> '5 <i>s.</i> boards.
Fourth,	1835 to 1840, price 1 <i>l.</i> 10 <i>s.</i> boards.
Fifth,	1840 to 1845, price 1 <i>l.</i> 10 <i>s.</i> boards.
Sixth,	1845 to 1850, price 1 <i>l.</i> 10 <i>s.</i> boards.
Seventh,	1850 to 1855, price 1 <i>l.</i> 10 <i>s.</i> boards.
Eighth,	1855 to 1860, price 1 <i>l.</i> 10 <i>s.</i> boards.
Ninth,	1860 to 1865, price 1 <i>l.</i> 10 <i>s.</i> boards.
Tenth,	1865 to 1870, price 1 <i>l.</i> 10 <i>s.</i> boards.
Eleventh,	1870 to 1875, price 1 <i>l.</i> 10 <i>s.</i> boards.

# LIST OF ABBREVIATIONS

IN THIS DIGEST.

<i>Abbreviations.</i>	<i>Reports.</i>	<i>Courts.</i>
Law J. Rep. P.C.	Law Journal Reports, New Series.	Privy Council.
Law J. Rep. Chanc.	" "	Chancery and Chancery Division.
Law J. Rep. Q.B.	" "	{ Queen's Bench and Queen's Bench Division.
Law J. Rep. C.P.	" "	{ Common Pleas and Common Pleas Division.
Law J. Rep. Exch.	" "	{ Exchequer and Exchequer Division.
Law J. Rep. Bankr.	" "	Bankruptcy.
Law J. Rep. M.C.	" "	{ Magistrates' Queen's Bench, Common Pleas and Exchequer Divisions.
Law J. Rep. P. D. & A.	" "	{ Probate, Divorce and Admiralty Division, and Ecclesiastical Courts.
Law Rep. E & I. App.	Law Reports . . . . .	{ House of Lords, English and Irish Appeals.
Law Rep. App. Cas.	" Appeal Cases . . . . .	House of Lords and Privy Council.
Law Rep. Chanc.	" Chancery Appeal Cases	Chancery Court of Appeal.
Law Rep. Eq.	" Equity Cases . . . . .	{ Master of the Rolls, Vice-Chancellors and Chief Judge in Bankruptcy.
Law Rep. Ch. D.	" . . . . .	Chancery Division.
Law Rep. Q.B., C.P. and Exch. }	" . . . . .	{ Courts of Queen's Bench, Common Pleas and Exchequer respectively.
Law Rep. Q.B. D., C.P. D. and Ex. D. }	" . . . . .	{ Queen's Bench, Common Pleas and Exchequer Divisions respectively.
Law Rep. P. D. . . . .	" . . . . .	{ Probate, Divorce and Admiralty Division.
Law Rep. C.C.R.. . . . .	" . . . . .	Crown Cases Reserved.
(App.) . . . . .	Court of Appeal.	
(H.L.) . . . . .	House of Lords.	
H.L. (Ir.) . . . . .	Irish Appeal to House of Lords.	
H.L. (Sc.) . . . . .	Scotch Appeal to House of Lords.	
(App. Div.) . . . . .	Appellate Divisional Court.	



*TABLE OF CASES included in the Digest which have been decided or reported on appeal too late to admit of their being noticed in the body of the Digest.*

Name of Case	Reference to Digest	Where Reported on Appeal	Whether Affirmed, Reversed or Varied
Alderson v. Maddison .	<i>Frauds, Statute of</i> , 19	50 Law J. Rep. Exch. 466; Law Rep. 6 Q.B. D. 174.	Reversed (C.A.)
Angus v. Dalton . . .	<i>Easement</i> 1 . . .	Not yet reported.	Affirmed (H.L.)
Arkwright v. Newbold .	<i>Company B</i> 2 . . .	50 Law J. Rep. Chanc. 372; Law Rep. 17 Ch. D. 302.	In part affirmed; in part reversed (C.A.)
Campden Charities, in re .	<i>Charity</i> 35 . . .	50 Law J. Rep. Chanc. 646.	Reversed (C.A.)
Chapleo v. Brunswick-Benefit Building Society	<i>Friendly Society</i> 12 .	50 Law J. Rep. C.P. 372.	Reversed (C.A.)
"City of Mecca," The .	<i>Admiralty</i> 7 . . .	50 Law J. Rep. P. D. & A. 53; Law Rep. 6 P. D. 106.	Reversed on further evidence (C.A.)
Goodman's Trusts, in re .	<i>Distributions, Statute of</i> .	50 Law J. Rep. Chanc. 425; Law Rep. 17 Ch. D. 266.	Reversed (C.A.)
Gosman, in re . . . .	<i>Crown</i> 7; <i>Petition of Right</i> 5	50 Law J. Rep. Chanc. 624.	Reversed (C.A.)
Knapman's Estate, in re; Knapman v. Wreford	<i>Administration</i> 29 .	50 Law J. Rep. Chanc. 629.	Affirmed (C.A.)
London Joint-Stock Bank v. Corporation of London	<i>Attachment</i> 13 . . .	50 Law J. Rep. Q.B. 594; Law Rep. 6 App. Cas. 393.	Affirmed (H.L.) <i>nom.</i> Corporation of London v. London Joint Stock Bank.
McCollin v. Gilpin . . .	<i>Company D</i> 22 . . .	Law Rep. 6 Q.B. D. 516.	Affirmed (C.A.)
Martin v. Mackonochie .	<i>Church and Clergy</i> 30	50 Law J. Rep. Q.B. 611; Law Rep. 6 App. Cas. 424.	Affirmed (H.L.) <i>nom.</i> Mackonochie v. Lord Penzance.

*Table of Cases, &c. (continued).*

Name of Case	Reference to Digest	Where Reported on Appeal	Whether Affirmed, Reversed or Varied
Mills v. Jennings . . .	<i>Mortgage</i> 31 . . .	Not yet reported .	Affirmed (H.L.) <i>nom.</i> Jennings v. Jordan.
New Zealand and Australian Land Co. v. Ruston	<i>Principal and Agent</i> 5	50 Law J. Rep. Q.B. 433.	Reversed (C.A.)
Nobel's Explosive Co. v. Jones & Co.	<i>Patent</i> 21 . . .	50 Law J. Rep. Chanc. 582.	Reversed (C.A.)
Patching v. Barnett . . .	<i>Remoteness</i> 5 . . .	Not yet reported .	In part affirmed ; in part reversed.
Pike v. Fitzgibbon . . .	<i>Husband and Wife</i> 36	Law Rep. 18 Ch. D. 454.	Reversed.
Reg. v. Castro . . . . .	<i>Criminal Law</i> 3 .	50 Law J. Rep. Q.B. 497 ; Law Rep. 6 App. Cas. 229.	Affirmed (H.L.) <i>nom.</i> Castro v. Regina.
Saltash, Mayor of, v. Goodman	<i>Custom 4 ; Fishery</i> 2	50 Law J. Rep. C.P. 508 ; Law Rep. 7 Q.B. D. 106.	Affirmed (C.A.)

## TABLE OF TITLES.

---

- ABANDONMENT, 1**  
**ABATEMENT, 1**  
**ABORTION, 1**  
**ACCEPTANCE, 1**  
**ACCESSORY, 2**  
**ACCOUNT, 2**  
     *Settled account : opening, 2*  
     *Cross-examination on account, 2*  
**ACKNOWLEDGMENT OF DEED, 2**  
**ACQUIESCENCE, 2**  
**ACTION, 3-5**  
     *When maintainable, 3*  
     *Notice of action, 4*  
**ADEMPMENT, 5**  
**ADMINISTRATION, 5-13**  
     *Right to sue, 6*  
     *Proof of debts, 6*  
     *Legal and equitable assets, 7*  
     *Marshalling assets, 7*  
     *Legatees, 9*  
     *Jurisdiction and practice, 9*  
**ADMINISTRATOR, 13**  
**ADMIRALTY, 13-19**  
     *Jurisdiction, 13*  
     *Pleading, 15*  
     *Practice, 15*  
     *Costs, 17*  
**ADMISSION, 19**  
**ADULTERATION OF FOOD, 19, 20**  
**ADULTERATION OF SEEDS, 20**  
**ADVANCEMENT, 20, 21**  
     *What constitutes an advancement, 20*  
     *Hotchpot : advancement when to be brought into, 21*  
     *Interest on advancement, 21*  
     *Power of trustees, 21*  
**ADVERTISEMENT, 21**  
**ADVOWSON, 21**  
**AFFIDAVIT, 21**  
**AGENT. [See PRINCIPAL AND AGENT.]**  
**AGISTMENT, 22**  
**ALSHOUSE, 22-26**  
     *Grant of licence, 22*  
     *Renewal of licence, 23*  
     *Scope and effect of licence, 23*  
     *House for public refreshment, 23*  
     *Offences, 23*  
**ANIMALS, 26**  
**ANNUITY, 26-28**  
     *Duration of annuity, 26*  
     *On what property chargeable, 27*  
     *Husband and wife : tenancy by entireties, 27*  
     *Registration under 18 & 19 Vict. c. 15. s. 12, 27*  
**APPOINTMENT. [See POWER.]**  
**APPORTIONMENT, 28, 29**  
     *Of rents and dividends, 28*  
     *Of other payments, 29*  
**APPROPRIATION, 28**  
**ARBITRATION, 29-33**  
     *Submission to arbitration, 29*  
     *Compulsory reference, 31*  
     *Arbitrator, 31*  
     *Umpire, 32*  
     *Award, 32*  
     *Costs, 33*  
**ARMY, 33**  
**ARREST, 33, 34**  
**ARTISANS' DWELLINGS, 34**  
**ASSAULT, 34, 35**  
**ATTACHMENT, 35-37**  
     *Of debts, 35*  
     *Of person, 37*  
**ATTORNEY. [See SOLICITOR.]**  
**AUCTION AND AUCTIONEER, 37, 38**  
**BANKER AND BANKING COMPANY, 38, 39**  
     *Banking company, 38*  
     *Banker and customer, 39*  
**BANKRUPTCY, 39-80**  
     *Jurisdiction of the Court of Bankruptcy, 41*  
     *Act of bankruptcy, 42*  
     *Adjudication, 46*  
     *Proof, 49*  
     *Mutual credit, 56*  
     *Trustee, 56*  
     *Public examination of bankrupt, 64*  
     *Order of discharge, 64*  
     *Prosecution of bankrupt, 66*  
     *Liquidation by arrangement, 66*  
     *Composition with creditor, 69*  
     *Practice, 73*  
     *Injunction, 77*  
     *Receiver, 78*  
     *Costs, 78*  
**BARON AND FEME. [See HUSBAND AND WIFE.]**  
**BASTARDY, 80, 81**  
**BIGAMY, 81**  
**BILL OF EXCHANGE AND PROMISSORY NOTE, 81-86**

- Form and operation*, 81  
*Stamp*, 82  
*Consideration*, 83  
*Indorsement: protection to bankers*, 83  
*Acceptance*, 83  
*Notice of dishonour*, 84  
*Re-exchange: right to*, 85  
*Specific appropriation of remittances to cover bills*, 85  
*Cancellation*, 86  
*Actions and proceedings*, 86  
*Proof against acceptor's estate in bankruptcy*, 86  
 BILL OF SALE, 87-94  
     *Registration*, 87  
     *Formalities attending registration*, 91  
     *Setting forth consideration*, 91  
     *Construction and effect of*, 92  
     *Possession or apparent possession*, 93  
     *After-acquired property*, 93  
     *Mortgage: consolidation*, 94  
     *Default in payment: giving time*, 94  
     *Illegal consideration: compounding felony*, 94  
 BOMBAY CIVIL SERVICE FUND, 95  
 BOND, 95-97  
 BOOTY OF WAR, 97  
 BOUNDARIES, 97  
 BREAD, 97  
 BROKER, 97, 98  
 BURIAL, 98, 99  
     *Burial within 100 yards of a dwelling house*, 98  
     *Burial ground*, 98  
     *Burial fees*, 99  
 CAMPBELL'S ACT, 99  
 CARRIAGE, 99  
 CARRIER, 99-104  
     *Carriers of goods or passengers' luggage*, 99  
     *Conveyance of passengers*, 102  
 CATTLE, 104  
 CENTRAL CRIMINAL COURT, 104  
 CERTIORARI, 104  
 CESTUI QUE VIE, 104  
 CHAMBERS, 105  
 CHAMPERTY, 105  
 CHARGING ORDER, 105  
 CHARITY, 105-111  
     *Gift or bequest to charity*, 106  
     *Administration of charity*, 109  
 CHOSE IN ACTION, 111  
 CHURCH AND CLERGY, 111-118  
     *Advowson*, 112  
     *Chancel*, 112  
     *Ecclesiastical Dilapidations Act, 1871*, 113  
     *Churchwardens*, 113  
     *Churchyards*, 113  
     *Faculty*, 114  
     *Per*, 114  
     *Offences:—*  
         *Vestments: ceremonies: ornaments*, 114  
         *Administration of Holy Communion*, 115  
     *Sequestration*, 115  
     *Church Discipline Act: obligation on Bishop to issue commission*, 115  
     *Public Worship Regulation Act*, 116  
     *Ecclesiastical Courts: jurisdiction: pleading and practice*, 117  
 CHURCH RATES, 118  
 CLUB, 118  
 COAL MINES REGULATION ACT, 118, 119  
 COINING, 119  
 COLONIAL LAW, 120-127  
     *Canada*, 120  
     *Cape Colony*, 122  
     *Ceylon*, 123  
     *Griqualand*, 123  
     *Hong Kong*, 123  
     *India*, 123  
     *Isle of Man*, 123  
     *Jamaica*, 123  
     *Jersey*, 123  
     *Newfoundland*, 124  
     *New South Wales*, 124  
     *New Zealand*, 124  
     *Queensland*, 125  
     *Sierra Leone*, 125  
     *South Australia*, 126  
     *Victoria*, 126  
 COMMISSION, 127  
 COMMISSION AGENT, 127  
 COMMON, 127-129  
     *Exclusive right of pasture*, 127  
     *Prescription by occupiers of tenements*, 128  
     *Right of pannage*, 128  
     *Approvement under Statute of Merton*, 128  
 COMPANY, 129-172  
     *Promoters*, 131  
     *Prospectus*, 134  
     *Registration*, 134  
     *Constitution and management:—*  
         *Memorandum and articles of association*, 136  
         *Title and designation of company*, 137  
         *Directors*, 137  
         *Solicitor or agent*, 145  
         *Meetings: voting, &c.*, 145  
         *Mortgages, bonds and debentures*, 146  
         *Reduction of capital*, 146  
         *Fully paid-up shares*, 147  
         *Shareholders*, 150  
         *Rectification of register*, 152  
         *Forfeiture, surrender and cancellation of shares*, 152  
         *Sale or transfer of shares*, 153  
         *Actions and proceedings by and against companies*, 155  
         *Scire facias against shareholder or director*, 156  
         *Amalgamation and transfer of business or assets*, 156  
         *Winding-up*, 159  
             *Petition and winding-up order*, 159  
             *Liquidator*, 161  
             *Receiver*, 162  
             *Creditors*, 162  
             *Contributories*, 165  
             *Service*, 168  
             *Appeals and rehearings*, 168  
             *Discovery and production of documents*, 168



- Stay or transfer of proceedings against company*, 169  
*Witnesses, examination of*, 170  
*Costs*, 170  
*Voluntary winding-up*, 171  
*Scheme of arrangement under Companies Arrangement Act*, 1870, 172  
 COMPOSITION DEED, 172  
 COMPROMISE, 173  
 CONCEALMENT, 173  
 CONDITION, 173, 174  
 CONFIRMATION OF SALES ACT, 174  
 CONFLICT OF LAWS, 174, 175  
 CONSPIRACY, 175  
 CONSTANTINOPLE, 175, 176  
 CONSTRUCTIVE NOTICE, 176  
 CONTAGIOUS DISEASES ACT, 176  
 CONTEMPT OF COURT, 177  
 CONTINGENT REMAINDER, 177, 178  
 CONTRACT, 178-185  
     *Consideration and validity*, 178  
     *When complete*, 180  
     *Construction*, 182  
     *Evidence*, 184  
     *Assignment of*, 185  
 CONTRIBUTION, 185  
 CONVERSION, 185  
 COPYHOLDS, 185, 186  
     *Custom : devise*, 185  
     *Rights of lord and copyholders*, 185  
     *Enfranchisement*, 186  
 COPYRIGHT, 186-189  
     *Registration*, 186  
     *Title of book*, 186  
     *Infringement*, 187  
     *Assignment*, 187  
     *Dramatic copyright*, 187  
     *Musical compositions*, 187  
     *Copyright of designs*, 188  
 CORNWALL, DUCHY OF, 189  
 CORONER, 189  
 CORPORATION, 189  
 COSTS, 189-201  
     *Costs of plaintiff*, 190  
     *Jurisdiction to award or disallow costs*, 192  
     *In particular cases*, 193  
     *Of parties in particular capacity*, 196  
     *Security for costs*, 196  
     *Taxation of costs*, 198  
 COUNSEL, 201  
 COUNTY COURT, 201-204  
     *Jurisdiction of*, 201  
     *Transfer of action*, 202  
     *Appeals*, 203  
     *Fees : right of registrar to recover*, 204  
 COUNTY RATE, 205  
 COURT FEES, 205  
 COVENANT, 205-209  
     *Covenant to settle property*, 205  
     *Covenant in restraint of trade*, 205  
     *Breach of covenant*, 206  
     *Covenants for title and quiet enjoyment*, 208  
     *Usual covenants*, 208  
     *Covenants whether running with the land*, 208  
 DIGEST, 1875-1880.
- Personal covenant*, 209  
*Implied covenant*, 209  
 COVIN AND COLLUSION, 210  
 CRIMINAL INFORMATION, 210  
 CRIMINAL LAW, 210  
 CROWN, 211-213  
 CUSTOM, 213, 214  
 DAMAGES, 214-218  
     *When recoverable*, 214  
     *Measure and criterion of*, 215  
     *Remoteness of*, 217  
 DEBENTURE, 218  
 DEBTOR AND CREDITOR, 219  
     *Assignment of debt*, 219  
     *Joint and several liability*, 219  
     *Appropriation of payments*, 219  
 DEBTORS ACTS, 219-222  
     *Imprisonment*, 220  
     *Discharge from arrest*, 221  
     *Notice of writ of attachment*, 221  
     *Fraudulent debtor*, 222  
 DEED, 222, 223  
     *Construction of*, 222  
     *Estoppel by*, 223  
     *Rectification of*, 223  
 DELAY, 223  
 DEPOSIT, 223  
 DETINUE, 224  
 DISCHARGE, 225  
 DISCLAIMER, 225  
 DISCOVERY, 225  
 DISQUALIFICATION, 225  
 DISTRIBUTIONS, STATUTE OF, 225  
 DISTRICT REGISTRY, 225, 226  
 DIVORCE, 226-233  
     *Jurisdiction*, 227  
     *Nullity of marriage*, 228  
     *Dissolution of marriage*, 228  
     *Restitution of conjugal rights*, 229  
     *Connivance and collusion*, 230  
     *Property of parties*, 230  
     *Evidence*, 232  
     *Practice*, 232  
 DOG LICENSE, 233  
 DOMICIL, 233, 234  
     *Acquisition and change of*, 233  
     *Law of, when applicable*, 234  
 DONATIO MORTIS CAUSA, 234  
 DOWER, 234  
 DRAINAGE, 234  
 EASEMENT, 236, 237  
     *Acquisition of*, 236  
     *Obstruction of*, 236  
 EJECTMENT, 236, 237  
 ELECTION, 237  
 ELEMENTARY EDUCATION ACTS, 237-239  
     *Qualification and election of School Board*, 238  
     *Borrowing powers of School Board*, 238  
     *Compulsory powers as to attendance of children*, 238  
 EMBEZZLEMENT, 239, 240  
 ENDOWED SCHOOLS ACT, 240  
 ENTAIL, 240  
 EQUITABLE ASSIGNMENT, 240, 241

- ESTOPPEL**, 241, 242  
*By record*, 241  
*By deed*, 241  
*In pais*, 242  
**EVIDENCE**, 242  
*Admissibility*, 243  
*Sufficiency and effect*, 246  
*Procedure*, 247  
*In criminal cases*, 248  
**EXCISE**, 248  
**EXECUTOR**, 248-251  
*Appointment of*, 249  
*Rights, powers and duties*, 249  
**EXECUTORY DEVISE**, 252  
**EXTRADITION**, 252  
**FACTOR'S ACTS**, 253  
**FALSE IMPRISONMENT**, 253  
**FALSE PRETENCES**, 254  
**FELONY**, 254  
**FERRY**, 255  
**FINES AND RECOVERIES ACT**, 255  
**FISHERY**, 255, 256  
**FIXTURES**, 256  
**FOREIGN GOVERNMENT**, 257  
**FOREIGN JUDGMENT**, 257  
**FOREIGN LAW**, 258  
**FORESHORE**, 258  
**FOREST OF DEAN**, 258  
**FORFEITURE**, 259, 260  
*On bankruptcy or alienation*, 259  
*On change of religion : remoteness*, 259  
*For breach of covenant*, 260  
**FORGERY**, 260  
**FRAUD**, 260-262  
*Liability for fraudulent acts*, 260  
*Rights of defrauded party*, 261  
**FRAUDS, STATUTE OF**, 262-266  
*Demise for less than three years*, 262  
*Contract or sale of lands*, 262  
*Contract not to be performed within a year*, 265  
*Contract for sale of goods over 10l.*, 266  
*Pleading statute*, 266  
**FRAUDULENT CONVEYANCE OR ASSIGNMENT**, 266  
**FRIENDLY SOCIETY**, 267-269  
**FURIOUS DRIVING**, 270  
**GAME**, 270  
*Taking, during fence months*, 270  
*Trespass in pursuit of*, 270  
**GAMING**, 270  
**GAS WORKS CLAUSES ACTS**, 271  
**GAVELKIND**, 271  
**GIFT**, 271  
**GOODWILL**, 272  
**GROWING CROPS**, 272  
**HARBOUR**, 272  
**HARBOURS, DOCKS AND PIERS CLAUSES ACT**, 272  
**HEIR**, 273  
**HEIRLOOMS**, 273  
**HIGHWAY**, 273-277  
*Definition of*, 273  
*Dedication of*, 273  
*Repair and maintenance of*, 273  
*Diverting and stopping up*, 275  
*Encroachment : information*, 275  
*Power to let pasturage*, 275  
*Actions and proceedings*, 276  
*Obstructions*, 276  
*Offences*, 277  
**HOSPITAL**, 277  
**HOUSE OF LORDS**, 278  
**HUSBAND AND WIFE**, 278-287  
*Action by divorced wife against husband*, 279  
*Liability of husband for acts of wife*, 279  
*Advancement or gift by husband*, 280  
*Annuity to husband and wife : tenants by entireties*, 280  
*Property of wife generally*, 280  
*Separate property of wife*, 282  
*Married Woman's Property Act*, 284  
*Married woman having Protection Order*, 287  
*Dower*, 287  
*Separation deed : custody of children*, 287  
**ILLEGALITY**, 287  
**ILLEGITIMATE CHILDREN**, 287  
**IMPLICATION**, 287  
**IMPRISONMENT**, 288  
**INCLOSURE**, 288  
**INCOME TAX**, 289  
**INDEMNITY**, 290  
**INDICTMENT**, 290  
**INFANT**, 290-295  
*Maintenance of*, 290  
*Property of*, 291  
*Contracts of*, 292  
*Execution of power by*, 293  
*Custody and education of*, 294  
*Guardian*, 294  
*Actions and proceedings by and against*, 294  
**INHABITED HOUSE DUTY**, 295  
**INJUNCTION**, 296-301  
*Jurisdiction to grant*, 296  
*When granted*, 298  
*Practice in action for*, 299  
**INNKEEPER**, 301  
**INSOLVENCY**, 302  
**INSURANCE**, 302-305  
*Life insurance*, 302  
*Fire insurance*, 304  
*Marine insurance*. [See MARINE INSURANCE.]  
**INTEREST**, 305  
**INTERPLEADER**, 305  
**ISLE OF MAN**, 307  
**JOINT TENANTS**, 307  
**JOINTURE**, 307  
**JUDGMENT**, 307, 308  
*Effect of judgment against one joint contractor*, 307  
*Remedies and rights of judgment creditor*, 307  
**JURISDICTION**, 308  
**JUSTICE OF THE PEACE**, 309-311  
*Jurisdiction of justices*, 309  
*Fees to justices' clerk*, 311

- KIDNAPPING ACT, 311**  
**LANCASTER PALATINE COURT, 311**  
**LAND DRAINAGE, 312**  
**LAND TAX, 312**  
**LANDLORD AND TENANT, 312-316**  
*Creation of tenancy, 313*  
*Implied covenant by lessor, 313*  
*Outgoings, charges and assessments, 313*  
*Waste : covenant to repair, 314*  
*Rent, 314*  
*Notice to quit, 315*  
*Outgoing and incoming tenant, 315*  
*Right to moneys under fire policy, 315*  
*Agricultural Holdings Act, 316*  
*Landlord and Tenant Act (Ireland), 1870, 316*  
**LANDS CLAUSES CONSOLIDATION ACT, 316-323.**  
*Purchase and taking of lands, 316*  
*Rights of landowners to compensation, 317*  
*Assessment of compensation, 318*  
*Application of compensation, 319*  
*Superfluous lands, 322*  
*Special Act, 323*  
**LAPSE, 323**  
**LARCENY, 323**  
**LEASE, 323-327**  
*Agreement for lease, 323*  
*Option to purchase : insurance money, 325*  
*Right of lessee of mines to compensation under Railways Clauses Act, 325*  
*Covenant not to assign, 325*  
*Covenant to pay rates, 325*  
*Forfeiture of lease : proviso for re-entry, 326*  
*Surrender of lease, 327*  
*Renewal of lease by partner in own name, 327*  
**LEASEHOLDS, 327**  
**LEE CONSERVANCY BOARD, 328**  
**LEGACY, 328-331**  
*Description of legatee : uncertainty, 328*  
*Legacy to executor, 328*  
*Legacy to debtor, 328*  
*Legacy to creditor, 329*  
*Bequest of chattels : right of choice, 329*  
*Specific, demonstrative, and general, 329*  
*Contingent or conditional legacy, 331*  
*Interest on legacy : right to, 331*  
**LEGACY DUTY, 331**  
**LEGITIMACY DECLARATION ACT, 331**  
**LETTERS, 331**  
**LIBEL, 331-336**  
*What is actionable, 332*  
*Privileged communications, 332*  
*Injunction to restrain, 334*  
*Practice and pleading in actions for libel, 334*  
*Criminal information, 335*  
**LICENCE, 336**  
**LIEN, 336**  
**LIFE ESTATE, 336**  
**LIGHT AND AIR, 336-338**  
*Acquisition and abandonment of right to, 336*  
*Infringement of right to, 337*  
*Constructive notice of right to, 338*  
**LIMITATION OF LIABILITY, 338**  
**LIMITATIONS, STATUTE OF, 338-343**  
*When statute operates as a bar, 338*  
*When statute begins to run, 341*  
*How barred, 342*  
*Pleading statute, 343*  
**LIS PENDENS, 343**  
**LOAN, 343**  
**LOCAL GOVERNMENT. [See PUBLIC HEALTH.]**  
**LOCOMOTIVE, 344**  
**LODGER, LODGING HOUSE, 344**  
**LORD MAYOR'S COURT, 345**  
**LOTTERY ACTS, 346**  
**LUNATIC, 346-349**  
*Jurisdiction and practice in lunacy, 346*  
*Property of lunatic, 347*  
*Pauper lunatic, 348*  
*Criminal lunatic, 349*  
*Reception of lunatic in unlicensed house, 349*  
**MAINTENANCE, 349**  
**MALICIOUS INJURY TO PROPERTY, 349**  
**MALICIOUS PROSECUTION, 349**  
**MANDAMUS, 350, 351**  
*Jurisdiction to grant, 350*  
*When granted, 350*  
**MANOR, 351**  
**MANSLAUGHTER, 351**  
**MARINE INSURANCE, 351**  
*Validity of policy, 351*  
*Construction and effect of policy, 353*  
*Restraint of princes, 354*  
*Partial and total loss, 355*  
*Seaworthiness, 357*  
*General average, 357*  
*Re-insurance, 357*  
*Broker's lien on policies, 358*  
*Actions and proceedings, 358*  
*Mutual Marine Insurance Association, 358*  
**MARKET, 359**  
**MARRIAGE, 360**  
*Formalities, 360*  
*Evidence of, 360*  
*Effect of, to confer name on woman, 360*  
**MARRIAGE SETTLEMENT. [See SETTLEMENT.]**  
**MASTER AND SERVANT, 360-364**  
*Contract of service, 361*  
*Liability of master for injury to servant, 361*  
*Right of action of master for loss of services, 362*  
*Liability of master for acts of servant, 362*  
*Truck Act : wages : deduction for damage, 363*  
**MEDICAL PRACTITIONER, 364**  
**MERCHANT SHIPPING ACTS, 364**  
**MERGE, 365**  
**MESNE PROFITS, 366**  
**METROPOLIS, 366-369**  
*Buildings, 366*  
*Paving streets, 367*  
*Street resting in board or vestry, 367*  
*Sewers, 368*

- Main drainage: jurisdiction of Board of Works*, 368  
*District rate*, 369  
*Management*, 369  
*Metropolitan commons*, 369  
**MINES**, 370-375  
*Exception of mines or minerals*, 370  
*Working of mines*, 370  
*Mining lease*, 373  
*Statutory regulations*, 374  
*Rating of*, 375  
**MISDESCRIPTION**, 375  
**MISTAKE**, 375  
**MORTGAGE**, 376-386  
*Validity and effect of*, 377  
*Rights of mortgagees in respect of his security*, 378  
*Mortgages in possession*, 378  
*Power of sale, exercise of*, 379  
*Transfer of mortgage*, 379  
*Primary and secondary securities*, 379  
*Priorities*, 380  
*Consolidation of several mortgages*, 381  
*Equitable mortgage*, 382  
*Foreclosure and redemption actions: practice in*, 383  
**MUNICIPAL CORPORATION**, 386-390  
*Qualification of members of*, 386  
*Municipal elections*, 387  
*Powers of municipal corporations*, 389  
**NAME**, 390  
**NECESSARIES**, 390  
**NE EXEAT REGNO**, 390  
**NEGLECT**, 391-396  
*In custody of dangerous animals*, 391  
*In keeping property in dangerous condition*, 391  
*In performance of dangerous acts*, 393  
*By persons in particular relations*, 394  
*Contributory negligence*, 396  
*Statutory negligence*, 396  
*Damages: loss of service by injury to servant*, 396  
**NEXT-OF-KIN**, 397  
**NOTICE**, 397  
**NUISANCE**, 397-400  
*Action in respect of*, 397  
*Abatement of*, 399  
*When punishable*, 400  
**OBSCENE PUBLICATION**, 400  
**OBSTRUCTION**, 401  
**PACKER**, 401  
**PARENT AND CHILD**, 402. [See HUSBAND AND WIFE, INFANT.]  
**PARISH**, 402  
**PARLIAMENT**, 402-408  
*Privilege of Parliament*, 403  
*Election of members: election petitions*, 403  
*Registration of voters*, 404  
**PARLIAMENTARY DEPOSIT**, 408  
**PARTITION**, 409-412  
*Practice in actions for*, 409  
*Sale under the Partition Act, 1868*, 410  
*Costs*, 412  
**PARTNERSHIP**, 412-417  
*How constituted: participation in profits*, 412  
*Construction and effect of partnership articles*, 413  
*Property of partnership*, 414  
*Liability of partnership for acts of members*, 414  
*Dissolution*, 416  
*Change of firm: novation of contract*, 417  
*Rights of creditors of bankrupt partnership*, 417  
*Jurisdiction and practice in partnership actions*, 417  
**PARTY WALL**, 417  
**PATENT**, 418-423  
*Validity of*, 418  
*Specification*, 419  
*Sealing*, 420  
*Licence*, 420  
*Infringement*, 421  
*Expiration: foreign patent*, 422  
*Prolongation of*, 422  
*Jurisdiction and practice in actions as to*, 422  
**PAWNBROKER**, 423  
**PEERAGE**, 423  
**PENAL SERVITUDE**, 424  
**PENALTY**, 424  
**PENSION**, 424  
**PERJURY**, 425  
**PERPETUITY**. [See REMOTENESS.]  
**PETITION OF RIGHT**, 425  
**PEW**, 426  
**PHARMACY ACT**, 426  
**PIERS AND HARBOURS**, 426  
**PLACES OF WORSHIP SITES ACT**, 426  
**PLEDGE**, 426  
**POLICY OF INSURANCE**, 427  
**POOR LAW**, 427-430  
*Guardians of the Poor*, 427  
*Auditor: disallowance of expenses of*, 427  
*Settlement*, 427  
*Removal*, 429  
*Criminal lunatic*, 430  
**PORTIONS**, 430, 431  
*Presumption against double portions*, 430  
*Parol evidence to rebut presumption*, 431  
**POSSESSION**, 431  
**POST OFFICE**, 431  
**POWER**, 431-436  
*Creation of: power or trust for sale*, 431  
*Objects and scope of*, 432  
*Execution of power*, 432  
*Appointment, construction and effect of*, 434  
*Power of leasing*, 435  
*Power of sale*, 435  
**PRACTICE**, 436-490  
*Accounts and enquiries*, 437  
*Appeals and rehearings*, 438  
*Appearance and default of appearance*, 445  
*Charging order*, 446  
*Compromise*, 447  
*Consolidation of actions*, 447

- Discontinuance*, 448  
*Dismissal of action*, 448  
*Enrolment*, 449  
*Evidence*, 449  
*Execution*, 452  
*Further consideration*, 452  
*Information*, 453  
*Interlocutory orders*, 453  
*Interrogatories*, 453  
*Joinder of causes of action*, 456  
*Judgment, decree or order*, 456  
*Motions*, 457  
*New trial*, 458  
*Parties*, 460  
*Payment into Court*, 464  
*Pleading*, 465  
*Pro confesso : taking bill*, 476  
*Reference*, 477  
*Sales under direction of Court*, 478  
*Sequestration*, 478  
*Service*, 478  
*Short cause*, 481  
*Special case*, 481  
*Staying proceedings*, 481  
*Stop order*, 483  
*Transfer of actions*, 483  
*Trial*, 484  
*Writ of summons*, 488  
**PREEMPTION**, 490  
**PREFERENCE**, 490  
**PRESCRIPTION**, 490  
**PRESUMPTION**, 491, 492  
     *Of death*, 491  
     *Of paternity*, 491  
     *Of marriage*, 491  
     *Of age of child bearing*, 491  
     *Of title or ownership*, 491  
     *In other cases*, 492  
**PRINCIPAL AND AGENT**, 492-496  
     *Contract of agency*, 492  
     *Liability of principal for acts of agent*, 492  
     *Rights of principal as against third parties*, 493  
     *Authority of agent*, 493  
     *Liability, rights and duties of agent*, 494  
**PRINCIPAL AND SURETY**, 497-500  
     *Validity and consideration of contract of guaranty*, 497  
     *Rights of surety*, 498  
     *Discharge of surety*, 499  
**PRIORITY**, 500  
**PRISON**, 500  
**PRIVILEGE**, 500  
**PRIVY COUNCIL**, 500  
**PROBATE**, 501-505  
     *Jurisdiction*, 501  
     *Grant of probate or administration*, 501  
     *Administration bond*, 504  
     *Practice and pleading*, 504  
**PRODUCTION OF DOCUMENTS**, 505-509  
     *Privileged communications*, 505  
     *Affidavit as to documents*, 507  
     *Right to production*, 508  
**PROHIBITION**, 509, 510  
     *Jurisdiction to grant*, 509  
     *To Lord Mayor's Court*, 510  
     *To Ecclesiastical Court*, 510  
     *To County Court*, 510  
     *To Railway Commissioners*, 510  
**PROPERTY TAX**, 510  
**PUBLIC BODY**, 511  
**PUBLIC ENTERTAINMENT**, 511  
**PUBLIC HEALTH AND LOCAL GOVERNMENT ACTS**, 511-519  
     *Election of Local Board*, 512  
     *Constitution and powers of Local Board*, 512  
     *Paving streets*, 515  
     *Sewers*, 517  
     *Notice of action*, 518  
     *Notice of appeal to Quarter Sessions*, 518  
     *Order to abate nuisance*, 518  
     *Offences*, 519  
         *Selling fish within town*, 519  
         *Unsound meat*, 519  
         *Exposing infected person in public street*, 519  
**PUBLIC POLICY**, 519  
**QUO WARRANTO**, 520  
**RAILWAY**, 521-531  
     *Constitution of railway company*, 521  
     *Powers and rights of company*, 522  
     *Liabilities of railway company*, 527  
     *Passenger Duty Act*, 529  
     *Abandonment*, 530  
     *Board of Trade, powers of*, 530  
     *Railway Commissioners, jurisdiction of*, 530  
**RAPE**, 531  
**RATES**, 531  
     (1) **POOR RATES**.  
         *Who are rateable*, 532  
         *Rateability of particular property*, 532  
         *Rateable value and principle of assessment*, 534  
         *Valuation list*, 535  
         *Recovery of*, 536  
         *Appeals*, 536  
     (2) **OTHER RATES AND ASSESSMENTS**, 536.  
**RECEIVER**, 537, 538  
     *Appointment of*, 537  
     *Powers and duties of*, 538  
**RECEIVING STOLEN GOODS**, 538  
**RECTIFICATION**, 539  
**REFORMATORY**, 539  
**REGISTRATION**, 539  
**RELEASE**, 540  
**REMAINDER**, 540  
**REMOTENESS**, 540-542  
     *Gift to mechanics' institution*, 540  
     *Contract to give right of preemption*, 540  
     *Annuity or absolute gift*, 540  
     *Gift to children of A. at twenty-five*, 540  
     *Gift to unborn children : cyprès*, 540  
     *Gift to a class : members of class not all ascertainable within period*, 541  
     *Restraint on anticipation*, 541  
     *Forfeiture clause on change of religion*, 541  
     *Appointment under special power*, 542  
     *Shifting clause : leaseholds*, 542

## RENEWABLE LEASEHOLDS, 542

RENEWAL, 542

RENT CHARGE, 542

REPLEVIN, 542

RES JUDICATA, 543

REVENUE, 544

REVERSION, 544

REWARD, 544

RIVER, 545

*Duty of Conservancy Board, 545**Pollution or obstruction: rights of riparian owners, 545**Right of navigation, 545*

ROGUE AND VAGABOND, 545

RULES AND ORDERS OF COURT, 546, 547

SALE OF GOODS, 548-555

*Construction and effect of particular contracts, 548**Sale of specific goods, 549**Sale by instalments, 550**Passing of property, 551**Delivery and acceptance of goods, 552**Right of re-sale: bankruptcy of vendor, 552**Vendor's lien, 552**Stoppage in transitu, 553*

SALFORD HUNDRED COURT, 555

SALMON FISHERY, 556

*Salmon Fishery Acts, 556**Right to salmon fishing, 556*

SATISFACTION, 557

SCHOOL, 557

SCOTCH LAW, 557-561

*Appeal, 557**Bankruptcy: set-off, 557**Church and churchyard, 557**Contract, 558**Deed: property passing by: evidence of intention, 558**Entail, 558**Glasgow Police Act, 1866, 559**Harbour: beaching fishing boats, 559**Lease, 559**Marriage, 559**Mines and minerals, 559**Nuisance, 559**Patent, 560**Public Health Act: Public well, 560**Res Judicata, 560**Riparian owners, 560**Superior and vassal, 560**Trinds, 560**Tramways, 561**Trustees, 561**Will, construction of, 561*

SCRIP CERTIFICATE, 561

SEA WALL, 562

SEQUESTRATION, 562

SERVICE, 562

SET-OFF, 563, 564

*Costs: award: solicitor's lien, 563**Of damages for breach of contract sued on, 563**By executor or administrator, 563**Debt contracted by infant: ratification, 563**In bankruptcy, 564**In other cases, 564*

SETTLED ESTATES ACTS, 564, 565

*What is a "Settled Estate," 564**Power to grant leases, 564**Lease of minerals, 565**Sale of settled estate, 565*

SETTLEMENT, 565-571

*Agreement for, 566**Consideration for, 566**Construction of, 567**Confirmation of voidable settlement, 570**Rectification of, 570**Effect of dissolution of marriage, 570*

SEWER, 571

SHELLEY'S CASE, 571

SHERIFF, 571, 572

*Compelling return of writ, 571**Rule to pay money levied, 571**Poundage fees and expenses, 571*

SHIPPING LAW, 572-592

*Assignment of ship, 573**Bill of lading, 573**Bottomry, 574**Charterparty, 575**Collision and damage, 578**Delivery and discharge of cargo, 582**Demurrage, 584**Foreign ship, 585**Forfeiture, 585**Freight, 585**General average, 586**Lien and mortgage, 588**Master, 589**Necessaries, 589**Offences, 589**Particular average, 589**Pilotage, 590**Sale of ship, 590**Salvage, 590**Ship's husband, 592**Tonage, 592**Wages, 592*

SHORTHAND NOTES, 592

SLANDER, 592, 593

*When actionable, 592**Costs of action for, 593*

SOLICITOR, 594-600

*Articled clerk, 594**Uncertificated solicitor, 595**Authority, rights and liabilities of solicitor in general, 595**Dealings and agreements between solicitor and client, 596**Summary jurisdiction over, 597**Bill of costs, 597**Lien for costs, 598*

SPECIFIC PERFORMANCE, 601-606

*What agreements will and will not be specifically enforced, 601**Objections to title: waiver of objections, 604**Right to specific performance with compensation, 605**Practice in actions for, 605*

- STAMP, 606, 607**  
*Deed, 606*  
*Transfer of mortgage, 606*  
*Sale by mortgagor with concurrence of mortgagor, 606*  
*Order for payment of money, 607*  
*Order of Charity Commissioners, 607*  
*Foreign securities, 607*  
*Stamp Act or Licence Act, 607*
- STANNARIES ACT, 607**
- STATUTE, 608-610**  
*Date and operation of, 608*  
*Construction of, 608*  
*Repeal of, 609*  
*Incorporation of, 610*
- STATUTORY DUTY, 610**
- STOCK EXCHANGE, 611, 612**
- SUCCESSION DUTY, 611-613**
- SUMMARY CONVICTION, 613**
- SUMMARY JURISDICTION, 613**
- SUPPORT, 613**
- SUPREME COURT OF JUDICATURE, 613**
- SURRENDER, 614**
- SURVIVORSHIP, 614**
- SUSPENSION, 614**
- TELEGRAPH, 614, 615**  
*Telegraph company, 614*  
*Telegram, 614*
- TENANT FOR LIFE AND REMAINDERMAN, 615-618**  
*Right of tenant for life to custody of deeds, 615*  
*Adjustment of relative rights as between corpus and income, 616*
- TENANT IN COMMON, 618**
- TENANT IN TAIL, 618**
- TENDER, 618**
- THAMES, 618, 619**  
*Conservancy Act: riparian owner, 619*  
*Watermen Act, 619*
- THEATRE, 619**
- THELLUSSON ACT, 619**
- TIME, 619**
- TITHES, 620**
- TITLE DEEDS, 620**
- TOLL, 620**
- TRADE, 620**
- TRADE MARK, 621-625**  
*Registration of, 621*  
*Infringement of, 623*
- TRADES UNIONS, 625**
- TRAMWAYS, 625**
- TRANSFER, 626**
- TREASURY, 626**
- TREES, 626**
- TRESPASS, 626**
- TRIAL, 627**
- TROVER, 627, 628**
- TRUST AND TRUSTEE, 628-636**  
*Declaration of trust, 628*  
*Executory trust, 630*  
*Implied trust, 630*  
*Resulting trust, 630*  
*Trust funds, 630*  
*Breach of trust, 631*  
*Trustee, 633*  
*Cestui que trust, 635*
- TRUSTEE ACTS, 636-638**  
*Petition when to be presented in lunacy, 636*  
*Appointment of new trustee, 637*  
*Vesting order, 637*  
*Costs: lunatic mortgagor, 638*
- TRUSTEE RELIEF ACT, 638-640**  
*Payment into Court, 638*  
*Payment out of Court, 639*  
*Time for appeal, 640*  
*Jurisdiction: petition for advice of Court, 640*
- TURNPIKE, 640**
- ULTRA VIRES, 641**
- UNCERTAINTY, 641**
- UNCONSCIONABLE BARGAIN, 641**
- UNDUE INFLUENCE, 641**
- UNIVERSITY, 641**
- VACCINATION, 642**
- VAGRANCY ACT, 643**
- VENDOR AND PURCHASER, 643-649**  
*Sale by auction: puffer, 643*  
*Contract of sale and purchase, 643*  
*Rescission of contract, 646*  
*Conveyance and completion, 647*  
*Application of purchase-money: duty of purchaser to see to, 648*  
*Purchaser for value without notice, 648*  
*Vendor's lien, 649*  
*Vendor and Purchaser Act, 649*
- VENUE, 649**
- VESTRY, 649**
- VOLUNTARY ASSOCIATION, 650**
- VOLUNTARY SETTLEMENT, 650-653**  
*Validity of, 651*  
*Enforcement of, 652*
- VOLUNTEER ACT, 653**
- WAREHOUSEMAN, 653**
- WARRANTY, 653**
- WARREN, 653**
- WASTE, 653, 654**  
*What acts amount to, 653*  
*Right to proceeds of sale of timber, 654*
- WATER AND WATERCOURSE, 654**
- WATER COMPANY, 655**
- WATERWORKS, 655**
- WAY, 656-658**  
*Way of necessity, 656*  
*Grant of "waggon or cart road," 656*  
*General words: sale by auction, 656*  
*Extent of right, 657*  
*Mode of user: increase of burden on servient tenement, 657*  
*Extinguishment of, 657*
- WAYLEAVE, 658**
- WILD FOWL, 658**
- WILL, 658-685**  
  
(1) CONSTRUCTION OF WILL.  
*Parol evidence of intention, 660*  
*Contingent or conditional will, 660*  
*Will in execution of power, 660*  
*Descriptions of property, 660*



*Residuary and general devises and be-  
quests, 662*

*Specific devises and bequests, 664*

*Ambiguity and uncertainty, 664*

*Who take, 667*

*What estate or interest passes, 671*

*Precatory trusts, 674*

*Vesting : gift over, 674*

*Hotchpot clause, 676*

*Substitution and survivorship, 677*

*Conditional and contingent gift, 679*

*Executory devise : validity of, 680*

*Trusts by reference, 681*

*Remoteness, 681*

(2) *VALIDITY OF WILL AND REQUISITE  
FORMALITIES.*

*Competency of testator, 681*

*What papers are testamentary, 681*

*What documents form part of will, 681*

*Duplicates : admission of evidence, 682*

*Execution, 682*

*Attestation, 682*

*Revocation of will, 683*

*Republication and revival of will, 684*

*WITNESS, 685*

*WORDS, 685-690*

*WRIT, 691*

## TABLE OF PREVIOUS CASES APPROVED, DISAPPROVED OR CONSIDERED.

- Albert v. Grosvenor Investment Co. (37 Law J. Rep. Q.B. 24) questioned. See *Bill of Sale* 48.
- Alexander v. Vanderzee (Law Rep. 7 C.P. 530) distinguished. See *Sale of Goods* 1.
- Allhusen v. Whittell (36 Law J. Rep. Chanc. 929) applied. See *Tenant for Life* 5.
- Allsop v. Day (31 Law J. Rep. Exch. 105) considered. See *Bill of Sale* 4, 12.
- Allsopp v. Wheatcroft (42 Law J. Rep. Chanc. 12) disapproved. See *Covenant* 4.
- Armitage v. Coates (35 Beav. 1), dictum in, followed. See *Remoteness* 12.
- Arthur Average Association, in re (44 Law J. Rep. Chanc. 569) doubted. See *Company* C 4.
- Ashworth, ex parte (43 Law J. Rep. Bankr. 142) observed upon. See *Bankruptcy* D 34.
- Attorney-General v. Floyer (31 Law J. Rep. Exch. 404) followed. See *Succession Duty* 2.
- Attwood v. Small (6 Cl. & F. 232) approved. See *Bankruptcy* D 21.
- Attwool v. Mereweather (37 Law J. Rep. Chanc. 35) applied. See *Company* E 4.
- Auckland, Lord, v. Westminster Local Board of Works (41 Law J. Rep. Chanc. 723) explained. See *Injunction* 3.
- Australian Direct Steam Navigation Co., in re (44 Law J. Rep. Chanc. 676) distinguished. See *Shipping Law* M 1.
- Axmann v. Lund (43 Law J. Rep. Chanc. 655) considered. See *Patent* 20.
- Baker v. Baker (27 Law J. Rep. Chanc. 417) considered. See *Annuity* 6.
- v. Clark (Law Rep. 8 C.P. 121) explained. See *Prohibition* 5.
- Banks v. Goodfellow (39 Law J. Rep. Q.B. 237) followed. See *Will Formalities* 1.
- Bates and Bedgate, ex parte (38 Law J. Rep. Ch. 501) questioned. See *Patent* 14.
- Bateson v. Green (5 Term Rep. 411) considered. See *Common* 5.
- Batty v. Marriott (17 Law J. Rep. C.P. 215) overruled. See *Contract* 11.
- Baxendale v. London, Chatham and Dover Railway Co. (44 Law J. Rep. Exch. 20) followed. See *Damages* 19.
- Barter v. Bower (23 W. R. 805) explained. See *Injunction* 24.
- Beavor v. Luck (36 Law J. Rep. Chanc. 865) questioned. See *Mortgage* 32.
- Berkeley v. Swinburne (17 Law J. Rep. Chanc. 416) explained. See *Remoteness* 9.
- Betts v. Neilson (49 Law J. Rep. Chanc. 317) dissented from. See *Patent* 3.
- Bingham v. Allport (1 Nev. & M. 398) distinguished. See *Tender*.
- v. Bingham (1 Ves. sen. 126) observed upon and approved. See *Vendor and Purchaser* 18.
- "Biola," The (34 Law Times N.S. 135; 5 Asp. Mar. Cas. 125) overruled. See *Admiralty* 37.
- Blackett v. Bradley (31 Law J. Rep. Q.B. 65) overruled. See *Mines* 7.
- Blissett v. Daniel (10 Ha. 493) distinguished. See *Partnership* 9.
- Booth v. Coulton (39 Law J. Rep. Chanc. 622) considered. See *Annuity* 6.
- Boss, ex parte (43 Law J. Rep. Bankr. 110) discussed. See *Bankruptcy* C 7.
- v. Helsham (36 Law J. Rep. Exch. 20) disapproved of. See *Vendor and Purchaser* 8.
- Bower v. Peate (45 Law J. Rep. Q.B. 446) affirmed. See *Easement* 1.
- Bowyer v. Woodman (Law Rep. 3 Eq. 313) distinguished. See *Limitations, Statute of*, 12.
- Bradshaw v. Lancashire and Yorkshire Railway Co. (44 Law J. Rep. C.P. 148) discussed. See *Estoppel* 1.
- Brampton and Longtown Railway Co., in re (39 Law J. Rep. Chanc. 681) followed. See *Railway* 33.
- Braybrooke, Lord, v. The A. G. (31 Law J. Rep. Exch. 177) followed. See *Succession Duty* 2.

- Bridges v. North London Railway Co. (43 Law J. Rep. Q.B. 151) considered. See *Carrier* 16, 17, 18.
- Brighton Arcade Co. v. Dowling (37 Law J. Rep. C.P. 125) observed upon. See *Company* H 66.
- Briggs v. Penny (21 Law J. Rep. Chanc. 256) considered. See *Trust* A 11.
- Brinsmead v. Harrison (40 Law J. Rep. C.P. 281) followed. See *Detinue* 3.
- Brookman v. Rothschild (3 Sim. 153) commented on. See *Damages* 3.
- Brown v. Gellatly (Law Rep. 2 Chanc. 751) followed. See *Tenant for Life* 9.
- Bullock v. Downes (9 H.L. Cas 1) followed. See *Will Construction* H 22.
- Burfield v. Bouch (31 Beav. 241) not followed. See *Partnership* 12.
- Burrell v. Smith (39 Law J. Rep. Chanc. 544) dissented from. See *Costs* 95.
- Butterfield v. Heath (22 Law J. Rep. Chanc. 270) disapproved. See *Voluntary Settlement* 2.
- Buxton v. Buxton (1 Myl. & Cr. 80) followed. See *Executor* 17.
- Byerley v. Prevost (Law Rep. 6 C.P. 144) considered. See *Bill of Sale* 4, 12.
- Camden, Marquis of, v. Battersbury (28 Law J. Rep. C.P. 187) followed. See *Lease* 10.
- Cannon v. Johnson (40 Law J. Rep. Chanc. 46) followed. See *Partition* 24.
- Casson v. Roberts (32 Law J. Rep. Chanc. 105) commented on. See *Estoppel* 5.
- Castle v. Gillett (Law Rep. 16 Eq. 530) not followed. See *Administration* 28.
- Chalmers, ex parte (42 Law J. Rep. Bankr. 2) considered. See *Sale of Goods* 13.
- "Charlotte," The (3 W. Rob. 68) approved. See *Shipping Law* V 2.
- Cherry v. Boulton (2 Keen 319) followed. See *Set-off* 4.
- Chinnock v. Marchioness of Ely (34 Law J. Rep. Chanc. 399) distinguished. See *Frauds, Statute of*, 7.
- Churton v. Douglas (28 Law J. Rep. Chanc. 841) considered. See *Vendor and Purchaser* 13.
- Clark, in re (44 Law J. Rep. Chanc. 314) followed. See *Infant* 11.
- Clarke v. Browne (2 Sm. & G. 524) disapproved. See *Legacy* 17.
- v. Dickson (E. B. & E. 148) approved. See *Fraud* 6.
- v. Wright (30 Law J. Rep. Exch. 113) considered. See *Voluntary Settlement* 4.
- Clayton's Case (1 Mer. 572) applied. See *Trust* C 7.
- Cleland, ex parte (36 Law J. Rep. Bankr. 33) observed upon. See *Administration* 52.
- Coffin v. Cooper (34 Law J. Rep. Chanc. 692) followed. See *Power* 22.
- Coles v. Bank of England (10 Ad. & E. 437) questioned. See *Bill of Exchange*, 12.
- "Commerce," The (3 W. Rob. 287) commented on. See *Shipping Law* E 19.
- Cook v. Ipswich Local Board (40 Law J. Rep. M.C. 169) considered. See *Public Health Act* 18.
- v. Jaggard (35 Law J. Rep. Exch. 76) disapproved. See *Will Construction* E 2.
- Cooke v. Crawford (13 Law J. Rep. Chanc. 406) dissented from. See *Power* 26.
- v. Oxley (3 Term Rep. 653) discussed. See *Contract* 24.
- v. —, considered. See *Trust* D 4.
- Cooper's Trusts, in re (23 Law J. Rep. Chanc. 25) explained. See *Trust* E 1.
- Corby v. Hill (27 Law J. Rep. C.P. 318) applied. See *Master and Servant* 16.
- Cotterell v. Jones (21 Law J. Rep. C.P. 2) approved. See *Champerty* 1.
- Cowling v. Higginson (7 Law J. Rep. Exch. 265) observed upon. See *Way* 7.
- Credit Company of England, in re (40 Law J. Rep. Chanc. 187) not followed. See *Company* D 55.
- Crofton v. Poole (1 B. & Ad. 568; 9 Law J. Rep. K.B. 59) applied. See *Bankruptcy* F 56.
- Crofts v. Middleton (2 Kay & J. 135) dissented from. See *Shelley's Case*.
- Cross v. Alsop (40 Law J. Rep. C.P. 53) distinguished. See *Parliament* 17.
- Crowther, ex parte (24 L.T. N.S. 330) not followed. See *Bankruptcy* F 2.
- Crutwell v. Lye (17 Ves. 335) considered. See *Vendor and Purchaser* 13.
- Currie v. Nind (5 Law J. Rep. Chanc. 71) distinguished. See *Voluntary Settlement* 2.
- Darby v. Smith (8 Term Rep. 82) observed upon. See *Bill of Sale* 42.
- Dare Valley Railway Co., in re (Law Rep. 5 Chanc. 554) followed. See *Arbitration* 11.
- Davidson v. McLeod (Sc. Court of Justiciary) dissented from. See *Adulteration of Food* 5.
- Davies v. Hopkins (27 Law J. Rep. C.P. 6) followed. See *Parliament* 20.
- Davis v. Morris (2 Coll. 303) distinguished. See *Mistake* 1.
- Degg v. Midland Railway Co. (26 Law J. Rep. Exch. 171) distinguished. See *Negligence* 17.
- De'Rochofort v. Dawes (40 Law J. Rep. Chanc. 625) considered. See *Mortgage* 18.

- Desborough v Harris (5 De G. M. & G. 439) dissented from. See *Insurance* 5.
- Dickenson v. Wright (29 Law J. Rep. Exch. 150) followed. See *Voluntary Settlement* 4.
- Dodds v. Hills (2 Hem. & M. 424) distinguished. See *Company* D 88.
- Doe d. Freeman v. Bateman (2 B. & Ald. 168) approved of. See *Specific Performance* 19.
- Doe v. Vowles (1 Moo. & R. 261) disapproved. See *Evidence* 10.
- Douglas v. London and North Western Railway Co. (3 Kay & J. 173) distinguished. See *Lands Clauses Act* 33.
- Driver's Settlement, in re (Law Rep. 19 Eq. 352) explained. See *Trustee Acts* 11.
- Dunn's Case (1 L. C.C. 59) followed. See *Forgery*.
- Edmunds v. Waugh (35 Law J. Rep. Chanc. 234) followed. See *Lands Clauses Act* 35.
- Evans v. Carrington (30 Law J. Rep. Chanc. 364) applied. See *Settlement* 33.
- v. Davies (13 Law J. Rep. Chanc. 11) followed. See *Sheriff* 1.
- v. Nicholson (44 Law J. Rep. C.P. 351) distinguished. See *Prohibition* 2.
- Eyre v. Marsden (4 Myl. & Cr. 231) followed. See *Administration* 18, 21.
- Faulkner v. Elger (4 B. & C. 449) considered. See *Church and Clergy* 1.
- Felton's Executors' Case (35 Law J. Rep. Chanc. 196) followed. See *Company* D 37.
- Fenner v. London and South Eastern Railway Co. (41 Law J. Rep. Q.B. 313) explained. See *Production* 4.
- Fisher, ex parte; in re Ash (41 Law J. Rep. Bankr. 62) considered. See *Bankruptcy* B 9, 16, 17.
- Fleet v. Murton (41 Law J. Rep. Q.B. 49) distinguished. See *Broker* 1; *Principal and Agent* 12.
- Fletcher v. Rylands (37 Law J. Rep. Exch. 161) applied and considered. See *Negligence* 5, 9.
- Foligno v. Martin (22 Law J. Rep. Chanc. 502) not followed. See *Vendor and Purchaser* 23.
- "Forest Queen," The (Law Rep. 3 Ad. & E. 299) approved. See *Liverpool Passage Court* 2.
- Fowler v. Lock (41 Law J. Rep. C.P. 99) distinguished. See *Negligence* 21.
- Fowler's Case (42 Law J. Rep. Chanc. 9) doubted. See *Company* H 57.
- Fox v. Fox (Law Rep. 19 Eq. 286) distinguished. See *Will Construction* L 4, 5.
- Foxley, ex parte (Law Rep. 3 Chanc. 815) explained. See *Bankruptcy* B 16.
- Freeland v. Pearson (36 Law J. Rep. Chanc. 374) disapproved of. See *Power* 4; *Will Construction* H 18.
- Frith v. Forbes (4 De G. F. & J. 407) explained. See *Bill of Exchange* 23.
- Fussell v. Dowding (42 Law J. Rep. Chanc. 716) not followed. See *Settlement* 33.
- Gale v. Gale (21 Beav. 349) followed. See *Power* 10.
- Gardner v. Barber (10 Jur. N.S. 508) followed. See *Annuity* 2.
- Gatty v. Fry (46 Law J. Rep. Exch. 605) distinguished. See *Stamp* 1.
- Gibbs and West's Case; in re International Life Assurance Co. (39 Law J. Rep. Chanc. 667) not followed. See *Company* H 67.
- Gibson, in re (31 Law J. Rep. Chanc. 596) considered. See *Legacy* 15.
- Gillham v. Taylor (42 Law J. Rep. Chanc. 674) disapproved of. See *Charity* 17.
- Goldsmid v. Stonehewer (9 Hare App. xxxviii.) explained. See *Mortgage* 42.
- Goodright v. Moses (2 W. Black. 1019) distinguished. See *Voluntary Settlement* 2.
- Gordon v. Lord Reay (5 Sim. 274) disapproved. See *Will Formalities* 27.
- Gorger v. Mievill (3 B. & C. 45) applied. See *Scrip Certificates* 2.
- Gowan v. Broughton (44 Law J. Rep. Chanc. 275), dictum in, disapproved. See *Administration* 17.
- Greated v. Greated (28 Law J. Rep. Chanc. 756) doubted. See *Will Construction* I 7.
- Greenwich Hospital Improvement Act, in re (20 Beav. 458) followed. See *Will Construction* E 2.
- Greisley v. Earl of Chesterfield (13 Beav. 288) not followed. See *Tenant for Life* 5.
- Grimm v. Fowler (29 Law J. Rep. Q.B. 189) observed upon. See *Arbitration* 17.
- Grizewood v. Blanc (21 Law J. Rep. C.P. 46) explained. See *Contract* 13.
- Hadley v. Baxendale (23 Law J. Rep. Exch. 179) distinguished. See *Damages* 15, 22.
- Haines v. Burnett (27 Beav. 500) not followed. See *Lease* 4.
- Hall v. Hall (20 Beav. 139) not followed. See *Partnership* 12.
- Halstead United Charities, in re (Law Rep. 20 Eq. 48) followed. See *Lands Clauses Act* 40.
- Hamilton, Duke of, v. Meynal (2 Dick. 788) followed. See *Evidence* 31.
- Hammond v. Anderson (1 B. & P. N.R. 69) considered. See *Sale of Goods* 32.

- Harvey v. Stracey** (22 Law J. Rep. Chanc. 23) followed. See *Power* 17.
- Hayes v. Hayes** (4 Russ. 311) doubted. See *Remoteness* 6.
- Henderson v. Stevenson** (Law Rep. 2 Sc. & D. App. 470) distinguished. See *Carrier* 8, 20.
- Hensman v. Fryer** (37 Law J. Rep. Chanc. 97) considered. See *Administration* 23, 24.
- Herbert v. Sayer** (12 Law J. Rep. Q.B. 286) followed. See *Bankruptcy* H 16.
- Hertfordshire Brewery Co., in re** (43 Law J. Rep. Chanc. 358) not followed. See *Company* C 1.
- Hewison v. Negus** (22 Law J. Rep. Chanc. 655) followed. See *Voluntary Settlement* 2.
- Hilton v. Lord Grenville** (13 Law J. Rep. Q.B. 193) applied. See *Mines* 7.
- Hinton, ex parte** (44 Law J. Rep. Bankr. 36) explained. See *Bankruptcy* M 14.
- Hobday v. Peters** (28 Beav. 603) distinguished. See *Trust* C 1.
- Hobgen v. Neale** (40 Law J. Rep. Chanc. 36) distinguished. See *Will Construction* H 20.
- Hodgson v. Bective** (32 Law J. Rep. Chanc. 489; 33 *Ibid.* 601) followed. See *Will Construction* D 10.
- **v. Johnson** (28 Law J. Rep. Q.B. 88) commented on. See *Contract* 1.
- Hollyford Copper Mining Co., in re** (Law Rep. 5 Chanc. 93) followed. See *Company* H 70.
- Holmes v. North Eastern Railway Co.** (38 Law J. Rep. Exch. 161) applied. See *Negligence* 17.
- Holroyd v. Marshall** (23 Law J. Rep. Chanc. 193) followed. See *Bill of Sale* 45.
- Howkins v. Jackson** (2 Mac. & G. 372) distinguished. See *Release*.
- Hughes v. Ellis** (24 Law J. Rep. Chanc. 351) doubted. See *Will Construction* I 7.
- Humble v. Shore** (7 Ha. 247) considered. See *Will Construction* E 10, 11.
- Humphrey v. Dale** (27 Law J. Rep. Q.B. 390) distinguished. See *Broker* 1; *Principal and Agent* 12.
- Indermaur v. Dames** (36 Law J. Rep. C.P. 181) applied. See *Master and Servant* 16.
- Ingham v. Primrose** (28 Law J. Rep. C.P. 294) questioned. See *Bill of Exchange* 12.
- Ingram v. Soutten** (44 Law J. Rep. Chanc. 55) considered. See *Settlement* 10.
- Jacobs v. Brett** (44 Law J. Rep. Chanc. 377) followed. See *Salford Hundred Court*.
- Jegon v. Vivian** (40 Law J. Rep. Chanc. 389) followed. See *Mines* 13.
- Jervis v. Berridge** (42 Law J. Rep. Chanc. 518) approved. See *Contract* 18.
- Jessop v. Blake** (3 Giff. 639) not followed. See *Settlement* 33.
- Jolly v. Rees** (33 Law J. Rep. C.P. 177) followed. See *Husband and Wife* 6.
- Jones v. Thompson** (27 Law J. Rep. Q.B. 234) followed. See *Attachment* 3.
- **v. Williams** (10 Law J. Rep. Exch. 253) followed. See *Practice* D 2.
- Kellett v. Tranmere Local Board** (34 Law J. Rep. Q.B. 87) dissented from. See *Arbitration* 19.
- Keppel v. Bailey** (2 Myl. & K. 517) treated as overruled. See *Covenant* 15.
- Kevan v. Williams** (5 Sim. 171) explained. See *Remoteness* 9.
- “**Killarney**,” **The** (30 Law J. Rep. P. M. & A. 41) followed. See *Shipping Law* R 1.
- King, ex parte** (Cooke's Bankrupt Laws, 176) observed upon. See *Fraud* 2.
- **, ex parte** (44 Law J. Rep. Bankr. 92) observed upon. See *Bankruptcy* D 34.
- **v. Hoare** (14 Law J. Rep. Exch. 29) considered. See *Debtor and Creditor* 2.
- Lamb v. Eames** (40 Law J. Rep. Chanc. 447) followed. See *Will Construction* I 8.
- Lancefield v. Iggulden** (44 Law J. Rep. Chanc. 203) considered. See *Administration* 23.
- Lang v. Gisborne** (31 Law J. Rep. Chanc. 769) explained. See *Patent* 3.
- Langridge v. Payne** (2 Jo. & H. 423) observed upon. See *Mortgage* 6.
- Lanphier v. Buck** (34 Law J. Rep. Chanc. 650), dictum in, disapproved. See *Will Construction* N 4.
- Leather Cloth Co. v. Lonsont** (39 Law J. Rep. Chanc. 86) followed. See *Covenant* 4.
- Le Grice v. Finch** (3 Mer. 50) disapproved. See *Legacy* 17.
- Le Neve v. Le Neve** (Amb. 436) distinguished. See *Bill of Sale* 19.
- Lightfoot v. Burstall** (33 Law J. Rep. Chanc. 788) considered. See *Will Construction* E 10, 11.
- Lipscomb v. Lipscomb** (38 Law J. Rep. Chanc. 90) considered. See *Mortgage* 18.
- Lloyd v. Banks** (37 Law J. Rep. Chanc. 881) followed. See *Mortgage* 26.
- Locking v. Parker** (42 Law J. Rep. Chanc. 257) explained. See *Mortgage* 5.
- Lolley's Case** (Russ. & Ry. 237) followed. See *Divorce* 6.

- London Marine Insurance Association, in re (38 Law J. Rep. Chanc. 681) considered. See *Company* H 63.
- Lundy Granite Co., in re (40 Law J. Rep. Chanc. 588) discussed and approved. See *Company* H 36.
- McArthur, ex parte (40 Law J. Rep. Bankr. 86) not followed. See *Mortgage* 7.
- Macdonald v. Union Bank of Scotland (Court Sess. Cas., 3rd ser. vol. ii. p. 963) approved. See *Bill of Exchange* 11.
- Machu v. London and South Western Rail. Co. (2 Exch. 415) approved. See *Railway* 26.
- Madeley v. Booth (2 De Gex & S. 718) dissented from. See *Specific Performance* 6.
- Major v. Major (23 Law J. Rep. Chanc. 718) followed. See *Administration* 51.
- Marsden's Trusts, in re (4 Drew. 594) distinguished. See *Power* 21.
- Marshall v. Ulleswater Steam Navigation Co. (3 B. & S. 742), dictum in, not approved. See *Fishery* 1.
- Martin v. Goble (1 Campb. 322) dissented from. See *Damages* 14; *Light and Air* 9.
- v. Martin (35 Law J. Rep. Chanc. 679) dissented from. See *Will Construction* L 12.
- Maryport, &c. Railway Act, in re (32 Law J. Rep. Chanc. 811) not followed. See *Lands Clauses Act* 37.
- Matthews v. Bloxsome (39 Law J. Rep. Q.B. 209) doubted. See *Bill of Exchange* 11.
- Mayott v. Mayott (2 Bro. C.C. 125) explained. See *Will Construction* H 31.
- Maxwell v. Hogg (36 Law J. Rep. Chanc. 433) considered. See *Partnership* 13.
- "Medina," The (Law Rep. 2 P.D. 5) followed. See *Shipping Law* T 3.
- Melhado v. Porto Allegre, &c. Railway Co. (43 Law J. Rep. C.P. 253) observed upon. See *Company* A 2.
- Mercer v. Paterson (27 Law J. Rep. Exch. 54) followed. See *Bankruptcy* B 14.
- Mercati's Case; in re Accidental and Marine Insurance Co. (37 Law J. Rep. Chanc. 56) questioned. See *Company* H 90.
- "Milan," The (31 Law J. Rep. Adm. 105) considered. See *Admiralty* 49.
- Miles v. Tobin (16 W.R. 465) doubted. See *Light and Air* 10.
- Minchin v. Minchin (7 Ir. Chanc. Rep. 267) dissented from. See *Power* 20.
- Morgan v. Knight (15 Com. B. Rep. N.S. 669) followed. See *Bankruptcy* H 3.
- Morley, ex parte (43 Law J. Rep. Bankr. 28) followed. See *Bankruptcy* D 19.
- Morton v. Woods (38 Law J. Rep. Q.B. 81) explained. See *Mortgage* 2.
- Moseley's Trusts, in re (40 Law J. Rep. Chanc. 275) not followed. See *Remoteness* 7.
- Musgrove, ex parte (3 Mont. D. & D. 386) considered. See *Bankruptcy* B 24.
- Napier v. Schneider (12 East, 420) not followed. See *Bill of Exchange* 14.
- Nash v. Dickinson (Law Rep. 2 C.P. 252) distinguished. See *Sheriff* 8.
- Newton v. Cubitt (31 Law J. Rep. C.P. 246) followed. See *Ferry*.
- "Northumbria," The (Law Rep. 3 A. & E. 6) followed. See *Shipping Law* E 30.
- Oakeley v. Pasheller (4 Cl. & F. 207) distinguished. See *Principal and Surety* 17.
- Oakes v. Turquand (36 Law J. Rep. Chanc. 949) followed. See *Company* D 75.
- v. Oakes (9 Hare, 666) overruled. See *Legacy* 15.
- Occleston v. Fullalove (43 Law J. Rep. Chanc. 207) considered. See *Will Construction* H 12.
- O'Loughlen, ex parte (40 Law J. Rep. Bankr. 28), dictum in, questioned. See *Bankruptcy* A 2, M 24.
- O'Mahoney v. Burdett (44 Law J. Rep. Chanc. 56) considered. See *Settlement* 10.
- Orde, ex parte; in re Horsley (40 Law J. Rep. Bankr. 60) distinguished. See *Bankruptcy* K 11.
- Owen v. London and North Western Railway Co. (37 Law J. Rep. Q.B. 35) approved. See *Lands Clauses Act* 15.
- Page v. Leapingwell (18 Ves. 463) applied. See *Power* 16.
- Paice v. Walker (39 Law J. Rep. Exch. 109) distinguished. See *Principal and Agent* 11.
- Parsons v. Lloyd (35 Law J. Rep. Exch. 190 n) disapproved. See *Bankruptcy* F 24.
- Paton v. Sheppard (10 Sim. 186) not followed. See *Will Construction* D 12.
- Patterson v. Patterson (40 Law J. Rep. P. & M. 5) doubted. See *Bankruptcy* C 2.
- Peacock, ex parte (42 Law J. Rep. Bankr. 78) distinguished. See *Bankruptcy* D 8.
- Pease v. Jackson (37 Law J. Rep. Chanc. 725) considered. See *Friendly Society* 5.
- Peek v. Gurney; Barclay's Case (43 Law J. Rep. Chanc. 19) explained. See *Company* D 40, 77.
- Pennell v. Deffell (20 Law J. Rep. Chanc. 115) overruled. See *Trust* C 7.

- Phene v. Popplewell (31 Law J. Rep. C.P. 235) explained. See *Lease* 19.
- Pile v. Salter (5 Sim. 411) disapproved. See *Will Construction* L 11.
- Porter v. Vorley (9 Bing. 98) disapproved. See *Damages* 10.
- Potter v. Faulkner (31 Law J. Rep. Q.B. 30) distinguished. See *Negligence* 17.
- Prudential Assurance Co. v. Knott (44 Law J. Rep. Chanc. 192) observed upon. See *Injunction* 4; *Libel* 13, 14.
- Purser v. Darby (4 K. & J. 41) discussed. See *Will Construction* E 9.
- Pyer v. Carter (26 Law J. Rep. Exch. 258) considered. See *Easement* 4.
- Quick v. Quick (3 Sw. & Tr. 442) overruled. See *Evidence* 25.
- Raggett v. Findlater (43 Law J. Rep. Chanc. 64) distinguished. See *Trade Mark* 8.
- Rankin v. Potter (42 Law J. Rep. C.P. 169) explained. See *Marine Insurance* 18.
- Rede v. Oakes (4 De Gex, J. & S. 505) observed upon. See *Vendor and Purchaser* 26.
- Reg. v. Battle, Sussex (36 Law J. Rep. M.C. 1) distinguished. See *Rates* 10.
- v. Cambrian Railway Co. (40 Law J. Rep. Q.B. 169) overruled. See *Ferry*.
- v. Cavendish (12 Irish Law Rep. 230) not followed. See *Libel* 22.
- v. Chichester, Bishop of (29 Law J. Rep. Q.B. 23) approved. See *Church and Clergy* 25.
- v. Deer (L. & C. 240) corrected. See *Receiving Stolen Goods*.
- v. Featherstone (Dears. C.C. 369) corrected. See *Receiving Stolen Goods*.
- v. Glynn (41 Law J. Rep. M.C. 58) distinguished. See *Bastardy* 6.
- v. Hornsea (39 Law J. Rep. M.C. 59) distinguished. See *Highway* 4.
- v. Lower Heyford (2 Sm. L.C. 300, 6th ed.) followed. See *Evidence* 10.
- v. Read (2 Car. & K. 957) followed. See *Assault* 3.
- v. St. Austell (5 B. & Ald. 693) followed. See *Mines* 24.
- v. West Riding, Trustees of (39 Law J. Rep. M.C. 17) followed. See *Alchouse* 1.
- v. Wycombe Railway Co. (36 Law J. Rep. Q.B. 121) approved. See *Railway* 8.
- Rennie v. Morris (41 Law J. Rep. Chanc. 321) overruled. See *Company* D 89.
- Rex v. Cumberworth (1 Law J. Rep. M.C. 86) overruled. See *Highway* 7; *Turnpike* 2.
- Rex v. Edge Lane (5 Law J. Rep. M.C. 91) dissented from. See *Turnpike* 2.
- Reynolds v. Godlee (Johns. 536, 582) overruled. See *Trust* E 2.
- Rhodes v. Airedale Drainage Commissioners (43 Law J. Rep. C.P. 323) overruled. See *Arbitration* 11.
- Rich v. Basterfield (16 Law J. Rep. C.P. 273) distinguished. See *Nuisance* 2.
- Rideout's Trusts, in re (39 Law J. Rep. Chanc. 192) followed. See *Evidence* 16. Considered. See *Evidence* 17.
- Robinson, in re (37 Law J. Rep. Exch. 11) approved. See *Costs* 78.
- v. Mollett (44 Law J. Rep. C.P. 362) distinguished. See *Broker* 3.
- Robson v. Drummond (2 B. & Ald. 303) distinguished. See *Contract* 27.
- Rodger v. Comptoir d'Escompte de Paris (38 Law J. Rep. P.C. 30) dissented from. See *Sale of Goods* 33.
- Rollins v. Hinks (41 Law Rep. Chanc. 358) considered. See *Patent* 20.
- Ross v. Ross (20 Beav. 645) followed. See *Will Construction* I 15.
- Row v. Row (Law Rep. 7 Eq. 414) not approved. See *Administration* 21.
- Ruding's Settlement, in re (41 Law J. Rep. Chanc. 665) disapproved of. See *Power* 9.
- Ryall v. Bowles (1 Ves. sen. 343) considered. See *Bankruptcy* F 14.
- Bylands v. Fletcher (37 Law J. Rep. Exch. 161) applied. See *Covenant* 17.
- Sayer v. Hughes (37 Law J. Rep. Chanc. 401) considered. See *Advancement* 2.
- Schibsby v. Westenholz (40 Law J. Rep. Q.B. 73) considered. See *Foreign Judgment* 3.
- "Schwan," The (43 Law J. Rep. Adm. 18) followed. See *Admiralty* 50.
- Scott v. Bentley (24 Law J. Rep. Chanc. 244) corrected. See *Lunatic* 17.
- Selby v. Pomfret (30 Law J. Rep. Chanc. 770) explained. See *Mortgage* 32.
- Selkirk v. Davies (2 Dowl. 230) followed. See *Bankruptcy* D 21.
- Semenza v. Brinsley (34 Law J. Rep. C.P. 161; 18 Com. B. Rep. N.S. 467) explained. See *Principal and Agent* 8.
- Sibley v. Perry (7 Ves. 522) discussed. See *Will Construction* I 15.
- Sidney v. Wilmer (25 Beav. 260; 4 De Gex, J. & S. 84) observed upon. See *Way* 10.
- Simmons v. Rose (25 Law J. Rep. Chanc. 615) explained. See *Administration* 44.



- Simpson, in re (43 Law J. Rep. Bankr. 147) distinguished. See *Bankruptcy* D 19.
- Sinclair v. Jackson (17 Beav. 405) approved. See *Limitations, Statute of*, 12.
- Sinonin v. Mallac (2 Sw. & Tr. 67) distinguished. See *Domicile* 5.
- Slubey v. Heyward (2 H. Bl. 504) observed upon. See *Sale of Goods* 32.
- Smith v. Iliffe (44 Law J. Rep. Chanc. 755) discussed. See *Settlement* 30.
- v. Kenrick (18 Law J. Rep. C.P. 172) distinguished. See *Crown* 2.
- v. Seghill, Overseers of (44 Law J. Rep. M.C. 114) followed. See *Parliament* 17.
- Soames v. Martin (10 Sim. 287; 8 Law J. Rep. Chanc. 367) followed. See *Annuity* 2.
- Solomon v. Davey (Dart. V. & P. 5th ed. 450 n) overruled. See *Vendor and Purchaser* 15.
- v. Solomon (33 Law J. Rep. Chanc. 473) confirmed. See *Administration* 14.
- Somerville v. Mackay (6 Ves. 382) distinguished. See *Partnership* 7.
- Spalding v. Ruding (6 Beav. 376) applied. See *Sale of Goods* 31.
- Spargo's Case (42 Law J. Rep. Chanc. 488) followed and applied. See *Company* D 63, 65.
- Steed v. Preece (43 Law J. Rep. Chanc. 687) distinguished. See *Infant* 10; *Partition* 20.
- Stephens v. Australasian Insurance Co. (42 Law J. Rep. C.P. 12) applied. See *Marine Insurance* 26.
- , ex parte (2 Mont. & Ayr. 31) distinguished. See *Bankruptcy* D 30.
- Stewart v. Jones (3 De Gex & J. 532) questioned. See *Will Construction* H 7.
- Stokes' Trusts, in re (41 Law J. Rep. Chanc. 235) followed. See *Trustee Acts* 7.
- Stowe v. Jolliffe (43 Law J. Rep. C.P. 265) followed. See *Mortgage* 29.
- Strong v. Bird (43 Law J. Rep. Chanc. 814) distinguished. See *Gift* 1.
- Sweet v. Meredith (22 Law J. Rep. Chanc. 147) not followed. See *Vendor and Purchaser* 23.
- Swift v. Wenman (39 Law J. Rep. Chanc. 336) not followed. See *Settlement* 33.
- Sydney, ex parte (44 Law J. Rep. Bankr. 21) distinguished. See *Bankruptcy* H 3.
- Tapp v. Jones (44 Law J. Rep. Q.B. 127) approved. See *Attachment* 8.
- Taylor v. Caldwell (32 Law J. Rep. Q.B. 164) applied. See *Sale of Goods* 5.
- Tardiff v. Robinson (27 Beav. 629 n) distinguished. See *Tenant for Life* 11.
- Tassell v. Smith (27 Law J. Rep. Chanc. 694) overruled. See *Mortgage* 31.
- Teague, in re (11 Beav. 318) overruled. See *Solicitor* 33.
- Teague's Settlement, in re (Law Rep. 10 Eq. 564) followed. See *Remoteness* 11.
- Teasdale's Case (43 Law J. Rep. Chanc. 578), dictum in, questioned. See *Company* D 52.
- Tee v. Ferris (25 Law J. Rep. Chanc. 437) followed. See *Charity* 19.
- Temple, ex parte (1 Glyn & J. 216), statement in, disapproved. See *Mortgage* 12.
- Thomas v. Jones (29 Law J. Rep. Chanc. 570) approved. See *Costs* 95.
- Thompson v. Barrett (1 Law Times N.S. 268) distinguished. See *Bill of Sale* 4.
- v. Hudson (38 Law J. Rep. Chanc. 431) distinguished. See *Bond* 3.
- Tillett v. Stracey (37 Law J. Rep. C.P. 93) followed. See *Mortgage* 13.
- Topham v. Duke of Portland (39 Law J. Rep. Chanc. 259) distinguished. See *Power* 21.
- Toulmin v. Steere (3 Mer. 210) discussed. See *Mortgage* 21.
- Trollope v. Routledge (1 De Gex & S. 662) followed. See *Costs* 91.
- Valpy, ex parte (Law Rep. 7 Chanc. 289) disapproved. See *Company* D 15. Discussed. See *Company* D 17. Distinguished. See *Company* D 16.
- Varley v. Coppard (Law Rep. 7 C.P. 508) considered. See *Lease* 13.
- Vaughan v. South Metropolitan Cemetery Co. (20 Law J. Rep. Chanc. 265) followed. See *Burial* 4.
- Veal v. Veal (27 Beav. 303) followed. See *Donatio Mortis Causa* 2.
- Viant's Settlement Trusts, in re (43 Law J. Rep. Chanc. 832) disapproved. See *Settlement* 19.
- Vicars v. Vicars (29 Law J. Rep. P. & M. 20) overruled. See *Divorce* 25.
- Wall v. Bright (1 J. & W. 494) discussed. See *Will Construction* E 9.
- Wallace v. Allen (32 Law Times, N.S. 778) distinguished. See *Prohibition* 2.
- Watson v. Clarke (1 Dowl. 336) explained. See *Marine Insurance* 24.
- v. Cox (42 Law J. Rep. Chanc. 279) not followed. See *Vendor and Purchaser* 23.
- Webster v. Carline (4 M. & G. 27) considered. See *Acknowledgment of Deed* 2.
- Wellock v. Constantine (32 Law J. Rep. Exch. 285) questioned. See *Bankruptcy* D 37.
- Wells v. Abrahams (41 Law J. Rep. Q.B. 306) discussed. See *Bankruptcy* D 37.

xxiv TABLE OF PREVIOUS CASES APPROVED, DISAPPROVED OR CONSIDERED.

- Wheeler v. Howell (3 Kay & J. 198) disapproved. See *Limitations, Statute of* 12.
- Whateley v. Spooner (3 Kay & J. 542) considered. See *Advancement* 5.
- Wheatcroft's Case (42 Law J. Rep. Chanc. 853) disapproved. See *Company D* 38.
- White v. Bass (31 Law J. Rep. Exch. 283) approved. See *Easement* 4.
- v. Simmons (40 Law J. Rep. Chanc. 689) observed upon. See *Bankruptcy A* 7.
- Wilce v. Wilce (9 Law J. Rep. C.P. 197) followed. See *Will Construction E* 2.
- Wilkins v. Fry (1 Mer. 244) considered. See *Bankruptcy F* 1.
- Wilkinson v. Duncan (23 Beav. 469) followed. See *Tenant for Life* 19.
- Willesford v. Watson (Law Rep. 8 Chanc. 473) distinguished. See *Arbitration* 3.
- v. — Dicta of Wickens, V.C., disapproved. See *Arbitration* 6.
- Williams v. Burrell (1 Com. B. Rep. 402) followed. See *Damages* 12.
- v. Harding (35 Law J. Rep. Bankr. 25) considered. See *Bankruptcy C* 41.
- Williams v. James (36 Law J. Rep. C.P. 256) followed. See *Way* 7.
- Willingale v. Maitland (36 Law J. Rep. Chanc. 64) explained. See *Common* 3; *Custom* 1.
- Wilmer v. Currey (2 De Gex & S. 347) observed upon. See *Partnership* 23.
- Wilson v. Newberry (41 Law J. Rep. Q.B. 31) distinguished. See *Negligence* 4.
- v. Wilson (28 Law J. Rep. Chanc. 95) approved. See *Remoteness* 13.
- ex parte (41 Law J. Rep. Bankr. 46) followed. See *Bankruptcy D* 21.
- Wolfe v. Findley (6 Hob. 66) observed upon. See *Insurance* 4.
- Wood v. Waud (18 Law J. Rep. Exch. 305) approved. See *Watercourse* 3.
- Woodhouse v. Murray (36 Law J. Rep. Q.B. 282) followed. See *Bankruptcy B* 15.
- Woolsey v. Crawford (2 Campb. 445) not followed. See *Bill of Exchange* 14.
- Wynn Hall Colliery Co., in re (39 Law J. Rep. Chanc. 625) discussed. See *Company D* 17.
- Young v. Grote (4 Bing. 253) questioned. See *Bill of Exchange* 12.

AN  
ANALYTICAL DIGEST

OF THE

CASES REPORTED AND PUBLISHED

From MICHAELMAS SITTINGS 1875 to TRINITY SITTINGS 1880,

AND CONTAINED IN

THE LAW JOURNAL REPORTS,

And other Contemporary Reports ;

WITH

REFERENCES TO STATUTES PASSED WITHIN THE SAME PERIOD.

ABANDONMENT.

*Abandonment of fishery.* [See SALMON FISHERY, 1.]

*Abandonment of railways.* [See RAILWAY, 33.]

*Abandonment of ship.* [See MARINE INSURANCE, 18.]

ABATEMENT.

*Of action or proceeding.* [See PRACTICE, U.]

*Of criminal proceedings.* [See OBSCENE PUBLICATION, 3.]

*Of nuisance.* [See NUISANCE, 12-15.]

*Right to specific performance with abatement of purchase-money.* [See SPECIFIC PERFORMANCE, 20-23.]

of juniper; that oil of juniper in small quantities of from five to twenty drops is commonly used without any bad effect as a diuretic, but that taken in a dose of half an ounce it acts as a powerful stimulant and irritant, and produces violent purging and vomiting, which would have a tendency to produce miscarriage by reason of the shock to the system and the straining of the parts consequent upon the purging or vomiting; and that a dose of half an ounce of oil of juniper would be a very dangerous dose to administer to a pregnant woman, and that such danger would consist in the high probability of its causing miscarriage:—Held, that there was evidence that the half-ounce of oil of juniper was a “noxious thing” within the meaning of the statute. *Reg. v. Cramp*, 49 Law J. Rep. M.C. 44; Law Rep. 5 Q.B. D. 307.

ABORTION.

A “noxious thing” within the 24 & 25 Vict. c. 100. ss. 58, 59, means anything which is harmful as administered, although not necessarily harmful *per se*. The prisoner, with intent to procure miscarriage, gave V. an ounce bottle of oil of juniper, telling her to take it in two doses of half an ounce each. She took one such dose, which caused violent sickness. There was evidence that the bottle given by the prisoner contained 500 to 600 drops of oil  
DIGEST, 1875-1880.

ABSCONDING DEBTOR.

[See BANKRUPTCY, M 20.]

ACCELERATION.

*Of interest.* [See WILL, CONSTRUCTION, L 1.]

ACCEPTANCE.

*Of bill of exchange.* [See BILL OF EXCHANGE, 11-15.]

*Of offer.* [See CONTRACT, 17-25.]

B

## ACCESSORY—ACT OF BANKRUPTCY.

## ACCESSORY.

Upon the trial of an indictment against several prisoners, charging some with murder and others with having afterwards harboured them, the principals were found guilty of manslaughter, and the harbourers of having been accessories thereto after the fact:—Held, that the latter could, upon such indictment and verdict, be legally convicted as accessories after the fact to the crime of manslaughter. *Reg. v. Richards* (C.C.R.), 46 Law J. Rep. M.C. 900; Law Rep. 2 Q.B. D. 311.

## ACCOMMODATION BILL.

[See BILL OF EXCHANGE, 16.]

## ACCOMMODATION WORKS.

[See RAILWAY, 9.]

## ACCORD AND SATISFACTION.

[See PRACTICE, W 54.]

## ACCOUNT.

(A) SETTLED ACCOUNT, OPENING.

(B) CROSS-EXAMINATION ON ACCOUNT.

## (A) SETTLED ACCOUNT, OPENING.

1.—In actions seeking to open settled accounts, the Court acts on the following principle: Where a single item complained of is a fraudulent item, the proper order to make is to open the accounts altogether; where the item complained of is not fraudulent, and the accounts are of some years' standing, the proper order to make is to give liberty to surcharge and falsify. Where there is a question of surcharging and falsifying settled accounts, the case alleged must be clearly proved by the person impeaching them, and if there is any doubt it will be determined against him. *Gettling v. Keighley*, 48 Law J. Rep. Chanc. 45; Law Rep. 9 Ch. D. 547.

*Principal and agent: fiduciary relation: commission: overcharges.* [See PRINCIPAL AND AGENT, 20.]

*Re-opening settled accounts as between solicitor and client on ground of undue influence or exorbitant or improper charges.* [See SOLICITOR, 22, 23.]

## (B) CROSS-EXAMINATION ON ACCOUNT.

2.—A person desiring to cross-examine upon an account must specify the particular items of the account upon which he wishes to cross-examine. This rule applies as well to a plaintiff who has brought in an account in order to enforce a charge as to an ordinary accounting party. *Bates v. Eley*, 45 Law J. Rep. Chanc. 270; Law Rep. 1 Ch. D. 473.

[And see PRACTICE, A 5.]

## ACCUMULATIONS.

[See THELLUSSON ACT.]

*Interim rents: destination of, until happening of event.* [See WILL, CONSTRUCTION, D 10.]

*Rebuilding of mansion-house allowed out of accumulations.* [See TENANT FOR LIFE, 17.]

## ACKNOWLEDGMENT OF DEBT.

[See LIMITATIONS, STATUTE OF, 18-21.]

## ACKNOWLEDGMENT OF DEED.

[Doubts removed concerning the acknowledgment of deeds by married women in Ireland. 41 Vict. c. 23.]

1.—A married woman who under section 91 of the Fines and Recoveries Act has obtained an order of the Court of Common Pleas, dispensing with her concurrence, may dispose of her real estate by a deed which is not acknowledged by her. *Goodchild v. Dougal*, Law Rep. 3 Ch. D. 650.

2.—Semble, the perpetual commissioners who take the acknowledgment in England of a married woman, under section 82 of the Fines and Recoveries Act, need not be appointed for the county in which the acknowledgment is taken. *Webster v. Carline* (4 M. & G. 27) considered. *Blackmur v. Blackmur*, 45 Law J. Rep. Chanc. 710; Law Rep. 3 Ch. D. 633.

3.—Where it is proved that an order for the conveyance of a married woman's property has been obtained by fraud, such order will be set aside; but the evidence of fraud must be clear. *Ex parte Alice Cockerell*, Law Rep. 4 C.P. D. 39.

4.—Upon its appearing that a deed had been duly and properly acknowledged by a married woman before a Commissioner, under 3 & 4 Will. 4. c. 74, the Court allowed the certificate of such acknowledgment to be filed, although it was not made and signed by the Commissioner until upwards of twenty years after the deed had been acknowledged. *In re Chalker*, 47 Law J. Rep. C.P. 378.

## ACQUIESCENCE.

*Covenant, in breach of.* [See COVENANT, 12.]

*Injunction, right to, when barred by acquiescence.* [See INJUNCTION, 12, 13.]

*Local board, by.* [See INJUNCTION, 3.]

*Principal and agent: purchase by sub-agent: profit by agent.* [See PRINCIPAL AND AGENT, 17.]

*Shareholder, by, in misrepresentation in prospectus.* [See COMPANY, D 76.]

*Specific performance, when a bar to.* [See SPECIFIC PERFORMANCE, 18.]

## ACT OF BANKRUPTCY.

[See BANKRUPTCY (B).]

ACT OF GOD.

*Liability for damage occasioned by.* [See *CARRIERS*, 1; *HARBOURS CLAUSES ACT*, 3; *NEG-LIGENCE*, 8, 11.]

ACT OF PARLIAMENT.

[See *STATUTE*.]

ACTION.

(A) WHEN MAINTAINABLE.

- (a) *By personal representative for injury to personal estate of testator.*
- (b) *For breach of statutory duty.*
- (c) *By manager of mutual insurance society for contribution.*
- (d) *Against architect for collusively refusing his certificate.*
- (e) *Money paid: misrepresentation.*
- (f) *Effect of previous proceedings: res judicata.*
- (g) *In other cases.*

(B) NOTICE OF ACTION.

- (a) *Action against justice of the peace.*
- (b) *Action for wrongful arrest.*

(A) WHEN MAINTAINABLE.

- (a) *By personal representative for injury to personal estate of testator.*

1.—The plaintiff, who had obtained a verdict in an action to recover money paid for shares which proved to be of no value, and which he had been induced to take on the faith of a fraudulent prospectus issued by the defendants, died pending an appeal, and his administratrix sought to be added as a party to the action in his place:—Held (affirming the decision of the Common Pleas Division, 47 Law J. Rep. C.P. 676), that the cause of action, being one which diminished the value of the personal estate in the hands of the administratrix, survived, and that the administratrix was rightly added as a party to the action under Order L. *Twyrosse v. Grant* (App.), 48 Law J. Rep. C.P. 1; Law Rep. 4 C.P. D. 40.

*Estoppel: administratrix suing, first, under Lord Campbell's Act, and secondly, for damage to personal estate.* [See *ESTOPPEL*, 1.]

- (b) *Breach of statutory duty.*

2.—Where an Act of Parliament imposes a statutory duty, an action does not necessarily lie for the breach of such duty at the suit of any person injured by such breach. Whether such a right of action exists depends upon the general scope and object of the particular statute. *Atkinson v. The Newcastle and Gateshead Water Company* (App.), 46 Law J. Rep. Exch. 775; Law Rep. 2 Ex. D. 441.

By the Waterworks Clauses Act, 1847 (10 Vict. c. 17), s. 42, the undertakers are at all times to keep charged with water at a certain

pressure all their pipes to which fire-plugs shall be affixed, and to allow all persons at all times to take and use such water for extinguishing fire without making compensation for the same. By section 43, if the undertakers neglect to keep their pipes charged at the statutory pressure, they are liable to a penalty of 10*l.* for each offence, to be recovered by a common informer. In an action to recover damages against a water company for not keeping their pipes supplied with water at the statutory pressure, whereby the plaintiff's house was burnt down,—Held, on demurrer (reversing the decision of the Court of Exchequer, Law Rep. 6 Exch. 404), that the action would not lie. *Couch v. Steel* (3 E. & B. 402; 23 Law J. Rep. Q.B. 121) questioned. *Ibid.*

*Action against persons incorporated by Act of Parliament for a particular purpose.* [See *PUBLIC BODY*, 1.]

*Against vestry for neglect to remove rubbish.* [See *METROPOLIS*, 19.]

- (c) *By manager of mutual insurance society for contribution.*

3.—The manager of a Mutual Insurance Association, having no parliamentary power to sue on behalf of the members, claimed to sue upon a contract with him personally, the declaration being to the effect that the defendant was a member of the said association, and caused himself to be insured by a policy therein, and the plaintiff, in consideration of the defendant agreeing to comply with the rules annexed to the policy, subscribed the policy on behalf of the members of the said association. Averments that, by the said rules (in certain events which happened), additional percentages on the premium were to become payable by the defendant, to be drawn for as the committee might determine; that the manager's drafts for percentages should be accepted by the members and punctually paid when due, and that upon the said percentages becoming payable the committee directed the manager to draw upon the defendant for the said percentages, and that the plaintiff was the manager and did so draw, and all conditions were fulfilled. Breach, that the defendant had not accepted the draft nor paid the percentages:—Held (affirming the decision of the Court below), that the declaration was bad in substance as disclosing no consideration on the part of the plaintiff. *Evans v. Hooper* (App.), 45 Law J. Rep. Q.B. 206; Law Rep. 1 Q.B. D. 45.

- (d) *Against architect for collusively refusing his certificate.*

4.—The plaintiff, who had contracted to do certain repairs to the house of A. B. to the satisfaction of the architect of A. B., sued such architect for refusing to certify that the repairs had been done to his satisfaction; and in his statement of claim the plaintiff stated that the

defendant, with a view of earning his commission, induced the plaintiff to make a tender for the repairs, and that the defendant accepted such tender, and agreed with the plaintiff that as soon as the work was done in a sound and workmanlike manner, he would certify his satisfaction so as to enable the plaintiff to recover the price thereof from A. B. The statement afterwards averred the due execution of the work by the plaintiff, and alleged that though the defendant admitted to the plaintiff he was satisfied with the work, yet he, in collusion with A. B., and in fraud of the plaintiff, refused to certify that he was satisfied, and falsely pretended that he was dissatisfied, by reason of which, and through such wrongful acts, the plaintiff was unable to recover the price of the work from A. B.:—Held, on demurrer, that the statement disclosed a good cause of action. *Ludbrook v. Barrett*, 46 Law J. Rep. C.P. 798.

(e) *Money paid : misrepresentation.*

5.—The defendants, a limited company, who were possessed of a process for converting sewage into manure (for which a patent had been taken out in England but not for the foreign city of B.), agreed to sell to the plaintiff for 15,000*l.* the sole and exclusive right to use the patent in B. By the law existing at B. no exclusive right to use the process there could be obtained. This the plaintiff knew. His object in buying the exclusive right was to form a company for using the process at B., and induce persons to take shares in such company under the belief that if the company bought of the plaintiff the right sold to him by the defendants, the company would be entitled to the exclusive use of the process in B. In an action by the plaintiff to recover the 15,000*l.* on the ground that as there was no exclusive right to the use of the process in B. the consideration had failed:—Held (affirming the judgment of the Queen's Bench, 44 Law J. Rep. Q.B. 233; Law Rep. 10 Q.B. 491), that no action would lie: first, because although the defendants ostensibly sold the exclusive right to use the process at B., yet the plaintiff's object being to form a company, he had intended to buy the right whether exclusive or not, and therefore had obtained what he bargained for; and, secondly, because the plaintiff had entered into the contract with the defendants with a view to perpetrating a fraud. *Begbie v. The Phosphate Sewage Company* (App.), Law Rep. 1 Q.B. D. 679.

(f) *Effect of previous proceedings : res judicata.*

6.—In an action for damages against the defendants, as proprietors of an omnibus, in respect of injuries caused by negligence of their driver, the defendants pleaded that the plaintiff was awarded and had accepted a sum of money as compensation by a magistrate having jurisdiction to award the same:—Held, a good defence to the action, notwithstanding such order was not made on the defendants but

on the driver. *Wright v. The London General Omnibus Company (Lim.)*, 46 Law J. Rep. Q.B. 429; Law Rep. 3 Q.B. D. 271.

*Action by husband for assaulting wife barred by previous summary conviction.* [See ASSAULT, 1.]

*Action against executor charging wilful default : effect of previous administration decrees.* [See ADMINISTRATION, 36.]

*Declarator of marriage : suit dismissed in 1842 : second suit, after wife's death, in 1875.* [See SCOTCH LAW, 16.]

*Judgment recovered against one or more of several joint contractors a bar to an action upon the same contract against the others.* [See JUDGMENT, 1.]

[And see RES JUDICATA.]

(g) *In other cases.*

*Constable, against, to recover possession of stolen goods.* [See DETINUE, 2.]

*For rent in respect of premises situated abroad.* [See PRACTICE, W 44, VENUE.]

*Friendly society, against secretary of.* [See FRIENDLY SOCIETY, 5.]

*Joinder of causes of action.* [See PRACTICE, Q.]

*Master, by, quod servitium amittit.* [See MASTER AND SERVANT, 10.]

*Misrepresentation in prospectus, action by shareholder or company in respect of.* [See COMPANY, A 6.]

*Mortgagee, by, in receipt of rents.* [See MORTGAGE, 9-13.]

*On judgment, for costs.* [See HOUSE OF LORDS, 10.]

*Railway company, by, for penalty.* [See PENALTY, 2.]

*Surveyor of highways, against local board acting as.* [See HIGHWAY, 17.]

*Telegraph company, against, for misdelivery of telegram.* [See TELEGRAPH, 1.]

(B) NOTICE OF ACTION.

(a) *Action against justice of the peace.*

7.—The plaintiff having been taken into custody on a charge of concealing the birth of her illegitimate child, the defendant, who was a Justice of the peace, made an order for the examination of her person, under which order she was examined by a medical man. In an action against the defendant for an assault, there being no authority at common law or by statute to make the order,—Held (by Lopes, J.), that the defendant was not entitled to notice of action under 11 & 12 Vict. c. 44. s. 9 (which provides for the giving of notice before any action against a Justice of the peace for anything done by him in the execution of his

office), inasmuch as though he might have acted *bona fide*, in the belief that he had authority to make the order for the plaintiff's examination, there was nothing in fact on which he could ground such belief. *Agnew v. Jobson*, 47 Law J. Rep. M.C. 67.

(b) *Action for wrongful arrest.*

8.—In an action for wrongful arrest, in order to entitle the defendant to notice of action under 24 & 25 Vict. c. 96. s. 113, he must prove, first, that he *bona fide* believed that he found the plaintiff committing an offence; secondly, that having such belief, he proceeded in accordance with the terms of the Act in effecting an "immediate" apprehension, and "forthwith" bringing the plaintiff before a magistrate. *Griffiths v. Taylor*; and *Thatcher v. Taylor* (App.), 46 Law J. Rep. C.P. 162; Law Rep. 2 C.P. D. 194.

It is a question for the jury whether the apprehension was "immediate" or not. *Ibid.*

*Public Health Act* (11 & 12 Vict. c. 63) s. 139, *under*. [See HIGHWAY, 16; PUBLIC HEALTH ACT, 3.]

### ADDING PARTIES.

[See PRACTICE, U 17-28.]

### ADEMPMENT.

*Of bequest by conversion of property.* [See LEGACY, 16-22.]

*Of legacy by advancement.* [See ADVANCEMENT, 5.]

### ADJUDICATION.

[See BANKRUPTCY, C.]

### ADJUSTMENT OF ACCOUNTS.

[See TENANT FOR LIFE AND REMAINDERMAN.]

### ADMINISTRATION.

#### (A) RIGHT TO SUE.

- (a) *Suit by annuitant.*
- (b) *Suit by residuary legatee.*

#### (B) PROOF OF DEBTS.

- (a) *Priority of judgment creditor.*
- (b) *Priority of creditor over assignee of residuary legatee.*
- (c) *Security given by deceased while insolvent.*
- (d) *Interest on debt: insolvent estate.*
- (e) *Proof after chief clerk's certificate.*
- (f) *Dilapidations: bequest of leasehold's cum onero.*
- (g) *Priority: specialty and simple contract debts: rent.*
- (h) *Secured creditor.*
- (i) *Deficient estate: distribution of funds subsequently coming in.*

#### (C) LEGAL AND EQUITABLE ASSETS.

#### (D) MARSHALLING ASSETS.

##### (a) *Incidence of mortgage debt: Locke King's Act.*

- (1) *Mortgage comprising realty and personality.*
- (2) *Leaseholds not within the Act.*
- (3) *What words are a sufficient exoneration of the mortgaged estate.*

##### (b) *As between general residue and share of residue undisposed of.*

##### (c) *As between general personality and blended fund of realty and personality.*

##### (d) *As between residuary personal estate and real estate charged with legacies.*

##### (e) *As between real estate descended and pure personal estate bequeathed to charity.*

##### (f) *As between pecuniary legatee and residuary devisee.*

##### (g) *Charge of debts.*

##### (h) *As between corpus and income.*

#### (E) LEGATEES.

##### (a) *Charge of legacies on real estate.*

##### (b) *Set-off against legatee.*

##### (c) *Colonial duties, incidence of.*

#### (F) JURISDICTION AND PRACTICE.

##### (a) *Domicil: Scotch assets.*

##### (b) *Parties.*

##### (1) *Plaintiff having contingent interest.*

##### (2) *Representation of unascertained class.*

##### (c) *Creditors' action, form of.*

##### (d) *Wilful default, subsequent action charging.*

##### (e) *Injunction: foreign creditor.*

##### (f) *Staying proceedings: no title in plaintiff.*

##### (g) *Transfer of action: judgment: creditors: priority.*

##### (h) *Debts, whether to be raised by sale or mortgage.*

##### (i) *Further consideration: notice to parties served with decree.*

##### (k) *Costs.*

##### (1) *Not payable out of undisposed-of share of residue in priority of general residue.*

##### (2) *Deficient estate: liability of exors.*

##### (3) *Of administrator, where letters of administration revoked.*

##### (4) *Where realty and personality bequeathed as mixed fund.*

##### (5) *Of ascertaining classes entitled to share in residue.*

##### (6) *Of parties attending proceedings.*

##### (7) *Of suit by next friend to set aside agreement.*

##### (8) *Defaulting trustee.*

##### (9) *Action to ascertain whether specific property passed.*

##### (10) *Of proving will.*

##### (11) *Priority: costs in Probate Division.*

##### (12) *Set-off: solicitor's lien.*

(13) *Testamentary expenses.*(14) *Charges of fraud withdrawn.*(15) *Taxation.*

[The provisions of the Acts 17 & 18 Vict. c. 113, and 30 & 31 Vict. c. 69, extended to hereditaments of every tenure. 40 & 41 Vict. c. 34.]

## (A) RIGHT TO SUE.

(a) *Suit by annuitant.*

1.—The legatee of an annuity charged on certain real estate and the residue, was held entitled to an administration judgment. *Wollaston v. Wollaston*, 47 Law J. Rep. Chanc. 117; Law Rep. 7 Ch. D. 58.

(b) *Suit by residuary legatee.*

2.—A mere refusal by legal personal representatives to sue for the recovery of assets alleged to be outstanding is not sufficient to entitle a residuary legatee or next-of-kin to maintain an action against the alleged debtor to the estate and the legal representative for the recovery of such assets. Special circumstances must be shewn as a ground for such an action. *Yeatman v. Yeatman*, 47 Law J. Rep. Chanc. 6; Law Rep. 7 Ch. D. 210.

## (B) PROOF OF DEBTS.

(a) *Priority of judgment creditor.*

3.—The rule by which a judgment creditor of a testator is entitled to priority over simple contract creditors in the administration of the assets of the testator under an administration decree is not affected by section 10 of the Judicature Act, 1875, which provides that in such administration of assets the same rules shall prevail as to the respective rights of secured and unsecured creditors as may be in force under the law of bankruptcy with respect to bankrupts' estates. *Smith v. Morgan*, 49 Law J. Rep. C.P. 410; Law Rep. 5 C.P. D. 337.

(b) *Priority of creditor over assignee of residuary legatee.*

4.—The purchaser of a reversionary interest in a fund in Court in an administration suit takes subject to the claim of any creditor who may prove his debt at any time before the fund is paid out, the fund being available for creditors so long as it remains in Court. *Hooper v. Smart*; *Piper v. Piper*; and *Bailey v. Piper*, 45 Law J. Rep. Chanc. 99; Law Rep. 1 Ch. D. 90.

A. purchased for value the reversionary interest in a fund standing in Court to the credit of an administration suit (No. 1), and representing part of a testator's residuary estate. Prior to the purchase it had been certified in the suit, in effect, that there were no debts due from the estate. B., the plaintiff in a suit (No. 2) affecting part of the testator's real estate and instituted subsequently to A.'s purchase, obtained a decree directing an account, and charging the amount found due thereon and also his costs upon

the fund in Court in suit No. 1. A. was not a party to suit No. 2, but the testator's personal representative was a defendant thereto. Upon a petition by B. for payment of the charge given him by the decree in suit No. 2 out of the fund in suit No. 1,—Held, that B. was entitled to have his debt satisfied out of the fund in priority to A.'s claim as purchaser, and that the debt was not liable to apportionment as between that part of the residuary estate which remained in Court and that part which had been paid out. *Ibid.*

(c) *Security given by deceased while insolvent.*

5.—In the administration of the estate of a deceased person, a security given by him to a particular creditor will not be set aside on the ground of preference, if the object was payment, although the deceased person was at the time of giving the security insolvent to his own knowledge. *Middleton v. Pollock*; *ex parte Elliott*, 45 Law J. Rep. Chanc. 293; Law Rep. 2 Ch. D. 104.

E. placed a sum of money in the hands of her solicitor for investment. He died insolvent without investing the money, and after his death a declaration of trust was found among his papers, addressed to E., by which he declared himself trustee of some leasehold property whereof he was mortgagee, and of a bill indorsed by himself to E., to secure the repayment of this sum:—Held, as between E. and the general creditors of the solicitor's estate, that the transaction was *bona fide* within 13 Eliz. c. 5. *Ibid.*

(d) *Interest on debt: insolvent estate.*

6.—In an action for the administration of the estate of a person who has died insolvent since the commencement of the Judicature Act, 1875, a creditor on the estate whose debt bears interest is not entitled to interest up to the day of payment, but only to the date of the judgment for administration, which, by virtue of the 10th section of the Act, is equivalent to an adjudication in bankruptcy. *In re Summers*. *Boswell v. Gurney*, Law Rep. 13 Ch. D. 136.

(e) *Proof after chief clerk's certificate.*

7.—The general rule enabling a creditor in an administration action, after the time fixed by advertisement, and after the chief clerk's certificate, to come in upon terms and prove his debt, applies also to a case where a creditor seeks, after the chief clerk's certificate, an order on further consideration to bring in a further claim in respect of a debt which he had proved before the certificate, but the amount of which he had, through a mistake (not amounting to *laches*), miscalculated. *In re Metcalfe's Estate*. *Hicks v. May* (App.), 49 Law J. Rep. Chanc. 192; Law Rep. 13 Ch. D. 236.

(f) *Dilapidations: bequest of leaseholds cum onere.*

8.—Specific bequests upon trusts for H. and her



children after payment of a legacy and of the testator's debts and funeral expenses, and bequest of residuary estate to the plaintiff, whom the testator appointed his executor. The residuary estate consisted in part of a leasehold house, held for a term at a rack-rent and considerably out of repair. This leasehold being worthless, the plaintiff, five months after the testator's death, surrendered it to the landlord, who would only accept a surrender on payment of rent for two and a-half quarters from the testator's death and a sum for dilapidations. The residuary estate as a whole was valuable:—Held (reversing the decision of *Malins, V.C.*), that the plaintiff was not entitled to have the sums which he had paid to the landlord for dilapidations and for rent subsequent to the testator's death paid out of the specifically bequeathed property as being debts of the testator. *Harkins v. Harkins* (App.), Law Rep. 13 Ch. D. 47.

(g) *Priority: specialty and simple contract debts: rent.*

9.—Rent being a specialty debt is within the Act 32 & 33 Vict. c. 46, and therefore, in the administration of the assets of a deceased lessee, a lessor is not entitled to priority in respect of arrears of rent over the other creditors. *In re Hastings. Sherriff v. Hastings*, 47 Law J. Rep. Chanc. 137; Law Rep. 6 Ch. D. 610.

(A) *Secured creditor.*

10.—Sub-section 1 of section 25 of the Judicature Act, 1873, came into operation on the passing of the Act. Accordingly, where a testator died in May, 1875, insolvent,—Held, that a secured creditor, who had realised his security, was only entitled to prove for the difference between the amount of his debt and the value of his security, and not for the full amount of his debt. *In re Richards. Hilton v. Jones*, 47 Law J. Rep. Chanc. 740; Law Rep. 9 Ch. D. 620.

11.—The last case overruled. Section 25 of the Judicature Act, 1873, did not come into operation on the passing of the Act, but was suspended by the Supreme Court Commencement Act, 1874, until the 1st of November, 1875. Accordingly, where an intestate died in April, 1874, and a suit to administer his estate was instituted in December, 1874,—Held, that the estate as regards secured creditors was to be administered according to the old rule of the Court of Chancery. *Sherwin v. Selkirk* (App.), Law Rep. 12 Ch. D. 68.

(i) *Deficient estate: distribution of funds subsequently coming in.*

12.—Where a decree has been made for administration of a testator's real and personal estate and insufficient funds directed to be paid rateably to ascertained creditors, the respective creditors are the only persons entitled to the proportions directed to be paid

to them, and if such proportions be unclaimed they will remain in Court, and will not after any lapse of time be distributed amongst the other named creditors or any other creditors of the testator, or paid to the testator's representatives; and if any fresh funds come in, they are in like manner distributable amongst the same creditors with any other creditors who may have subsequently proved their claims. *Ashley v. Ashley* (App.), 46 Law J. Rep. Chanc. 322; Law Rep. 4 Ch. D. 757; reported in Court below, 45 Law J. Rep. Chanc. 185; Law Rep. 1 Ch. D. 243.

Where any debt bearing interest, or any balance of such a debt remains unpaid, the creditor will be entitled to interest on the debt or any part of it of which he could not previously have obtained payment; but not on anything which remained unpaid through his own default to claim payment. *Ibid.*

In 1748 a decree was made for the administration of the personal estate of a testator, and by an order made on further consideration in 1785 his real estate was also directed to be applied in payment of debts. By an order made in 1792, certain funds, the proceeds of the estate, were directed to be applied in payment of the specialty debts found by the Master's report, in full, and the simple contract debts found by the same report, rateably, *pro tanto*, the estate being insufficient. Part of the funds remained unclaimed by the creditors, and in 1865 further funds were also paid into Court:—Held, that the only persons interested in the original funds were the creditors named in the report, and their only rights in respect of such funds were to be paid the amounts originally directed to be paid to them, without interest, and that the new funds were payable rateably (if insufficient) amongst the simple contract creditors named in the report, or their representatives, in respect of the balances not previously directed to be paid to them, with interest, in case the debts bore interest, and such other creditors (if any) as might since have proved their debts. *Ibid.*

*Trade creditors: lien: indemnity.* [See EXECUTOR, 21.]

(C) *LEGAL AND EQUITABLE ASSETS.*

*The separate estate of a married woman under the Married Woman's Property Act, 1870, is equitable assets.* [See HUSBAND AND WIFE, 43.]

(D) *MARSHALLING ASSETS.*

(a) *Incidence of mortgage debt: Locke King's Act.*

(1) *Mortgage comprising realty and personality.*

13.—Where real and personal estate belonging to a testator are comprised in the same mortgage, *Locke King's Act* (17 & 18 Vict. c. 113) has not the effect of throwing the whole mortgage debt upon the real estate, but such mortgage debt must, as between the devisees of the testator's real estate and the legatees of his

personal estate, be borne rateably by the mortgaged realty and the mortgaged personality. *Trestail v. Mason*, 47 Law J. Rep. Chanc. 249; Law Rep. 7 Ch. D. 685.

(2) *Leaseholds not within the Act.*

14.—Locke King's Act (17 & 18 Vict. c. 115) does not apply to leaseholds. *Solomon v. Solomon* (33 Law J. Rep. Chanc. 473) confirmed. *Hill v. Wormsley*, 46 Law J. Rep. Chanc. 102; Law Rep. 4 Ch. D. 665. [But see now 40 & 41 Vict. c. 34.]

(3) *What words are a sufficient exoneration of the mortgaged estate.*

15.—Testator, after devising a freehold estate to his daughter for life, with remainder to her children, as tenants in common, devised all his other real estate, "charged nevertheless in aid of his personal estate and in exoneration of his other real estate, with the payment of all his just debts," upon trusts for his three sons. The real estates so devised to the daughter and the sons respectively were subject to a mortgage for 1,000*l.*:—Held (*dubitante* Baggallay, L.J.), that by force of Locke King's Act, 1854, and the Amendment Act, 1867, the daughter and the sons took the devised estate subject to the payment of the mortgage in rateable proportions, and that the words "in aid of my personality, &c." did not amount to a "contrary intention" within the Act so as to charge the whole of the mortgage either on the personality or on the estate devised to the sons. *In re Newmarch*. *Newmarch v. Storr* (App.), 48 Law J. Rep. Chanc. 28; Law Rep. 9 Ch. D. 12.

16.—Testator directed his executors to pay all his just debts, funeral and testamentary expenses, out of his personal estate in exoneration of his real estate. Some time afterwards he mortgaged a part of his real estate:—Held, that the mortgaged estate had not been exonerated from its primary liability to pay the mortgage debt. *In re Rossiter*. *Rossiter v. Rossiter*, 49 Law J. Rep. Chanc. 36; Law Rep. 13 Ch. D. 354.

(b) *As between general residue and share of residue undisposed of.*

17.—Testatrix, after directing payment of her just debts, funeral and testamentary expenses, gave her residuary and personal estate amongst four persons by name, one of whom died in her lifetime:—Held, that the lapsed share was not primarily liable for the costs of an administration suit, but that the costs must be paid before the residue was divided. *Dictum* in *Gowan v. Broughton* (44 Law J. Rep. Chanc. 275; Law Rep. 19 Eq. 77) disapproved. *Trethow v. Helyar*, 46 Law J. Rep. Chanc. 125; Law Rep. 4 Ch. D. 53.

18.—A gift of residue of testator's real and personal estate having failed as to the realty and impure personality under the Mortmain Act, the costs of an action for administration were

ordered to be borne by the realty and pure and impure personality *pro rata*. *Eyre v. Marsden* (4 Myl. & Cr. 231) followed. *Blann v. Bell*, 47 Law J. Rep. Chanc. 190; Law Rep. 7 Ch. D. 383.

19.—Testator bequeathed a sum of bank annuities and the residue of his personal estate (not including in the term "residue" the bank annuities) to trustees upon certain trusts as to part of the bank annuities, and one-fifth of the residue for the benefit of his son T.; and as to other part of the bank annuities, and one other fifth of the residue, for his daughter M. In the events which happened these bequests lapsed:—Held, that the costs of a suit to administer the testator's real and personal estate were payable out of the general personal estate, and not primarily out of the lapsed bequests. *Fenton v. Wills*, 47 Law J. Rep. Chanc. 191; Law Rep. 7 Ch. D. 33.

20.—A lapsed share of real estate is not liable to the costs of an administration action in priority to residuary personal estate given upon trust for sale and payment of debts, funeral and testamentary expenses. *In re Jones*. *Jones v. Caless*, Law Rep. 10 Ch. D. 40.

(c) *As between general personality and blended fund of realty and personality.*

21.—The costs of an action for executing the trusts of a will which bequeaths realty and personality together as a mixed fund by a disposition that fails as to part, are borne (according to *Eyre v. Marsden*, 4 Myl. & Cr. 231) rateably by the part effectually given and that which lapses, and this notwithstanding that the whole may be vested in trustees. *Ron v. Ron* (Law Rep. 7 Eq. 414) not approved. *Luckcraft v. Pridham*, 48 Law J. Rep. Chanc. 636.

(d) *As between residuary personal estate and real estate charged with legacies.*

22.—Subject to the payment of his debts, and certain legacies previously given, a testator devised "all his real estate," and bequeathed "all the residue of his personal estate" to trustees in trust for A. A. died in his lifetime:—Held, that the personal estate was the primary fund for the payment of debts and legacies, the testator not having manifested any intention to discharge it. *Wells v. Row*, 48 Law J. Rep. Chanc. 476.

(e) *As between real estate descended and pure personal estate bequeathed to charity.*

[See CHARITY, 1.]

(f) *As between pecuniary legatee and residuary devisee.*

23.—Where the residuary personal estate is insufficient to pay the costs of an administration suit, the deficiency must be made up by the pecuniary legatees in priority to the residuary devisees. *Tomkins v. Colthurst*, Law Rep. 1 Ch. D. 626.

*Lancefield v. Iggulden* (44 Law J. Rep. Chanc. 203; Law Rep. 10 Chanc. 136) and *Hensman v. Fryer* (37 Law J. Rep. Chanc. 97; Law Rep. 3 Chanc. App. 420) considered. *Ibid.*

24.—Testator's general personal estate having proved insufficient for payment of his debts and general legacies,—Held, that the general legatees could not require the devisees of real estate and specific legatees to contribute towards payment of the debts. *Hensman v. Fryer* (37 Law J. Rep. Chanc. 97; Law Rep. 3 Chanc. App. 420) not followed. *Farquharson v. Floyer*, 45 Law J. Rep. Chanc. 750; Law Rep. 2 Ch. D. 109.

(g) *Charge of debts.*

25.—A testator directed his debts to be paid; in giving parts of his property for the benefit of each of his children, he devised freeholds to his executors in settlement for his daughters :—Held, that such freeholds were not charged with debts. *In re Bailey*, 48 Law J. Rep. Chanc. 628; Law Rep. 12 Ch. D. 268.

[And see Nos. 15, 16, 22 *supra*; 40 *infra*.]

(h) *As between corpus and income.*

26.—Executors to whom a testator gives an absolute discretion to postpone the sale and conversion of his estate, are not bound by the ordinary rule to convert the property within a year, even though some of the property consists of shares in an unlimited company; nor will they be liable in the absence of *mala fides* for loss arising to the estate from the non-conversion. The decision of Bacon, V.C., affirmed. Where a testator gave all his real and personal property, including a business, to his executors on trust to sell and pay the income to his wife for life, and after her death to the plaintiff, but with full discretion to his executors to postpone the sale of his estate, and directed that until the sale the net income should be applied in the same way as the income of the proceeds of the sale was to be applied, and soon after the death of the testator one of the executors purchased the business at a valuation,—Held (by Bacon, V.C.), that the sale must be set aside, and that the executor must account for the profits made since the sale, without salary, but with just allowances; and that the amount of the profits must be treated as capital, and that the widow was only entitled to the income of it. On an appeal the case was compromised, and the purchase was confirmed; but the Court expressed an opinion that if the sale had been set aside the widow would have been entitled to the profits as income. *In re Norrington. Brindley v. Partridge* (App.), Law Rep. 13 Ch. D. 654.

*Charge of debts: duty of tenant for life to keep down interest.* [See TENANT FOR LIFE, 5.]

*Conversion of wasting property as between tenant for life and remainderman.* [See TENANT FOR LIFE, 7-10.]

DIGEST, 1875-1880.

(E) LEGATEES.

(a) *Charge of legacies on real estate.*

27.—A testatrix directed her debts and legacies to be paid by her executors. She then gave legacies and made a specific devise, and gave the residue of her real and personal estate to persons who were not her executors upon certain trusts :—Held, that the legacies were a charge on the residuary real estate. *In re Brooke's Estate. Brooke v. Rooke*, 45 Law J. Rep. Chanc. 730; Law Rep. 3 Ch. D. 630.

28.—Will containing a charge of debts and funeral expenses on personal estate followed by a gift of legacies (one of which was in certain events to fall into "residuary estate") and an ultimate gift of specific real estate and residue of realty and personality upon certain trusts :—Held, that the legacies were charged on the specific real estate. *Bray v. Sterens*, Law Rep. 12 Ch. D. 162.

*Castle v. Gillett* (Law Rep. 16 Eq. 530) not followed. *Ibid.*

(b) *Set-off against legatee.*

29.—An assignee for value of an unpaid legacy takes subject to liabilities attaching to the same as assets, such as costs of administering the estate, and also subject to a lien for moneys owing by the legatee to the estate. The husband of a *feme covert* legatee takes his wife's legacy subject to the same liabilities. Where expenses in the administration (chargeable by the executrix against the estate) had been caused by a legatee's conduct, and were a debt from him to the executrix,—Held, that his legacy was subject to a lien in the hands of the executrix for the amount, to the exoneration of the residuary and other legatees. *In re Knapman's Estate. Knapman v. Wreford*, 49 Law J. Rep. Chanc. 716.

(c) *Colonial duties, incidence of.*

[See COLONIAL LAW, 51.]

(F) JURISDICTION AND PRACTICE.

(a) *Domicil: Scotch assets.*

30.—The executors of a testator, whose domicile was Scotch, and whose property was mainly in Scotland, but some portion of whose personality was in England, proved his will in Scotland and afterwards took out probate in England in the ordinary general form. One of the executors then commenced an action in England against his co-executors for general administration of the personal estate, which was opposed on the ground, first, that the action was unnecessary; secondly, that, at any rate, the decree should be limited to the assets in England :—Held (affirming the decision of Hall, V.C., 47 Law J. Rep. Chanc. 845; Law Rep. 9 Ch. D. 173), that the plaintiff was entitled to the ordinary administration decree without restriction. *Stirling-Maxwell v. Cartwright* (App.), 48 Law J. Rep. Chanc. 562; Law Rep. 11 Ch. D. 522.

(l) *Parties.*(1) *Plaintiff having contingent interest.*

31.—Testator gave his residuary personal estate upon trust for his three daughters for their lives, with remainder on trust for their children or issue, with cross-remainders between them; and if his daughters should all die without having any children or issue entitled under the trusts aforesaid, on trust for such person or persons as would have been entitled under the Statute of Distributions if he had then died intestate. The three daughters entitled under the will were unmarried; these and another daughter were the sole statutory next-of-kin of the testator at the present time:—Held, that an action for administration brought by collateral relations, who would have been some of the next-of-kin at the present time if the four daughters were dead, was demurrable for want of interest. *Clowes v. Hilliard*, 46 Law J. Rep. Chanc. 271; Law Rep. 4 Ch. D. 413.

(2) *Representation of unascertained class.*

32.—The action was for execution of the trusts of a will under which the following persons and classes had distinct interests dependent upon the construction of a reversionary gift: (1) the heir-at-law; (2) the next-of-kin; (3) children of the heir who had died before the period of distribution; (4) children of the heir living at that period; (5) children living at that period of next-of-kin who were then dead; (6) children of next-of-kin who had survived their parents and died before the period of distribution. The only parties before the Court belonged to class 5; and there was evidence that it would be difficult to answer enquiries as to 1, 2, 3 and 4:—On motion for judgment it was directed that persons should be appointed at chambers to represent, for the purpose of determining the questions of construction, the persons and classes numbered 1, 2, 3 and 4; enquiries as to 5 and 6, and if it should appear that there were any persons within class 5, and that they had all since died, or that there were any persons within class 6, then the like direction as to those classes respectively; the chief clerk to certify with respect to the above matters independently in the first instance. *In re Peppitt's Estate. Chester v. Phillips*, 46 Law J. Rep. Chanc. 95; Law Rep. 4 Ch. D. 230.

The reversionary gift raised a distinct interest in H. R. P., who had gone to California in 1848, two years before the testator's death, and had not been heard of for twenty years past. The plaintiff was the actual legal personal representative of the testator:—The judgment directed that if it should appear that H. R. P. survived the testator and had no legal personal representative, a person should be appointed at chambers to represent his estate for the purposes of the action. *Ibid.*

(c) *Creditors' action, form of.*

33.—Indorsement of writ "on behalf of creditors" held not necessary. *Cooper v. Blissett*, 45 Law J. Rep. Chanc. 272; Law Rep. 1 Ch. D. 691.

34.—A creditor cannot have judgment for the administration of real estate unless he sue on behalf of all the creditors. *Worraker v. Fryer*, 45 Law J. Rep. Chanc. 273; Law Rep. 2 Ch. D. 109.

35.—In a creditor's action the writ must be indorsed with a claim by the plaintiff "on behalf of himself and all other creditors." *Worraker v. Fryer* (45 Law J. Rep. Chanc. 273; Law Rep. 2 Ch. D. 109) followed. *In re Royle. Fryer v. Royle*, Law Rep. 5 Ch. D. 540.

(d) *Wilful default, subsequent action charging.*

36.—Where an administration decree has been made directing the usual accounts against trustees and executors, a subsequent action by the same plaintiff seeking to charge them with what they might have received but for their wilful default, on the ground of breach of trust, cannot be maintained unless the special leave of the Court to bring such action has been obtained. The previous practice under Consolidated Order XXXI. rule 11, requiring leave to be obtained in such cases, has not been altered by the Judicature Acts and Rules. *Laming v. Gee*, 48 Law J. Rep. Chanc. 196; Law Rep. 10 Ch. D. 715.

It appearing that the plaintiff had not become aware of the facts on which the subsequent action was grounded until after the administration decree, the Court treated the case as comprising an application for leave to bring such action, and directed the hearing to proceed as if such application had been granted. *Ibid.*

(e) *Injunction: foreign creditor.*

37.—The Court will not interfere by injunction to restrain a foreign creditor resident abroad from suing for his debts in the Courts of his own country, although a decree has been made here for the administration of the estate of the debtor and the foreign creditor has come in under the decree and filed evidence to prove his debt in the administration action. *In re Boyse. Crofton v. Crofton*, 49 Law J. Rep. Chanc. 689; Law Rep. 15 Ch. D. 591.

(f) *Staying proceedings: no title in plaintiff.*

38.—Where after decree the plaintiff is found to have no title to sue, proceedings may be stayed on the application of a person served with notice of the decree. *Housman v. Housman*, Law Rep. 1 Ch. D. 535.

(g) *Transfer of action: judgment creditors: priority.*

39.—A creditor who has obtained a judgment against the executor of his deceased debtor before a decree is made for the administration of the debtor's estate has priority over other creditors,

and that priority is unaffected by 32 & 33 Vict. c. 46. But where A., a creditor, had obtained in an action in the Exchequer Division an order  *nisi*  to sign judgment against the executrix of his debtor, and before judgment had been signed another creditor obtained in the Chancery Division a decree for the administration of the deceased debtor's estate, A. was held to have no priority, and the action in the Exchequer Division was transferred to the Chancery Division, and proceedings therein stayed upon motion made for that purpose. *In re Stubbs, Hanson v. Stubbs*, 47 Law J. Rep. Chanc. 671; Law Rep. 8 Ch. D. 154.

(k) *Debts, whether to be raised by sale or mortgage.*

40.—A trust to pay debts or a gross sum out of rents and profits is *prima facie* a charge on the *corpus*. *Metcalf v. Hutchinson*, 45 Law J. Rep. Chanc. 210; Law Rep. 1 Ch. D. 591.

Testator, by will dated the 26th of February, 1865, gave real and personal estate to a trustee to receive the "rents and profits," and to retain out of the said "rents and profits" 10*l.* yearly while acting as trustee, and then directed his debts to be paid out of his "rents and profits," and after his debts had been paid he directed his trustee to pay out of his "rents and profits" 500*l.* to a legatee by five yearly payments, and that the "remainder of the rents and profits" should be divided between A., B., C. and D. for life, with remainder to the children of A., B. and C., and in default of children, he directed his trustee to pay to E. the yearly income of his aforesaid real and personal estates for his life, with remainder to his children, and in default of E.'s issue, gave "the whole of his real and personal estate" to X. The testator died in 1871. The personality proved insufficient:—Held, that the debts were charged on the *corpus* of the real estate. *Ibid.*

A., B., C. and D. requested a sale; E. asked that the money might be raised by mortgage, and offered to advance it:—Held, that the wishes of those entitled first in order were first to be considered, and a sale directed. *Ibid.*

(i) *Further consideration: notice to parties served with decrees.*

41.—When notice of an administration judgment has been served on parties interested, and afterwards, on further consideration, it is desired to obtain a personal order against them, they should be served with notice of the action having been set down for further consideration, even though they have not obtained an order to attend the proceedings. *In re Rees, Rees v. George*, 49 Law J. Rep. Chanc. 568; Law Rep. 15 Ch. D. 490.

(k) *Costs.*

(1) *Not payable out of undisposed-of share of residue in priority of general residue.*

[See Nos. 17–21 *supra*.]

(2) *Deficient estate: liability of executors.*

42.—Where executors have made a right partial distribution and have properly accounted, and the remaining legatees then bring an action for administration, the costs will be borne by the shares remaining undistributed. But where executors had made a wrong partial distribution, on the assumption that the estate was divisible into five shares instead of six, and their accounts were also incorrect, the costs of a subsequent administration suit were ordered to be paid out of the whole estate, as if no distribution had taken place, so as to charge the executors with the share of costs attributable to the distributed shares of the estate. *Hilliard v. Fulford*, 46 Law J. Rep. Chanc. 43; Law Rep. 4 Ch. D. 389.

(3) *Of administrator, whose letters of administration revoked.*

43.—Where a suit is instituted by an administrator with knowledge that another person claims to administer, and subsequently the letters of administration are revoked, such administrator will not be allowed his costs. *Houseman v. Houseman*, Law Rep. 1 Ch. D. 535.

(4) *Where realty and personality bequeathed as mixed fund.*

44.—Where a testator creates for purposes of disposition a mixed fund of the proceeds of realty directed to be converted and personality, the personality is not exempted from its primary liability to debts, &c., unless these are directed expressly or by necessary implication to be paid out of the mixed fund. The mere fact that the will contains a constructive charge of debts upon real estate will not amount to such a direction. *Simmons v. Rose* (6 De Gex, M. & G. 411; 25 Law J. Rep. Chanc. 615) explained. *Luckcraft v. Pridham*, 48 Law J. Rep. Chanc. 636.

(5) *Of ascertaining classes entitled to share in residue.*

45.—Testatrix gave a legacy of 100*l.*, payable at the death of a tenant for life of her residuary estate, to one of the executors of her will, who never proved or acted:—Held, that the circumstance of payment being deferred rebutted the presumption that the legacy was given to him in the character of executor. *In re Reece's Trusts*, 46 Law J. Rep. Chanc. 412; Law Rep. 4 Ch. D. 841.

At the death of the tenant for life the residuary estate was divisible into shares, some of which were given to individuals, and others to classes:—Held, that the costs of ascertaining the classes were costs of administration, and as such payable out of the residuary estate, and not out of the shares of the classes. *Ibid.*

(6) *Of parties attending proceedings.*

46.—Where parties in an administration suit are served with notice of the decree or judgment, and obtain an order of course giving them

liberty to attend the further proceedings, such parties will not, according to the practice of this branch of the Court, be entitled to their costs of such attendance out of the estate as a matter of course, but must obtain a special order to that effect. The practice is for certain persons to be selected before taking the accounts and enquiries in chambers to represent the different interests, and for the costs of such persons only to be allowed out of the estate as a matter of course. *Sharp v. Lush* (M.R.), 48 Law J. Rep. Chanc. 231; Law Rep. 10 Ch. D. 468.

(7) *Of suit by next friend to set aside agreement.*

47.—A suit was instituted by a next friend, on behalf of infants interested in the administration of a testator's estate, for the purpose of setting aside an agreement which had been entered into by the executors and trustees for the disposal of the testator's business, and the bill contained charges of gross misconduct against T., one of the trustees and executors. T. defended the suit, and the bill was dismissed with costs, the Court being of opinion that the agreement was for the benefit of the estate, and that the charges against T. were unfounded. The next friend being insolvent, T. applied in a suit for the administration of the testator's estate to be allowed his costs out of the estate, but they were refused, on the ground that he had not previously obtained leave to defend. But, on appeal, the decision was reversed and the costs were allowed. *Walters v. Woodbridge* (App.), 47 Law J. Rep. Chanc. 516; Law Rep. 7 Ch. D. 504.

(8) *Defaulting trustee.*

48.—Where in an action for administration of trusts, the plaintiff makes a special case of breach of trust in relation to the property, not depending upon a mere point of construction, the rule is that, the breach of trust being established, the trustee must bear the costs of the action so far as it relates thereto. *Bell v. Turner*, 47 Law J. Rep. Chanc. 75.

(9) *Action to ascertain whether specific property passed.*

49.—The costs of an action to determine whether specific property passed under a gift to A. or a gift to B. ought not to be charged on the residue. *Wollaston v. Wollaston*, 47 Law J. Rep. Chanc. 117.

(10) *Of proving will.*

50.—Executors took legacies under the will of their testator, which also gave them the residue. The will was disputed by the next-of-kin, but was established, except the residuary clause. In an administration suit the executors were allowed all costs of proving the will, including certain costs ordered by the House of Lords to be paid to the next-of-kin. *Fulton v. Andrew*, 46 Law J. Rep. Chanc. 131.

(11) *Priority: costs in Probate Division.*

51.—One of the creditors of a testator cited the executrix in the Probate Division to prove the will, and an order was made that she should prove it within a time limited, and that, in default of her doing so, administration should be granted to the creditor. The executrix proved the will, and another friendly creditor then commenced an action in the Chancery Division against her to administer the estate, and the ordinary administration decree was made. Afterwards the creditor who had issued the citation obtained in the Probate Division an order that his costs of the proceedings there should be paid out of the estate in priority to other claims:—Held (affirming a decision of Malins, V.C.), that the costs of the administration action must be paid in priority to the costs in the Probate Division. *Major v. Major* (23 Law J. Rep. Chanc. 718) followed. *In re Mayhew. Rowles v. Mayhew* (App.), 46 Law J. Rep. Chanc. 552; Law Rep. 5 Ch. D. 596.

(12) *Set-off: solicitor's lien.*

52.—Sums of costs incurred in the same suit or proceedings, though payable under different orders, may be set off against each other; and this right of the parties is not affected by the solicitor's lien. So held, where defendant, after becoming liable under orders in the suit to pay costs to plaintiff, had changed his solicitor, and subsequently under another order became entitled to receive a smaller sum of costs from plaintiff, and although the application to set off was made by plaintiff after notice from defendant's solicitor that he claimed a lien upon the smaller sum. *Ex parte Cleland* (36 Law J. Rep. Bankr. 33; Law Rep. 2 Chanc. 808) observed upon. *Roberts v. Bule*, 47 Law J. Rep. Chanc. 414; Law Rep. 8 Ch. D. 198.

(13) *Testamentary expenses.*

53.—"Testamentary expenses" held to include the cost of an administration suit. *Penny v. Penny*, 48 Law J. Rep. Chanc. 691; Law Rep. 11 Ch. D. 440.

(14) *Charges of fraud withdrawn.*

54.—The plaintiff in an action sought the removal of a trustee on the ground of a breach of trust. At the trial the plaintiff withdrew the charges of breach of trust and took a judgment for administration. The plaintiff was ordered to pay the costs of the whole action, up to and including the hearing. *Fane v. Fane*, 49 Law J. Rep. Chanc. 200; Law Rep. 13 Ch. D. 228.

(15) *Taxation.*

55.—A creditor's administration action was ordered to be stayed on payment by the applicant, the executrix and residuary legatee of the debt and the costs of the action. Before the Taxing Master, the executrix objected to items in the plaintiff's bill of costs, alleging as to some

of them that they had been incurred in taking unnecessary and improper proceedings in the action. The Taxing Master refused to enquire into the truth of these allegations, and taxed the costs without reference to them:—Held that, under rule 18 of the Additional Rules of Court, 1875, the Taxing Master ought to have considered the plaintiffs' objections, and that there must be a new taxation. *Baines v. Wormsley*, 47 Law J. Rep. Chanc. 844.

*Solicitor and client costs.* [See COSTS, 94.]

*Equity to a settlement: enforcement of, on petition.* [See HUSBAND AND WIFE, 19.]

## ADMINISTRATOR.

[See EXECUTOR.]

*Ad item: intestate's estate not sufficiently represented by, in administration action.* [See PRACTICE, U 15.]

*Costs of, where letters of administration revoked.* [See ADMINISTRATION, 43.]

## ADMIRALTY.

### (A) JURISDICTION.

#### (a) Foreign ship.

- (1) *Appearance under protest.*
- (2) *Action of salvage in rem.*
- (3) *Immunity from arrest: power of Crown.*
- (4) *Jurisdiction in respect of damage by foreign ship on high seas.*
- (5) *Wrongful arrest: ownership.*
- (6) *Action in rem to enforce judgment of foreign court.*

#### (b) Damage and collision.

- (1) *Claim to indemnity.*
- (2) *Damage by loss of life.*

#### (c) Salvage.

- (d) *Suit for possession: bail.*
- (e) *Restraint: arrest: bail for safe return.*
- (f) *Bottomry.*
- (g) *Co-ownership: sale of ship.*
- (h) *County court.*
- (i) *Necessaries.*

#### (k) Stay of proceedings: *lis alibi pendens*.

### (B) PLEADING.

#### (a) Action for wages.

#### (b) Salvage action.

### (C) PRACTICE.

#### (a) Appearance.

#### (b) Default, proceedings by.

#### (c) Appeal.

- (1) *Reversal of court below on question of fact.*

#### (2) From county court.

##### (i) Leave to appeal.

##### (ii) Jurisdiction to entertain.

#### (3) Staying proceedings pending.

#### (d) Service: amended writ.

#### (e) Discontinuance.

#### (f) Evidence.

- (1) *Commission to take evidence as to foreign law.*

#### (2) Entries by deceased seaman: *depositions*.

#### (g) Reference to registrar and merchants.

#### (h) Transfer of action.

#### (i) Salvage.

##### (1) *Towage services: arrest of ship.*

##### (2) *Interest on salvage.*

##### (3) *Several actions.*

#### (k) Bottomry.

##### (1) *Interest.*

##### (2) *Arrest before bond payable.*

#### (l) Damage and collision.

##### (1) *Burden of proof.*

##### (2) *Interrogatories.*

##### (3) *Bringing in third party.*

##### (4) *Defence on merits and on ground of compulsory pilotage.*

##### (5) *Limitation of liability.*

#### (m) Inspection of documents.

#### (n) Necessaries.

##### (1) *Accounts and enquiries before judgment.*

##### (2) *Action in rem: non-delivery of statement of defence.*

#### (o) Receiver: co-ownership suit.

### (D) COSTS.

#### (a) Collision action.

#### (b) Discontinuance.

#### (c) Security for costs.

#### (d) Release of ship: *unreasonable objection to bail.*

#### (e) Salvage.

#### (f) Of appeal.

#### (g) Taxation.

#### (h) Bottomry.

#### (i) Possession: *wrongful arrest.*

[Improvements facilitated in the organisation of the Admiralty and War Office. 41 & 42 Vict. c. 53.]

## (A) JURISDICTION.

### (a) Foreign ship.

#### (1) Appearance under protest.

1.—Two foreign vessels, owned by foreigners resident abroad, came into collision at sea. The owner of one brought an action in the Admiralty Court in England against the owner of the other for damage. While abroad the defendant was served with the writ of summons and, desiring to object to the jurisdiction of the Court, entered an appearance under protest:—On motion the action was dismissed by the Court. On appeal, held that the order was right. *The Virar*, Law Rep. 2 P. D. 29.

2.—A defendant in an Admiralty action desiring to object to the jurisdiction, may enter an appearance under protest in accordance with the practice in force in the Admiralty Court before the Judicature Acts. *In re Smith* (45 Law J. Rep. P. D. & A. 92; Law Rep. 1 P. D. 330) followed. *The Virar*, Law Rep. 2 P. D. 29.

#### (2) Action of salvage in rem.

3.—A ship of war belonging to and duly com-

missioned by a foreign government is not within the jurisdiction of a British municipal tribunal, and a warrant of arrest in an action of salvage *in rem* cannot be issued against such ship out of the Admiralty Division, nor against the cargo on board, even though it is the property of private persons, if the goods in question are under the charge of the government for public purposes. *The Constitution*, 48 Law J. Rep. P. D. & A. 13; Law Rep. 4 P. D. 39.

(3) *Immunity from arrest : power of Crown.*

4.—A packet engaged in international postal service and chartered by a foreign government, officered by the duly commissioned officers of that government, and also allowed to carry small packages, is not free from the process of an English municipal tribunal. Nor can a convention between Great Britain and Belgium, not ratified by Parliament, take away from a British subject his right to enforce a legal process against a foreign ship. *The Parlement Belge*, 48 Law J. Rep. P. D. & A. 18; Law Rep. 4 P. D. 129.

(4) *Jurisdiction in respect of damage by foreign ship on high seas.*

5.—Collision on the high seas between a British ship and the C. M. belonging to foreigners. Neither the C. M. nor her owners were within the territorial jurisdiction of the High Court of Admiralty. Application that a writ should issue for service upon the owners abroad refused. *In re The City of Mecca*; *in re Smith*, 45 Law J. Rep. P. D. & A. 92; Law Rep. 1 P. D. 300.

(5) *Wrongful arrest : ownership.*

6.—In a cause of damage the C. C. was arrested in a suit in Ireland by the owners of the H. W. A cross action was also instituted there on behalf of the C. C. The C. C. was afterwards arrested in a suit in England by the owners of the H. W., who then moved the Court in Ireland for stay of all proceedings there, which was refused. The owners of the C. C. appeared under protest in the suit in England. Motion by the owners of the C. C. to stay proceedings in the suit in England granted. *The Catarrino Chiazzare*, 45 Law J. Rep. P. D. & A. 105; Law Rep. 1 P. D. 368.

(6) *Action in rem to enforce judgment of foreign court.*

7.—The Admiralty Division has jurisdiction to enforce by an action *in rem* a judgment delivered by a foreign tribunal in an action *in rem*; for it is the duty of an Admiralty Court of one nation to enforce the decree of that of another nation, which duty arises out of international comity. *The City of Mecca*, 49 Law J. Rep. P. D. & A. 17; Law Rep. 5 P. D. 28.

(b) *Damage and collision.*

(1) *Claim to indemnity.*

8.—When, upon the application of the defendant, in an action *in rem* for damages by a collision, a third party is brought into the action under Order XVI. rule 17, with liberty to defend and be bound, as between himself and the defendant, by any decision the Court may come to as to the cause of the collision, the defendant, even if he does not appear at the trial of the action, will be bound by such decision. *The Cartburn*, 49 Law J. Rep. P. D. & A. 14; Law Rep. 5 P. D. 35.

(2) *Damage by loss of life.*

[See SHIPPING LAW, E 1, 2.]

(c) *Salvage.*

9.—The Board of Trade, as owners of a steam-tug and lifeboat belonging to Ramsgate harbour, may sue for an award of salvage in respect of services rendered by the steam-tug and lifeboat. *The Cybele*, 47 Law J. Rep. P. D. & A. 13; Law Rep. 2 P. D. 224; affirmed on appeal, 47 Law J. Rep. P. D. & A. 86; Law Rep. 3 P. D. 8.

[And see No. 3 supra.]

(d) *Suit for possession : bail.*

10.—Greek subjects, P. & P., in possession of a Greek ship, under a judgment of a Greek Court brought the ship to this country, where they were forcibly dispossessed by E., another Greek subject. In a cause of possession by P. & P. the Consul-General of Greece requested the English Admiralty Court to entertain the suit:—Held, that the Court had jurisdiction. *The Evangelistria*; *Empirikos v. Piangos*, 46 Law J. Rep. P. D. & A. 1.

In suits for possession the Court of Admiralty can take bail. *Ibid.*

(e) *Restraint : arrest : bail for safe return.*

11.—The Court has jurisdiction, in an action of restraint at the suit of a part owner holding a minority of shares, to arrest a vessel, notwithstanding that she is about to proceed on a voyage approved of by a majority of the part owners, and is being employed under a charter entered into by the ship's husband, appointed to act on behalf of all the owners. *The Talca*, Law Rep. 5 P. D. 169.

(f) *Bottomry.*

[See SHIPPING LAW, C 1.]

(g) *Co-ownership : sale of ship.*

12.—The Court has discretionary power, under the Admiralty Court Act, 1861, s. 8, to order the sale of a vessel proceeded against in an action of ownership, although the majority of the co-owners oppose the sale. *The Nelly Schneider*, Law Rep. 3 P. D. 162.



(h) *County Court.*

13.—The Admiralty jurisdiction of the County Courts extends to the distribution of salvage, although there has been no original claim for salvage. *The Glannibanta*, 46 Law J. Rep. P. D. & A. 75; Law Rep. 2 P. D. 45.

14.—Leave to set down an appeal from a County Court Judge in Admiralty, which could not be set down without leave, was refused by the Judge of the Admiralty Division. On appeal from this decision, the Court of Appeal held they had no jurisdiction to interfere. *The Amstel* (App.), 47 Law J. Rep. P. D. & A. 11; Law Rep. 2 P. D. 186.

(i) *Necessaries.*

15.—The Court has jurisdiction to entertain a claim against a foreign ship to recover payments made to enable the master of the ship to supply her with necessaries while lying in a British colonial port. *The Anna* (App.), 46 Law J. Rep. P. D. & A. 15; Law Rep. 1 P. D. 253.

16.—Moneys obtained by means of a bill of exchange to procure necessaries are necessaries within the meaning of 3 & 4 Vict. c. 65. s. 6. *The Anna*, 45 Law J. Rep. P. D. & A. 98.

17.—D. J. furnished necessaries to the A., which was subsequently sold to persons who had notice of D. J.'s claim:—Held, that D. J. could not after the sale arrest the ship in an action for necessaries. *The Aneroid*, 47 Law J. Rep. P. D. & A. 15; Law Rep. 2 P. D. 189.

(k) *Stay of proceedings: lis alibi pendens.*

18.—In a cause of damage cross actions were instituted in September, in the Court of Commerce at Marseilles, by the owners of the E. F. and of the D. In November the owners of the E. F. instituted a suit in the High Court of Admiralty of England in respect of the same collision. The owners of the D. appeared in that suit and entered a cross action. In December the cross actions in the foreign Court were heard and judgment given for the D. in both suits, in that by the E. F. by default, and in that by the D. after evidence. The suits in the High Court of Admiralty were afterwards heard, and the D. found alone to blame:—Held, that the D. must be condemned in damages and costs, notwithstanding the foreign judgments. *The Delta*; *The Erminia Foscolo*, 45 Law J. Rep. P. D. & A. 111; Law Rep. 1 P. D. 393.

## (B) PLEADING.

(a) *Action for wages.*

19.—To an action for wages a defendant may set up as a counter-claim a claim for damage to the ship in consequence of the negligence of the master, the plaintiff in the action, although he has been paid by insurers in respect of such damage. *The Sir Charles Napier*, 49 Law J. Rep. P. D. & A. 23; Law Rep. 5 P. D. 73.

(b) *Salvage action.*

20.—In an action for distribution of salvage, the defendants may plead an agreement by which the plaintiffs have accepted certain sums in respect of the amount of salvage reward due to them respectively. Such a pleading is not demurrable under section 182 of the Merchant Shipping Act, 1854; but the Court will at the hearing consider whether or not it is an equitable agreement and entered into in good faith. *The Afrika*, 49 Law J. Rep. P. D. & A. 63; Law Rep. 5 P. D. 192.

## (C) PRACTICE.

(a) *Appearance.*

*Foreign ship: appearance under protest.* [See No. 1 supra.]

(b) *Default, proceedings by.*

21.—Proceedings by default in Admiralty actions *in rem* are regulated by the practice of the High Court of Admiralty as it prevailed immediately before the passing of the Judicature Act, 1875. *The Polymede*, Law Rep. 1 P. D. 121.

[And see No. 43 infra.]

(c) *Appeal.*(1) *Reversal of court below on question of fact.*

22.—Where in Admiralty actions there was conflicting evidence in the Court below, and the decision depends upon the demeanour of the witnesses, the Court of Appeal follow the practice of the Privy Council, and will not, except in cases of extreme pressure, overrule the decision of the Court below; but in cases where the decision did not depend upon the demeanour of the witnesses, they will weigh the evidence, and draw their own inferences. *The Glannibanta* (App.), Law Rep. 1 P. D. 283.

(2) *From county court.*(i) *Leave to appeal.*

23.—In a cause of damage in a County Court, the High Court of Admiralty continues, until rules of Court or other arrangements are made, to be the proper Court of Appeal. Sections 34, 42, 45 and 76 of the Supreme Court of Judicature Act, 1873, considered. *The Two Brothers*, 45 Law J. Rep. P. D. & A. 47; Law Rep. 1 P. D. 52. [And see No. 14 supra.]

(ii) *Jurisdiction to entertain.*

24.—An action of damage instituted in a County Court to recover 30*l.* was dismissed:—Held, that there was no appeal from the judgment dismissing the action. *The Falcon*, 47 Law J. Rep. P. D. & A. 56; Law Rep. 3 P. D. 100.

(3) *Staying proceedings pending.*

25.—An application to stay proceedings under an order of the Court of Appeal, pending

an appeal to the House of Lords, must be made to the Court of Appeal, and not to the division of the High Court to which the action is attached. *The Khedive*, Law Rep. 5 P. D. 1.

(d) *Service: amended writ.*

**26.**—In Admiralty actions *in rem* an amended writ must be served in the same way as the original writ, and if the defendants do not appear and the ship has meantime been sold and the proceeds paid into Court, then the amended writ must be delivered to the Registrar with notice that service was intended and filed in the registry. In such a case the amended writ must be indorsed with the date of service, pursuant to Order IX. rule 13. *The Cassiopria* (App.), 48 Law J. Rep. P. D. & A. 38; Law Rep. 4 P. D. 188.

(e) *Discontinuance.*

**27.**—An informal letter substantially discontinuing an action *in rem* is sufficient notice within Order XXIII. rule 1 of the Judicature Act, 1875. *The Pommerania*, 48 Law J. Rep. P. D. & A. 55; Law Rep. 4 P. D. 195.

(f) *Evidence.*

(1) *Commission to take evidence as to foreign law.*

**28.**—Commission to take evidence in Spain as to the law of Spain refused, the Court considering that there could be no difficulty in getting competent Spanish advocates to attend in this country, and that such course would be less expensive than sending counsel and solicitors to Spain. *The M. Mozham* (App.), Law Rep. 1 P. D. 107.

(2) *Entries by deceased seaman: depositions.*

**29.**—Entries in a log by a deceased seaman in the course of his duty, but not contemporaneous with the facts entered, and not against his interest, are not admissible in evidence. Depositions of a deceased seaman taken by a receiver of wreck in the course of his duty are not admissible as evidence in an action of damage. *The Henry Cozon*, 47 Law J. Rep. P. D. & A. 83; Law Rep. 3 P. D. 156.

(g) *Reference to registrar and merchants.*

[See Nos. 45, 48, supra.]

(h) *Transfer of action.*

**30.**—When an action is commenced in the Admiralty Division in a matter over which that Division has not jurisdiction, the defendant can insist as of right on its transfer to another division. *The Seaham*, 48 Law J. Rep. P. D. & A. 29.

(i) *Salvage.*

(1) *Towage services: arrest of ship.*

[See SHIPPING LAW, V 2.]

(2) *Interest on salvage.*

**31.**—Although execution has not issued, interest upon a salvage reward is recoverable from the date of a judgment, and interest on the solicitor's taxed bill of costs from the date of the allocation of the Taxing Master. *The Jones Brothers*, 46 Law J. Rep. P. D. & A. 75.

The Court has no power to refuse interest because the judgment recovered is for salvage. *Ibid.*

(3) *Several actions.*

**32.**—An application to consolidate two salvage actions instituted against the same vessel being opposed by the plaintiffs, the Court allowed the defendants to make a single tender in respect of the claims in both actions. *The Jacob Landstrom*, Law Rep. 4 P. D. 191.

**33.**—Where the defendants, in two actions of salvage instituted against the same property, were ordered to pay only one set of costs, to be apportioned between the two sets of plaintiffs, the Court directed that the apportionment should be made according to the amounts of the plaintiffs' respective bills of costs. *The Pasithea*, Law Rep. 5 P. D. 5.

(k) *Bottomry.*

(1) *Interest.*

**34.**—The Admiralty Division will not allow larger interest than four per cent. on a bottomry bond, from the date when it becomes payable until the date of payment, even if a larger amount is stipulated for in the bond. *The Sophia Cook*, 49 Law J. Rep. P. D. & A. 16; Law Rep. 4 P. D. 30; and *The D. H. Bills*, Law Rep. 4 P. D. 32 n.

[And see SHIPPING LAW, C 1.]

(2) *Arrest before bond payable.*

**35.**—When a bottomry bond on ship and freight is payable at or before the expiration of seven days after the arrival of a ship in port, and the ship is arrested at the suit of a holder of the bond immediately on its arrival, he will have to pay the costs consequent upon such arrest, if the money was ready to be paid on the arrival of the ship. *The Endora*, 48 Law J. Rep. P. D. & A. 32; Law Rep. 4 P. D. 208.

(l) *Damage and collision.*

(1) *Burden of proof.*

**36.**—The S. and J. D. came into collision. On behalf of the S. it was alleged that the red and white lights of the J. D. were seen on the port-bow, and that the S. was ported, but that the J. D. was starboarded:—Held, that the story on behalf of the S. was inconsistent, that the evidence shewed there was not a good look-out on board the S., and that therefore the S. was alone to blame. *The Julia David*, 46 Law J. Rep. P. D. & A. 54.

[And see SHIPPING LAW, B 2.]

(2) *Interrogatories.*

37.—Interrogatories may be delivered in an action for damage by collision asking for information relative to the collision. *The Biola* (34 Law Times, N.S. 135; 5 Asp. Mar. Cas. 126) overruled. *The Radnorshire*, 49 Law J. Rep. P. D. & A. 48; Law Rep. 5 P. D. 172.

*Stay of proceedings: his alibi pendens.* [See No. 18 supra.]

(3) *Bringing in third party.*

38.—When, upon the application of the defendant, in an action *in rem* for damages by a collision, a third party is brought into the action under Order XVI. rule 17, with liberty to defend and be bound, as between himself and the defendant, by any decision the Court may come to as to the cause of the collision, the defendant, even if he does not appear at the trial of the action, will be bound by such decision. *The Cartburn*, 49 Law J. Rep. P. D. & A. 14; Law Rep. 5 P. D. 35.

(4) *Defence on merits and on ground of compulsory pilotage.*

39.—When in an action for damages by collision the defendant pleads a defence on the merits and also a plea of compulsory pilotage, and succeeds on the plea of compulsory pilotage only, each party will have to pay his own costs. *The Mathew Cay*, 49 Law J. Rep. P. D. & A. 47; Law Rep. 5 P. D. 49.

Semble, the defendant will be entitled to the costs of the action if there is only a plea of compulsory pilotage and he succeeds upon it. *Ibid.*

(5) *Limitation of liability.*

40.—In limitation of liability suits it is not necessary that the Court should make an order that the money paid into Court in a cause of damage should be transferred to the limitation of liability suit. *The Sisters*, Law Rep. 1 P. D. 281.

(m) *Inspection of documents.*

41.—The Court will not allow surveys made solely for the purpose of the case of one of the parties on a trial or for the opinion of one of the parties' legal advisers to be inspected. *The Southwark and Vauxhall Water Company v. Quick* (47 Law J. Rep. (App.) Q.B. 258) followed. *The Theodor Korner*, 47 Law J. Rep. P. D. & A. 85; Law Rep. 3 P. D. 162.

(n) *Necessaries.*(1) *Accounts and enquiries before judgment.*

42.—Under the Judicature Act, 1875, Order XXXIII., in an action for necessaries, the Court will, in its discretion, order enquiries to be made before judgment is pronounced, to ascertain if any or what sum is due. *The Sully*, 48 Law J. Rep. P. D. & A. 56.

(2) *Action in rem: non-delivery of statement of defence.*

43.—Order XXIX. (Rules of Court, 1875) rule 2 does not apply to proceedings in an action *in rem* where no statement of defence has been delivered, but in such a case the practice prevailing before the Judicature Acts must be followed. *The Sfactoria*, Law Rep. 2 P. D. 3.

(o) *Receiver: co-ownership suit.*

44.—The Court will appoint a receiver in a co-ownership suit where such a course, having regard to the circumstances of the case, is just and convenient. *The Amptill*, Law Rep. 5 P. D. 224.

Where an action of co-ownership is brought by the owner of one moiety of a vessel against the owner of the other moiety, the appointment of a receiver is both just and convenient. *Ibid.*

## (D) COSTS.

(a) *Collision action.*

45.—The defendants in an action for damage having admitted their liability, an order was drawn up by consent referring the question as to amount to the registrar and merchants before the statement of claim was delivered. The sum claimed was 295*l.* 18*s.* 1*d.* The amount found on reference was 199*l.* 18*s.* 6*d.* with interest. On a motion to condemn the defendants in the costs of the action,—Held, that the Court had jurisdiction to make the order. *The Williamina*, Law Rep. 3 P. D. 97.

46.—When the owners of cargo laden on board a ship which has been in collision with another ship bring an action for damage caused to such cargo against this other ship, and both ships are adjudged to be in fault, so that the owners of cargo only recover half their damages, they are entitled to all the costs of the action. *The City of Manchester*, 48 Law J. Rep. P. D. & A. 70; Law Rep. 5 P. D. 3.

47.—Where the owners of a ship and the owners of cargo on board such ship unite in bringing an action for damages against another ship, in consequence of a collision between the two vessels, and at the hearing both ships are held to blame, and no order is made as to costs, the owners of the cargo are nevertheless entitled to be paid by the defendants such costs of the reference as arise out of proof of any claim which they may have in respect of such cargo. *The Consett*, 49 Law J. Rep. P. D. & A. 24; Law Rep. 5 P. D. 229.

48.—At the hearing of an action of damage in which there was a claim and a counter-claim by the two ships, the Court found both ships to blame, and condemned each ship in a moiety of the damage sustained by the other. The question of damage was referred to the Registrar and merchants, and no order was made as to costs. Afterwards the defendant ship brought its counter-claim into the registry, and less than one-ninth of the amount claimed in counter-

claim was struck off, and no mention was made in the report as to the costs of the reference:—Held, that the owners of the plaintiff ship must pay the costs of and incident to this reference. *The Savernake*, 49 Law J. Rep. P. D. & A. 71; Law Rep. 5 P. D. 166.

49.—The case of *The Milan* (Lush. 388; 31 Law J. Rep. Adm. 105) does not lay down any general rule that wherever owners of cargo succeed in an action brought by them to recover damages for the loss of or injury to the cargo they are entitled to the whole costs of the litigation. "The circumstances of each particular case must introduce a variation in the way the costs are given" (per Baggallay, L.J.). *The City of Manchester* (App.), 49 Law J. Rep. P. D. & A. 81; Law Rep. 5 P. D. 221.

50.—A collision took place between two vessels, and the defendants admitted that their vessel was to blame, but alleged by way of defence that they had a pilot on board by compulsion of law, and that they were therefore exempt from liability:—Held (reversing the decision of the Judge of the Admiralty Court), that as there was no evidence of contributory negligence on the part of the defendant owners they were exempt from liability. *The Clyde Navigation Company v. Barclay* (Law Rep. 1 App. Cas. 790) followed. *The Daioz* (App.), 47 Law J. Rep. P. D. & A. 1.

The defendants having applied on a subsequent occasion for the costs of the action,—Held, that the rule of the Court of Admiralty, that where the defendants succeed on a plea of compulsory pilotage no costs are to be given, also holds good in the Court of Appeal. *The Sohwan* (43 Law J. Rep. Adm. 18; Law Rep. 4 A. & E. 187) followed. *Ibid*.

51.—In an action of damage, if the only defence is that the collision was caused by the negligence of the pilot taken by compulsion of law, the defendants, if successful in establishing this defence, are entitled to costs. *The Juno*, 45 Law J. Rep. P. D. & A. 105; Law Rep. 1 P. D. 135.

Evidence by a clerk from the Trinity House that the Trinity House have from a period prior to the Merchant Shipping Act, 1854, been in the habit of licensing pilots for the district in question, held to be *prima facie* proof of their authority. *Ibid*.

#### (b) Discontinuance.

52.—The plaintiffs commenced an action of possession to obtain the certificate of registry of a ship. Before pleadings were filed the Court, upon motion, ordered the certificate to be delivered to the plaintiffs, who then discontinued the action:—Held, that the plaintiffs must pay the costs. *Bremner v. Cormack; the St. Olaf*, 46 Law J. Rep. P. D. & A. 74; Law Rep. 2 P. D. 113.

#### (c) Security for costs.

53.—The Court of Appeal follows the practice of the Privy Council in Admiralty actions,

and will not require security for the costs of an appeal to be given, except under special circumstances. *The Victoria* (App.), Law Rep. 1 P. D. 280.

54.—The owners of two vessels which had both been injured in a collision with one another were foreigners resident abroad. The owner of one brought an action against the other, and claimed the damage done to his vessel. The owner of the other appeared as defendant, and counter-claimed for damages done to his vessel. The defendants were ordered to give security for costs, but they only gave security for costs of the counter-claim. At the hearing the counter-claim was dismissed on the ground that security had not been given for the whole of the costs of the action. *The Julia Fisher*, Law Rep. 2 P. D. 115.

55.—Where an appellant is clearly liable to give security for costs, he ought to offer security without an application to the Court, and the offer, if reasonable, ought to be accepted; and in case of an application to the Court, the Court, in dealing with the costs, will consider whose conduct has necessitated the application. *The Ship Constantine. The Owners of the Alice v. The Owners of the Constantine*, Law Rep. 5 P. D. 156.

[And see next case.]

#### (d) Release of ship: unreasonable objection to bail.

56.—When a plaintiff in an action *in rem* arrests a ship, and, although substantial bail is offered, refuses to release her, and unreasonably requires an enquiry to be made as to the means of the securities, he will be liable to pay damages and costs for so doing. Security for costs will not necessarily be required from a mate who is a foreigner and a plaintiff in an action for wages. *The Don Ricardo*, 49 Law J. Rep. P. D. & A. 28; Law Rep. 5 P. D. 121.

#### (e) Salvage.

[See No. 33 supra.]

#### (f) Of appeal.

57.—Appeals as to the amount of salvage form no exception to the rule laid down under the Judicature Act that a successful appellant is entitled to his costs. *The City of Berlin* (App.), 47 Law J. Rep. P. D. & A. 2; Law Rep. 2 P. D. 187.

58.—The costs in Admiralty appeals will in future, as in all other appeals, follow the event. *The Condor. Perkins and Homer v. The Owners of the Condor*, 48 Law J. Rep. P. D. & A. 33; Law Rep. 4 P. D. 115 (nom. *The Swansea v. The Condor*).

59.—Where the respondent to an appeal gives notice under Order LVIII. rule 6 that he shall, when the appeal comes on, apply to have the order of the Court below varied, and the appeal is dismissed with costs, the appellant will be entitled to deduct from such costs the

costs occasioned by the notice of the respondent. *The Lauretta*, 48 Law J. Rep. P. D. & A. 55; Law Rep. 4 P. D. 25.

60.—A shipping casualty must be actually caused or contributed to by the master to enable the Court of enquiry to suspend his certificate. The Court of Appeal, if it reverses the decision of the Wreck Commissioner, will give the appellant his costs unless there has been such misconduct on the part of an officer as to render an enquiry reasonable; and, if unsuccessful, the appellant must pay the costs of the Board of Trade. *The Arizona*, 49 Law J. Rep. P. D. & A. 54; Law Rep. 5 P. D. 123.

(g) *Taxation.*

61.—In taxing a bill of costs as between solicitor and client the Registrar has no jurisdiction to decide whether items of costs necessary were made so by the solicitor's negligence. *The Papa de Rossie*, Law Rep. 3 P. D. 160.

62.—A retainer to two counsel will be allowed on taxation. Refreshers will not be allowed unless the cause has lasted more than one whole working day. *The Neera*, 48 Law J. Rep. P. D. & A. 69; Law Rep. 5 P. D. 118.

(h) *Bottomry.*

[See No. 35 supra.]

(i) *Possession: wrongful arrest.*

63.—The plaintiff, a foreigner, purchased of the defendant one-fourth share of the A. At the time of the purchase she was a British ship, but the defendant, a foreigner, subsequently procured a register for her as a foreign ship. In a suit by the plaintiff for possession, the Court, upon the foreign consul refusing to interfere, declined to entertain the suit, which was dismissed with costs, but not damages. *The Agincourt*, 47 Law J. Rep. P. D. & A. 37; Law Rep. 2 P. D. 239.

ADMISSION.

*In pleadings.* [See COMMON, 3; PRACTICE, W 32, 65.]

*Letters.* [See EVIDENCE, 23.]

*Motion on admission.* [See PRACTICE, V 4, 5; W 16, 17.]

*Payment into Court on.* [See PRACTICE, V 5, 6.]

ADULTERATION OF FOOD.

1.—By section 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), it is enacted that "no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser," under a penalty. The respondent having asked for a pint of gin, and being told by the appellant that he kept gin at 2s. and 1s. 4d. per pint, purchased from him a pint at

the latter price. On analysis the gin was found to contain forty-three per cent. of water, but not to be injurious to health. Gin is a compound article and never sold pure; the higher the price the more nearly of proof strength the purchaser expects it to be, and the variations range as low as twenty-two per cent. under proof. Upon an information under the above section the appellant was convicted:—Held, that it was for the magistrate to decide, as a question of fact, whether the purchaser in such a case obtained an article of the nature, substance and quality demanded by him; and dilution of gin being recognised commercially, it became a question of degree whether or no, in the particular case, the dilution was so excessive as to make the article supplied something different from what was asked for. *Webb v. Knight*, 46 Law J. Rep. M.C. 264; Law Rep. 2 Q.B. D. 530.

2.—It is a condition precedent to a summary conviction under the Sale of Food and Drugs Act, 1875, that the purchaser of the article shall notify to the seller his intention to have it analysed by the public analyst. It is not enough for him to say that he had purchased the article for the purpose of analysis. *Barnes v. Chipp*, 47 Law J. Rep. M.C. 85; Law Rep. 3 Ex. D. 176.

3.—A purchaser who knows that the article which he buys is not of the nature, substance and quality demanded by him, is not prejudiced within the meaning of section 6 of the Sale of Food and Drugs Act, 1875, even though no label is delivered to him by the vendor, pursuant to the provisions of section 8 of the same Act. *Sandys v. Small*, 47 Law J. Rep. M.C. 115; Law Rep. 3 Q.B. D. 449.

Non-compliance with the provisions of section 8 does not, in the absence of fraud, constitute a sale "to the prejudice of the purchaser," and is not of itself an offence within section 6 of the Act. *Ibid.*

4.—Upon a prosecution under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), for selling to the prejudice of the purchaser an article of food not such as demanded by him, it was contended for defendant that having bought the article with a written description describing it as the purchaser described the article demanded by him, defendant had, within the meaning of section 25, "purchased the article as the same in nature, substance and quality as that demanded of him by the prosecutor, and with a written warranty to that effect":—Held, that the defendant was not within the protection of section 25. And per Pollock, B.,—Description upon a sale by description is not a warranty within the meaning of the section. *Rook v. Hopley*, 47 Law J. Rep. M.C. 118; Law Rep. 3 Ex. D. 209.

5.—Where an inspector duly appointed under section 13 of the Sale of Food and Drugs Act, 1875, purchased for analysis an article of food, and took the proceedings upon such analysis prescribed by the Act, and it was proved that the article so purchased was not of the nature, sub-

stance and quality of the article demanded by him, but an inferior article, though not known by him to be so at the time of the purchase,—Held, that it was a “sale to the prejudice of the purchaser” within section 6 of the Act. *Semble* (per Lush, J.), section 6 is not limited to the case of an admixture of a foreign substance with the article demanded, but may apply where the article supplied is of a different and inferior quality from that demanded. *Davidson v. McLeod* (in the Scotch Court of Justiciary) dissented from. *Hoyle v. Hitchman*, 48 Law J. Rep. M.C. 97; Law Rep. 4 Q.B. D. 233.

6.—The respondent was summoned upon an information laid by the appellant, the inspector appointed under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), for having sold to the prejudice of one Toy certain coffee which was not of the nature and quality of the article demanded by such purchaser, contrary to the provisions of section 6. It appeared that Toy went as the appellant's assistant, and asked for some best coffee, for which he paid. On being analysed, the coffee purchased was found to contain a large proportion of chicory. The Justices dismissed the information on the ground, amongst others, that the proceeding having been instituted by the appellant in his official capacity, he and not Toy should have personally purchased the article and dealt with the same:—Held, upon the above facts, that Toy might be treated as an ordinary purchaser, and that the Justices had acted wrongly in entertaining the objection. *Horder v. Scott*, 49 Law J. Rep. M.C. 78; Law Rep. 5 Q.B. D. 552.

#### ADULTERATION OF SEEDS.

[The Adulteration of Seeds Act, 1869, amended. 41 Vict. c. 17.]

By the Adulteration of Seeds Act, 1869, s. 3, any person who, with intent to defraud, “dyes or causes to be dyed” any seed is rendered liable to certain penalties therein specified. By section 2 the term “to dye seeds” means “to give to seeds by a process of colouring, dyeing, sulphur smoking or other artificial means the appearance of seeds of another kind.” The respondents improved the appearance of some old clover seeds by the process of sulphur smoking, and thereby made them resemble young clover seed, with intent to defraud:—Held, that they had committed no offence, inasmuch as there had been no adulteration, and the seeds in question were only improved in quality and not made to resemble seeds of another kind. *Francis v. Maas*, 47 Law J. Rep. M.C. 83; Law Rep. 3 Q.B. D. 341.

#### ADVANCEMENT.

##### (A) WHAT CONSTITUTES AN ADVANCEMENT.

- (a) *Annuity granted in intestate's lifetime.*
- (b) *Policy effected by father on son's life.*
- (c) *By mother.*
- (d) *By husband to wife.*

##### (B) HOTCHPOT: ADVANCEMENT WHEN TO BE BROUGHT INTO.

##### (C) INTEREST ON ADVANCEMENT.

##### (D) POWER OF TRUSTEES.

##### (A) WHAT CONSTITUTES AN ADVANCEMENT.

###### (a) *Annuity granted in intestate's lifetime.*

1.—A father by deed covenanted to pay to each of his six daughters an annuity of 200*l.* for her life, subject to a proviso that the income of any property which he might thereafter settle on any of his daughters should be taken in discharge *pro tanto* of her annuity. On the marriage of one of his daughters he covenanted for payment to trustees of 5,000*l.*, the covenant not to be enforced during his life if he should pay interest at four per cent. during that period. On the marriage of two others, being entitled to a life interest in a certain fund with a power of appointment amongst his children, he appointed one-sixth of such fund to each of such daughters, and surrendered to her his life interest in such sixth (exceeding 200*l.* a year), they releasing their annuities. A fourth daughter died in his lifetime, leaving issue, and the remaining two annuities were still subsisting at his death. The father died intestate. In a suit for administration,—Held (varying the order of Vice-Chancellor Hall, 46 Law J. Rep. Chanc. 812), that the payments of the annuities during the life of the intestate must be considered to have been made by way of allowance for maintenance and not of advancement, and the 5,000*l.* and the subsisting annuities only were, to be brought into hotchpot, the value of the latter being calculated at the death of the intestate. *Hatfield v. Minet* (App.), 47 Law J. Rep. Chanc. 612; Law Rep. 8 Ch. D. 136.

###### (b) *Policy effected by father on son's life.*

2.—A father effected a policy of assurance on the life and in the name of his son, and paid all the premiums and kept the policy in his own possession. On the death of the son intestate, the father took out letters of administration, and received the insurance money. In a creditor's suit instituted for the administration of the son's estate, the Court being of opinion upon the evidence that the father had effected the policy for his own benefit,—Held (affirming the decision of Bacon, V.C.), that he was entitled to keep it, and the fact that the policy was void by reason of the father not having an insurable interest in his son's life, within the meaning of 14 Geo. 3. c. 48, though a good ground of defence to the insurance company if they had chosen to avail themselves of it, could not affect his right after the money had been paid. *Worthington v. Curtis* (App.), 45 Law J. Rep. Chanc. 259; Law Rep. 1 Ch. D. 419.

###### (c) *By mother.*

3.—A mother is not under such an obligation to provide for her children as to raise a presump-

tion that an investment in the name of her child, or in the joint names of herself and the child, is an advancement and not a loan. The intention is, in such case, a question of evidence. *Sayer v. Hughes* (37 Law J. Rep. Chanc. 401) considered. *Bonnet v. Bennet*, Law Rep. 10 Ch. D. 474.

(d) *By husband to wife.*

[See HUSBAND AND WIFE, 8.]

(B) HOTCHPOT: ADVANCEMENT WHEN TO BE BROUGHT INTO.

4.—Testator recited that certain debts were due from his son Frederick to himself, and then released those debts, "and all other moneys due from him to me." Testator then made to his son Frederick further advances, and expressly released those by a codicil. Testator then made still further advances, but did not release those. On question whether these last debts were released,—Held (reversing the decision of Malins, V.C., Law Rep. 6 Ch. D. 122), that there was nothing to shew a contrary intention, and the will therefore spoke from the death of the testator, and released the debts subsequent to the codicil. *Everett v. Everett* (App.), 47 Law J. Rep. Chanc. 367; Law Rep. 7 Ch. D. 428.

5.—Testator gave his residuary estate upon trust for his two sons and four daughters equally, and declared that all such sums of money as he had then already advanced, or should thereafter advance, to or for the benefit of either of his children, as should appear in any account in his handwriting kept by him for that purpose, or as should be shewn in any other manner, should be considered and taken in full for or, as the case might be, in part of his or her share of and in the trust estate. Subsequently to the date of his will the testator advanced to one of his sons 1,575*l.*, and to the other 1,560*l.* He afterwards wrote letters to each of them stating that it was his intention to make a present to them of sums of 640*l.* and 650*l.*, part of the 1,575*l.* and 1,560*l.*, respectively, and requiring them to send him promissory notes for the balance:—Held, that these letters were not admissible in evidence to vary the operation of the proviso contained in the will, and that the sums of 640*l.* and 650*l.* must be brought into account by the sons. *Whately v. Spooner* (3 Kay & J. 542) considered. *Smith v. Conder*, 47 Law J. Rep. Chanc. 878; Law Rep. 9 Ch. D. 170.

6.—Testator, by a codicil, after reciting that he had, since the date of his will, advanced 4,000*l.* to his son A., directed that such sum should be considered as an advance on account of A.'s share in his residuary estate. The amount actually advanced to A. at the date of the codicil was less than 4,000*l.*:—Held, that the recital and direction in the codicil must be taken, for the purposes of the will, as conclusive; and that A. must be charged with the sum of 4,000*l.* as advanced to him at the date of the codicil. *In re Aird's Estate. Aird v. Quirk*, 48 Law J. Rep. Chanc. 631; Law Rep. 12 Ch. D. 291.

(C) INTEREST ON ADVANCEMENT.

7.—A testator directed a debt due to him from his son A. to be deducted from the share given to A. by his will:—Held, that A. must pay interest at four per cent. on the debt from the time of the testator's death. *Field v. Seward*, Law Rep. 5 Ch. D. 538.

*Interest on advances: hotchpot clause.* [See WILL, CONSTRUCTION, M 2.]

(D) POWER OF TRUSTEES.

[See INFANT, 3.]

*Advance to son: set-off against legacy of son.* [See WILL, CONSTRUCTION, H 6.]

ADVERSE POSSESSION.

[See MINES, 2.]

ADVERTISEMENT.

*Adjudication of bankruptcy, of.* [See BANKRUPTCY, F 17.]

*Bankruptcy, of, in Gazette: commencement of trustee's title.* [See BANKRUPTCY, C 8.]

*Injunction to restrain publication of advertisement injurious to trade.* [See LIBEL, 13, 14.]

*Petition, of, to wind up company.* [See COMPANY, H 13.]

*Sale by court: advertisement by person not having conduct of sale: injunction.* [See PRACTICE, Z 3.]

ADVERTISEMENTS OF QUEEN ELIZABETH.

[See CHURCH AND CLERGY, 33, 34.]

ADVOWSON.

*Entail: barring: lunatic protector: consent of court.* [See LUNACY, 15.]

*Right of presentation vested in parishioners: mode of election.* [See CHURCH AND CLERGY, 1.]

*Trust to purchase advowson: cestui que trust whether exclusive object of trust.* [See TRUST, E 8.]

AFFIDAVIT.

[See PRACTICE, K.]

*Bill of sale: filing of affidavit together with.* [See BILL OF SALE, 22–30.]

*Documents, of.* [See PRODUCTION OF DOCUMENTS, 14–21.]

AFTER-ACQUIRED PROPERTY.

*Bankrupt, of.* [See BANKRUPTCY, F 31–36.]

*Covenant to settle.* [See SETTLEMENT, 18–24.]

*Whether passing by testamentary gift.* [See WILL, CONSTRUCTION, D 5.]

## AGENT.

[See PRINCIPAL AND AGENT.]

## AGISTMENT.

A man who receives beasts to agist, on a contract to take reasonable care, which beasts are afterwards injured by an animal *mansuetæ naturæ*, is not exempt from liability merely on the ground that he did not know the animal to be ferocious. All the circumstances taken together may shew a want of reasonable care nevertheless, and if so, he will be liable. *Smith v. Cook*, 45 Law J. Rep. Q.B. 122; Law Rep. 1 Q.B. D. 79.

(Per Blackburn, J.), the rule requiring proof of *scienter* in cases of injuries by animals *mansuetæ naturæ*, is an artificial rule which ought not to be extended. *Ibid*.

## AGRICULTURAL HOLDINGS ACT.

[Amendment of so much of the Agricultural Holdings (England) Act, 1875, as relates to the Governors of Queen Anne's Bounty. 39 & 40 Vict. c. 74.]

[See LAND TRANSFER, 19.]

## AGRICULTURAL IMPLEMENTS.

[Prevention of accidents by thrashing machines. 41 Vict. c. 12.]

## ALDERMAN.

*Disqualification of*. [See MUNICIPAL CORPORATION, 1.]

## ALSHOUSE.

## (A) GRANT OF LICENCE.

- (a) *Fresh application to adjourned sessions.*
- (b) *Qualification of applicant.*
- (c) *Appeal to sessions.*
- (d) *Ground of refusal of licence.*
  - (1) *Duty of justices to state.*
  - (2) *Alteration of licensed premises.*

## (B) RENEWAL OF LICENCE.

- (a) *New tenant.*
- (b) *Discretion of justices: "renewal" or "new licence."*

## (C) SCOPE AND EFFECT OF LICENCE.

- (a) *Wine dealer's excise licence.*
- (b) *Reasonable additions to licensed premises.*

## (D) HOUSE FOR PUBLIC REFRESHMENT.

## (E) OFFENCES.

- (a) *Licence to sell beer "to be drunk on the premises."*
- (b) *Occasional licensee protected notwithstanding irregularity.*
- (c) *Prohibited hours.*
  - (1) *Grocer's shop.*
  - (2) *"Private friends."*
- (d) *Selling by retail without excise licence.*
- (e) *Suffering gaming on licensed premises.*

(f) *Imprisonment in default of payment of penalty.*

(g) *Sunday trading.*

(h) *Permitting drunkenness.*

(i) *Notice of appeal to quarter sessions.*

## (A) GRANT OF LICENCE.

(a) *Fresh application to adjourned sessions.*

1.—Where a man who had applied at the general annual licensing meeting for several licences was refused a spirit licence on the ground of the want of a formal qualification, and afterwards obtained the qualification, issued fresh notices and applied again at the adjournment of the same sessions for the spirit licence which had been previously refused him.—Held, that he had a right so to apply; that this was not a case of *res judicata*, as the case presented on the second application was different from that on the first. *Reg. v. The Justices of the West Riding* (39 Law J. Rep. M.C. 17; Law Rep. 5 Q.B. 33) followed and extended. *Reg. v. The Justices of Kirkdale*, 45 Law J. Rep. M.C. 36; Law Rep. 1 Q.B. D. 49 (*nom. Ex parte Maughan*).

(b) *Qualification of applicant.*

2.—It is not a valid ground for the refusal of an application for a certificate under 32 & 33 Vict. c. 27, in respect of a licence to sell by retail beer, cider or wine not to be consumed on the premises, that the applicant is not a resident on the premises sought to be licensed, and a *mandamus* will go to the Justices to enter continuances and hear an application which has been refused on such grounds. *Reg. v. De Rutzer*, 45 Law J. Rep. M.C. 57; Law Rep. 1 Q.B. D. 55 (*nom. Reg. v. De Rutzen*).

(c) *Appeal to quarter sessions.*

3.—By the Licensing Act, 1872, s. 52, an appeal is given to a person aggrieved by an order or conviction made by a Court of summary jurisdiction, and by sub-section 3 the appellant is required "immediately after" giving notice of appeal to the sessions against the order or conviction to enter into a recognisance to try the appeal, &c.:—Held, that the question whether an appellant has duly complied with the requirements of the section was one of fact to be determined by the sessions, having regard to all the circumstances of the case. The word "immediately" means the same thing as "forthwith," and implies prompt action and as speedy as the circumstances reasonably admit of. *Reg. v. The Justices of Berkshire*, 48 Law J. Rep. M.C. 137; Law Rep. 4 Q.B. D. 469.

(d) *Ground of refusal of licence.*(1) *Duty of justices to state.*

4.—The Wine and Beerhouse Act, 1869, provides, in section 8, that no application for a certificate under that Act in respect of a licence to sell by retail beer, cider or wine not to be



consumed on the premises, shall be refused, except upon one or more of four grounds which are there specified in that section:—Held, that Justices who refuse a licence to an applicant under this Act are bound to state to him upon which of the four grounds they have so refused it. *Reg. v. Sykes*, 45 Law J. Rep. M.C. 39; Law Rep. 1 Q.B. D. 52.

5.—Where Justices refuse a licence to an applicant under the Wine and Beerhouse Act, 1869, for the sale by retail of beer, &c., not to be consumed on the premises, they are bound to state at the time the ground upon which they have so refused it. *Reg. v. The Justices of the Chertsey Division of Surrey*, 47 Law J. Rep. M.C. 104; Law Rep. 3 Q.B. D. 374 (*nom. Ex parte Smith*).

(2) *Alteration of licensed premises.*

[See No. 9 infra.]

(B) RENEWAL OF LICENCE.

(a) *New tenant.*

8.—A., who was duly licensed in respect of certain premises, gave up possession of them on the 3rd of August to B., who was authorised by the Justices, under 5 & 6 Vict. c. 44, to continue the business of the house till the next special sessions on the 11th of September. Meanwhile the general annual licensing meeting was held on the 28th of August, and B.'s application for a transfer was not granted, and was finally refused at the adjourned general meeting on the 23rd of September, to which date the Justices had extended the authority granted by them under 5 & 6 Vict. c. 44. B. gave up possession to C. on the 28th of September, whose application for a licence at the next special sessions on the 23rd of October failed on account of his having omitted to give the proper notices, and D. thereupon took the premises, gave the notices and applied as a new tenant, under section 14 of 9 Geo. 4. c. 61, to the Justices at special sessions in January for a licence. The Justices refused the application on the ground that as there was no licence in existence at the time of the application in respect of the premises, they had no jurisdiction:—Held, that the decision of the Justices was right. *In re Todd*, 47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407.

Semble (per Cockburn, L.C.J., and Manisty, J.), that the words "any new tenant" in section 14 of 9 Geo. 4. c. 61 are not restricted to a tenant next in succession to the licensed occupier who has given up possession; and that the Justices would have jurisdiction to grant a licence to any succeeding tenant applying during the currency of the old licence. *Ibid.*

(b) *Discretion of justices: "renewal" or "new licence."*

7.—A man who had had a public-house licence for many years was refused the renewal of it on the ground that the neighbourhood was

sufficiently supplied, he not having taken out an excise licence or used his house as an inn:—Held, that the application was not for a new licence, and that the Justices had a discretion as to granting or refusing the application under 9 Geo. 4. c. 61. s. 1, and were not fettered by the limitations in sections 8 and 18 of 32 & 33 Vict. c. 27, which are confined to applications for licences for the sale of beer, cider and wine. *Reg. v. Smith*, 48 Law J. Rep. M.C. 38.

(C) SCOPE AND EFFECT OF LICENCE.

(a) *Wine dealer's excise licence.*

8.—A grocer selling wine by retail to be consumed off the premises with a wine dealer's licence, granted under 6 Geo. 4. c. 81. s. 2, is a wine merchant within the meaning of the Licensing Act, 1872, s. 73, and does not require a Justice's certificate. *Reg. v. The Justices of Bristol and Palmer v. Thatcher*, 47 Law J. Rep. M.C. 54; Law Rep. 3 Q.B. D. 346.

(b) *Reasonable additions to licensed premises.*

9.—S. was the licensed occupier of a public-house. At the time when the licence was granted there was adjacent a vacant piece of ground twenty-eight yards square. The owner of the public-house afterwards acquired this land, and rebuilt part of the house so as to include the vacant land. By this means the bar was enlarged and an entrance gained from another street. Intoxicating liquors were sold in the added part. On an information charging S. with selling liquors in a place where he was not authorised to sell them, the magistrate dismissed the information on the ground that the house was substantially the same as the one licensed, and refused to state a case. On motion for a rule to compel him to state a case, the Court refused to interfere. *Reg. v. Raffles*, 45 Law J. Rep. M.C. 61; Law Rep. 1 Q.B. D. 207.

(D) HOUSE FOR PUBLIC REFRESHMENT.

10.—A shop consisting of one room only, open in front, without seats of any kind, was kept for the supply of ginger beer and lemonade, to be drunk at the counter, and kept open for that purpose till two or three o'clock a.m.—Held, that it was a house kept for public refreshment, resort and entertainment, within the meaning of 23 Vict. c. 27. s. 6, and required a licence under that statute. Judgment of the Court below (45 Law J. Rep. M.C. 86) affirmed—*Baggallay, J. A.*, dissenting. *Howes v. Board of Inland Revenue* (App.), 46 Law J. Rep. M.C. 15; Law Rep. 1 Ex. D. 385.

(E) OFFENCES.

(a) *Licence to sell beer "to be drunk on the premises."*

11.—The defendant, a person licensed to sell beer not to be drunk on the premises, sold beer to Y., who came to her door for it. Y. took it to

8, who was standing in his own garden on the other side of the road. 8. having drunk some of it, handed the jug back to Y. and others, who were standing in the road, to drink. This was repeated two or three times, the jug being filled and the beer drunk in the same way each time:—Held, that though the defendant was paid for the beer, and saw, or might have seen, how it was drunk, there was not sufficient to convict the defendant under 35 & 36 Vict. c. 94. s. 5, for permitting drinking “on any highway adjoining or near her licensed premises.” *Bath v. White*, Law Rep. 3 C.P. D. 175.

(b) *Occasional licence protected notwithstanding irregularity.*

12.—By 25 & 26 Vict. c. 22. s. 13, and 26 & 27 Vict. c. 33. s. 20. sub-s. 1, the Commissioners of Inland Revenue are empowered, with the consent in writing of one Justice of the peace usually acting at the petty sessions for the petty sessional division within which the place of sale is situate, to grant to any person who shall be duly authorised to keep a common inn, &c., an occasional licence under this Act, empowering him to sell the like articles for which he shall have taken out such licences as aforesaid, at any such other place, and for and during such period of time, &c. The appellant obtained the consent of a Justice of the peace of the county, but not residing or acting in the petty sessional division where an Odd Fellows' fête was about to take place, to his having an occasional licence to sell liquors on that occasion, and such consent recited, contrary to the fact, that the Justice was acting for such division. Upon such consent the Commissioners of Inland Revenue granted an occasional licence:—Held, that the appellant who sold liquors under such occasional licence could not be convicted of having sold intoxicating liquors which he was not licensed to sell, or at a place where he was not authorised by his licence to sell the same, under 35 & 36 Vict. c. 94. s. 3. *Sterens v. Emson* (App. Div.), 45 Law J. Rep. M.C. 63; Law Rep. 1 Ex. D. 100.

(c) *Prohibited hours.*

(1) *Grocer's shop.*

13.—By the Licensing Act, 1875, s. 3, “all premises in which intoxicating liquors are sold shall be closed” at certain hours. And by section 9, any person who during prohibited hours “sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale” thereof, or “allows any intoxicating liquor . . . to be consumed” therein, shall be liable to a penalty. The appellant was a grocer having a wine and spirit licence, and also a draper. The two trades were carried on in adjoining shops in the same house, each having a separate entrance from the street. The shops were separated from each other by a partition, in which there were gaps which were left open by day. After ten o'clock at night, the statutory time for closing licensed premises,

the lights were put out in the grocer's shop, the outer door was shut and the openings in the partition were blocked up, the only possible communication between the two shops being through the living rooms at the back. The draper's shop remained open for the sale of drapery goods. The magistrates on these facts convicted the appellant, under section 3 of the Licensing Act, for keeping open his licensed premises during prohibited hours:—Held, that the conviction was wrong, no penalty being imposed by section 3, and there being no proof of an offence under section 9. *Brigden v. Heighes*, 45 Law J. Rep. M.C. 58; Law Rep. 1 Q.B. D. 330.

14.—The appellant, a grocer and draper, being licensed to sell wines and spirits by retail not to be consumed on the premises, was charged “for that he did keep open certain premises for the sale of intoxicating liquors” after ten o'clock at night. The appellant had but one shop for his general trade, but the wines and spirits were kept in a large case, which after ten o'clock was closed by shutters and locked; upon the case and in the window were hung notices that, in accordance with the new Licensing Act, wines and spirits could not be supplied after ten o'clock at night. The shop itself was open after ten o'clock, but there was no proof of any sale or exposure of intoxicating liquors. The Justices held the charge proved under section 9 of 37 & 38 Vict. c. 49, and convicted the appellant:—Held, that the conviction was wrong; that before the Justices could convict upon this information they must be satisfied that the premises were opened or kept open for the sale of intoxicating liquors. *Tassell v. Orendon*, 46 Law J. Rep. M.C. 228; Law Rep. 2 Q.B. D. 383.

(2) *“Private friends.”*

15.—B. gave a dinner to some friends at a licensed house kept by A. On the breaking up of B.'s party, A. invited nine of B.'s guests, including the appellant, to remain after the hour for closing to partake of two bottles of claret at his (A.'s) expense. Upon an information charging these nine persons with being found on the premises during prohibited hours, the Justices, though satisfied of the *bona fides* of the transaction, convicted them under section 25 of the Licensing Act, 1872, on the ground that the landlord, on the arrival of the hour for closing, could not convert them into “private friends” for the purpose of their consuming the wine so supplied to them by him:—Held, that the conviction was right. *Corbett v. Haigh*, Law Rep. 5 C.P. D. 50.

(d) *Selling by retail without excise licence.*

16.—The appellants carried on business as wine and spirit merchants in W., and held all the licences the law required for dealing in and retailing spirits there. The appellants did not hold a licence to retail spirits at C., but they rented certain premises there, which were occupied by a traveller on their behalf. On these

premises was stored beer only, belonging to the appellants (for the sale of which they took out a licence), but the traveller took orders for spirits there, which the appellants executed by sending the spirits as required from W. The appellants were convicted by Justices of retailing spirits in C. without having a retailer's excise licence, contrary to the provisions of 6 Geo. 4. c. 81:—Held, that the conviction was right, on the ground that the appellants carried on business at C. as retailers of spirits, notwithstanding that no spirits were kept there, but were delivered from another town, where the appellants carried on the business of wine and spirit merchants. *Stallard v. Marks*, 47 Law J. Rep. M.C. 91; Law Rep. 3 Q.B. D. 412.

If a person takes a house or part of a house, either in his own name or the name of any other person, and there personally, or by his agent, makes sales of spirits by retail, he carries on business there as a retailer of spirits, even though no spirits are actually stored on the premises. *Ibid.*

(c) *Suffering gaming on licensed premises.*

17.—The offence of suffering gaming on licensed premises may be committed by connivance, either on the part of the principal or the person in charge. *Rodgate v. Haynes*, 45 Law J. Rep. M.C. 65; Law Rep. 1 Q.B. D. 89.

A gentleman took a sitting-room and three bedrooms in the appellant's hotel. One of these bedrooms was occupied by himself, the other two by a horse trainer and a jockey, both of whom lived in the immediate neighbourhood. The appellant retired to bed shortly before eleven p.m. and the hall porter was left in charge. Between 1.30 and 2.15 the following morning the three persons were discovered in the sitting-room playing cards for money, the noise they made having been heard outside the premises. During all this time the hall porter, whose duty it was to stay up and attend to customers, was in a parlour at the extreme end of the house where he could not hear what was going on:—Held, that there was sufficient evidence to convict the appellant of suffering gaming on her premises, and that it was unnecessary to prove an actual knowledge on her part of what was going on. *Ibid.*

18.—In order to justify the conviction of an hotel-keeper for suffering gaming on his licensed premises, it is not enough to show merely that such gaming took place. Actual knowledge is not necessary, but something amounting to constructive knowledge must be shewn. *Bosley v. Davies*, 45 Law J. Rep. M.C. 27; Law Rep. 1 Q.B. D. 84.

19.—By the Licensing Act, 1872, s. 17, any licensed person who suffers any gaming to be carried on on his premises is liable to a penalty. The appellant, who was a licensed person, allowed certain persons to play on his premises a game called "puff and dart." Each player paid the sum of twopence as entrance money,

and the winner received a rabbit as a prize. The appellant was convicted by a stipendiary magistrate for having unlawfully suffered gaming to be carried on upon his licensed premises:—Held (Cockburn, L.C.J., doubting), that the conviction was right. *Bew v. Hardson*, 47 Law J. Rep. M.C. 121; Law Rep. 3 Q.B. D. 454.

(f) *Imprisonment in default of payment of penalty.*

20.—By the Licensing Act, 1872, s. 8, a person who sells beer without a licence is liable for a first offence to a penalty of 50*l.*, or imprisonment with or without hard labour for a month. By section 51, where a Court of summary jurisdiction has ordered a distress to be made in default of payment of a penalty, the Court may order, in default of the said sum being paid as directed, that the person liable to pay the same shall be imprisoned for a period not exceeding six months in cases where the penalty amounts to 50*l.* B. was convicted before Justices for selling beer without a license, and fined 50*l.* B. confessed himself unable to pay, and was forthwith committed by the Justices to prison for six months without any distress having been made:—Held, that the Justices had exceeded their jurisdiction, inasmuch as the issue of a warrant of distress was necessary in all cases to make section 51 applicable. Held also (by Cockburn, L.C.J.), that the operation of section 51 was not intended to apply to offences where a specific term of imprisonment was imposed in default of payment of the penalty adjudged. *Ex parte Brown*, 47 Law J. Rep. M.C. 108; Law Rep. 3 Q.B. D. 545.

(g) *Sunday trading.*

21.—In calculating the distance from one place to another by the nearest public thoroughfare, for the purpose of determining whether the definition of a *bona fide* traveller in section 10 of 37 & 38 Vict. c. 40 (the Licensing Act, 1874) is satisfied, it is proper to measure it across a navigable estuary where there is a public ferry which can be used by any person on payment of a toll. *Coulbert v. Troke*, 45 Law J. Rep. M.C. 7; Law Rep. 1 Q.B. D. 1.

(h) *Permitting drunkenness.*

22.—By section 13 of the Licensing Act, 1872, it is an offence for any licensed person to permit drunkenness or riotous conduct to take place on his premises, or to sell any intoxicating liquor to any drunken person:—Held, that the publican himself could not be convicted of being drunk on his own premises under that section. *Warden v. Tye*, 46 Law J. Rep. M.C. 111; Law Rep. 2 C.P. D. 74.

23.—The words "licensed premises" in 35 & 36 Vict. c. 94. s. 12 mean premises open to the public for the sale of drink under the Act. A publican therefore is not liable to be convicted under this section for being found drunk on premises after the house is closed, of which he

was the tenant, and which are "licensed under the Act," such premises not being at that time "licensed premises." *Lester v. Torrens*, 46 Law J. Rep. Q.B. 280; Law Rep. 2 Q.B. D. 403.

(4) *Notice of appeal to quarter sessions.*

24.—Where a person convicted of an offence under section 12 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), served a notice of appeal, directed generally "to the Justices for the Liberties of the Cinque Ports" (within whose jurisdiction the conviction had occurred), upon the clerk to the Justices at his private house,—Held, that such notice and service were bad, as not being in compliance with section 52, which requires notice of appeal to be given to "the Court of summary jurisdiction." *Ex parte Curtis*, 47 Law J. Rep. M.C. 35; Law Rep. 3 Q.B. D. 13.

Semble, "that the Court of summary jurisdiction" means the convicting Justices. *Ibid.*

Where the quarter sessions have refused to hear an appeal on the ground of the insufficiency of the notices, and a *mandamus* is applied for to compel them to hear, the Court will, upon the argument against the rule, determine the question of the sufficiency or insufficiency of the notices. *Ibid.*

## ALIENATION.

*Restraint against.* [See ANNUITY, 3-5.]

## ALIMONY.

[See DIVORCE, 25, 26.]

## ALLOTMENT.

*Sale of land allotted to parish for building materials.* [See HIGHWAY, 10.]

*Shares, of.* [See COMPANY, D 73-81.]

*Wages, of: liability of shipowner on allotment note.* [See SHIPPING LAW, W 2.]

## AMENDMENT.

[See PRACTICE, W 20-34.]

## ANCIENT LIGHTS.

[See LIGHT AND AIR.]

## ANIMALS.

[The law relating to Cruelty to Animals amended. 39 & 40 Vict. c. 77.]

### *Cruelty to animals.*

1.—To cut a cock's comb for the purpose of exhibiting him as a game cock is to "cruelly illtreat and torture" him within 12 & 13 Vict. c. 92. s. 2. *Murphy v. Manning*, 46 Law J. Rep. M.C. 211; Law Rep. 2 Ex. D. 307.

2.—The keeper of a common pound is not, as such, within the words of section 5 of 12 & 13 Vict. c. 92, "a person who impounds or confines or causes to be impounded or confined" animals brought to his pound; he is therefore not under an obligation to provide such animals with food and water, nor subject to the penalty for neglecting to do so. *Dargan v. Davies*, 46 Law J. Rep. M.C. 122; Law Rep. 2 Q.B. D. 118.

*Market: sale of animals: implied representation of freedom from infectious disease.* [See CONTAGIOUS DISEASES ACT, 1.]

*Property in animals fera natura: embezzlement: gamekeeper killing his master's rabbits.* [See EMBEZZLEMENT, 3.]

## ANNUITY.

### (A) DURATION OF ANNUITY.

(a) *Annuity pur autre vie.*

(b) *Annuity to A. "for his maintenance and education."*

(c) *Proviso against alienation of annuity.*

### (B) ON WHAT PROPERTY CHARGEABLE.

(a) *Corpus or income.*

(b) *Charge on real estate.*

### (C) HUSBAND AND WIFE: TENANCY BY ENTIRETIES.

### (D) REGISTRATION UNDER 18 & 19 VICT. c. 15. s. 12.

### (A) DURATION OF ANNUITY.

(a) *Annuity pur autre vie.*

1.—Where a testator bequeathed to his son an annuity from the time of his majority to the death or second marriage of the testator's widow, and the son attained twenty-one and died before the widow,—Held, that the legal personal representative of the annuitant was entitled to the annuity until the death or second marriage of the widow. *In re Ord. Dickinson v. Dickinson* (App.), Law Rep. 12 Ch. D. 22.

(b) *Annuity to A. "for his maintenance and education."*

2.—An annuity to the children of A. "for their maintenance and education" is not confined to the minorities of the children. Bequest of an annuity of 100*l.* to A., followed by a direction in these words: "In the event of her death the annuity is to be continued to her children for their maintenance and education, and I have to request Mr. W. G., banker, to see it carried into execution." A. survived the testator and died. On the death of A.,—Held, that the annuity of 100*l.* was payable to the children, not merely during their respective minorities, but during their joint lives and the lives and life of the survivors and survivor of them. *Soames v. Martin* (10 Sim. 287; 8 Law J. Rep. Chanc. 367) followed. *Gardner v. Barber* (18 Jur. N.S. 508) observed upon. *Wilkins v. Jodrell*, 49 Law J. Rep. Chanc. 26; Law Rep. 13 Ch. D. 564.

(c) *Proviso against alienation of annuity.*

3.—The testatrix bequeathed 20,000*l.* to be laid out in the purchase of an annuity for A., and directed that he should not be entitled to receive the value in lieu thereof; and that if he should sell, mortgage or pledge the annuity, the same should cease and form part of her residuary estate:—Held, that A. was absolutely entitled, and could make a good title, to the annuity. *Hunt Fulston v. Furber*, Law Rep. 3 Ch. D. 285.

4.—A testator directed his trustees to purchase an annuity for a married woman, to be paid to her for her separate use, with restraint on alienation and anticipation, and provisos that on anticipation it should sink into the residue, and that she should not be entitled to receive the value in cash:—Held, that she was not entitled to the value, but that the trustees must observe the terms of the gift. *Hatton v. May*, Law Rep. 3 Ch. D. 148.

5.—An annuity was given by will to A., subject to a proviso that if he should at any time do or permit any act, deed, matter or thing whatsoever, whereby the same should be aliened, charged or encumbered in any manner whatsoever, the annuity should thereupon absolutely cease. A. became bankrupt, the act of bankruptcy being the neglect to pay a sum of money in compliance with a debtor's summons:—Held (reversing the decision of one of the Registrars), that the annuity had ceased to be payable. *In re Throckmorton; ex parte Eyston* (App.), 47 Law J. Rep. Bankr. 62; Law Rep. 7 Ch. D. 145.

## (B) ON WHAT PROPERTY CHARGEABLE.

(a) *Corpus or income.*

6.—When there is a simple gift of an annuity followed by a direction to set apart a fund to meet it, such direction does not cut down the right of the annuitant to have arrears made up out of *corpus*. *In re Mason. Mason v. Robinson*, 47 Law J. Rep. Chanc. 660; Law Rep. 8 Ch. D. 411.

Testator bequeathed to his widow an annuity of 500*l.* during her life, and all his personal estate, not specifically bequeathed, to his trustees upon trust for sale and conversion, and after payment of his debts and legacies, upon trust to invest the residue and to stand possessed of the investments upon trust out of the income thereof, to pay and keep down the annuity and subject thereto upon the trusts thereafter mentioned. The income of the whole estate being insufficient to pay the annuity,—Held, that the deficiency must be paid out of *corpus*. The two classes of cases represented respectively by *Baker v. Baker* (27 Law J. Rep. Chanc. 417) and *Booth v. Coulton* (39 Law J. Rep. Chanc. 622) distinguished. *Ibid.*

7.—A testator gave residuary real and personal estate upon trust for conversion and investment, and directed the trustees to set apart a sufficient portion of such investments as would produce the annuity of 1,200*l.* a year, which he

bequeathed to his wife, payable quarterly, to be reduced to an annuity of 150*l.* on her second marriage, and subject to such investment to set apart a sum for the testator's daughter; and as to the entire residue of the trust estate, and also that part set apart in favour of his wife after her death, or such part thereof as should no longer be required to be set apart in consequence of her second marriage, in trust for the daughter and three grandchildren. The testator declared that the property before conversion, and the income thereof, should be subject to the aforesaid trusts. The income of the trust estate was insufficient to answer the annuity:—Held (affirming the decision of the Court of Appeal, 48 Law J. Rep. Chanc. 657; Law Rep. 11 Ch. D. 891; *nom. Gee v. Mahood*), that the widow was entitled to have the deficiency raised out of the *corpus* of the estate. *Carmichael v. Gee* (H.L.), 49 Law J. Rep. Chanc. 829; Law Rep. 5 App. Cas. 588.

(b) *Charge on real estate.*

8.—Where a testator by a codicil gave an annuity of 100*l.* to E. S. during her life, and charged the same upon certain specified real estate, with usual powers of distress and entry in case the annuity should be in arrear,—Held, that the personal estate was the primary fund for payment of the annuity. *Patching v. Barnett*, 49 Law J. Rep. Chanc. 665.

9.—Where a testator charges annuities and legacies on land, annuitants have no priority over legatees, although power of distress and entry is given to them. *Roper v. Roper*, Law Rep. 3 Ch. D. 714.

## (C) HUSBAND AND WIFE: TENANCY BY ENTIRETIES.

10.—In an ante-nuptial settlement the wife's father covenanted with the trustees to pay to them during his life an annuity, upon trust to pay the same "unto and to the use of the husband and wife during their joint lives," and after the death of the husband to the use of the wife, with trusts for the children and the husband if he survived his wife:—Held, that the husband and wife took the annuity by entireties, and therefore that the whole of it was during their joint lives liable to the husband's debts, the wife not being entitled to any equity thereout. *Ward v. Ward*, 49 Law J. Rep. Chanc. 409; Law Rep. 14 Ch. D. 506.

*Administration suit by annuitant.* [See ADMINISTRATION, 1.]

*Grantee of annuity: right of, to moneys on policy effected by him on life of annuitant.* [See INSURANCE, 7.]

## (D) REGISTRATION UNDER 18 &amp; 19 VICT. c. 15. s. 12.

11.—By deed in February, 1872, a landowner charged his land with two life annuities. He subsequently made several mortgages of the

property by deeds, some of which recited the annuity deed. The annuity deed had not been registered as required by 18 & 19 Vict. c. 15. s. 12:—Held (by the Master of the Rolls), that the annuity deed, not being registered, was void as against all the subsequent incumbrancers, whether they had notice of it or not. Held (by the Court of Appeal), that as the 18 & 19 Vict. c. 15. s. 12 was in similar terms to the clauses in the Registry Acts, which had been decided not to make an unregistered conveyance void as against a subsequent purchaser who had notice of it, the Legislature must be taken to have used the words in the later Act in the sense given to them by those decisions, and that the annuities therefore were valid as against all the subsequent incumbrancers who took with notice of them, and against the grantor's trustee in bankruptcy. *Greaves v. Telford* (App.), 50 Law J. Rep. Chanc. 118; Law Rep. 14 Ch. D. 563.

#### ANNULMENT OF ADJUDICATION.

[See BANKRUPTCY, C 9-15.]

#### ANSWER.

[See PRACTICE, P.]

#### APPARENT POSSESSION.

[See BANKRUPTCY, F 3-20; BILL OF SALE, 39, 40.]

#### APPEAL.

*Admiralty, in.* [See ADMIRALTY, 22-25.]

*Award: reference: special case.* [See ARBITRATION, 30.]

*Bankruptcy, in.* [See BANKRUPTCY, M 1-22.]

*Costs, for.* [See PRACTICE, B 12-18.]

*Costs of.* [See COSTS, 47-55.]

*County court, from.* [See COUNTY COURT, 17-28; PRACTICE, B 6-8.]

*Criminal matters, in.* [See CRIMINAL LAW, 1, 2; GAMING, 2.]

*Divorce court, from.* [See DIVORCE, 7-9.]

*Ecclesiastical.* [See CHURCH AND CLERGY, 35.]

*House of Lords.* [See HOUSE OF LORDS.]

*Interpleader issue.* [See INTERPLEADER, 5, 6.]

*Mayor's court, from.* [See LORD MAYOR'S COURT, 5, 6.]

*Official referee, from order of.* [See PRACTICE, V 4.]

*Practice on appeals in general.* [See PRACTICE, B.]

*Probate.* [See PROBATE, 33, 34.]

*Public Health Act, under.* [See PUBLIC HEALTH, 33, 37.]

*Quarter sessions, from order of.* [See PUBLIC HEALTH, 14; RATE, 25.]

*Quarter sessions, to.* [See ALIENAGE, 2, 24.]

*Winding-up.* [See COMPANY, H 73-77.]

#### APPEARANCE.

[See PRACTICE, C.]

*Under protest.* [See ADMIRALTY, 1.]

#### APPELLATE JURISDICTION.

[The law respecting the appellate jurisdiction of the House of Lords amended. Appointment of Lords of Appeal in Ordinary. 39 & 40 Vict. c. 59.]

#### APPOINTMENT.

[See POWER, 15-22.]

#### APPORTIONMENT.

##### (A) OF RENTS AND DIVIDENDS.

###### (a) *Under Apportionment Act, 1870.*

(1) *Successive assignees of lease.*

(2) *To what wills Act applies.*

(3) *Trading or other public companies.*

###### (b) *Independently of that Act.*

##### (B) OF OTHER PAYMENTS.

##### (A) OF RENTS AND DIVIDENDS.

###### (a) *Under Apportionment Act, 1870.*

(1) *Successive assignees of lease.*

1.—An assignee of a lease who assigns between two quarter days is liable under the Apportionment Act for rent up to the date of such assignment. *Swansea Bank (Lim.) v. Thomas*, 48 Law J. Rep. Exch. 344; Law Rep. 4 Ex. D. 94.

(2) *To what wills Act applies.*

2.—A testator by will dated before the Apportionment Act, 1870, after disposing of his residuary personalty, devised the undisposed-of rents of real estate. He made a codicil subsequently to the Apportionment Act:—Held, that such rents were apportionable. *Constable v. Constable*, 48 Law J. Rep. Chanc. 621; Law Rep. 11 Ch. D. 681.

(3) *Trading or other public companies.*

3.—The meaning of the words "dividends" and "trading or other public companies" in the Apportionment Act, 1870, considered. *In re Griffith. Carr v. Griffith*, Law Rep. 12 Ch. D. 655.

A life assurance society, unincorporated, but established in 1843 by a deed of settlement with a board of directors, 100,000*l.* capital and list of shareholders, and possessing certain powers and concessions under a special Act of Parliament, passed in 1868, held to be a "public

company" within the Apportionment Act, 1870, s. 5. *Ibid.*

A bonus or surplus profits accruing on shares in the company specifically bequeathed by a will dated in 1875, held to be apportionable under the Apportionment Act, 1870. *Ibid.*

(b) *Independently of that Act.*

4.—Testatrix, who died in 1858, directed her trustees to carry on a business and to apply the net profits as to one-fourth upon trust for C. for life, and after his death upon trust for his widow for life; and testatrix left the mode and time of ascertaining or dividing the profits wholly in the discretion of the trustees, except that they should, every January, draw up a balance-sheet, shewing the net profits during the year ending on the preceding 31st of December. C. died on the 23rd of December, 1877, and his widow, as next tenant for life, claimed to be entitled to the whole of the one-fourth share of the net profits for the half-year ending on the 31st of that month:—Held, first, that independently of the Apportionment Act, 1870, the person entitled to take a share of net profits must be living at the time when the profits were ascertained; and, secondly, that the share of net profits in question was neither a "dividend" nor a "periodical payment" within the meaning of that Act. *In re Cow's Trusts*, 47 Law J. Rep. Chanc. 785; Law Rep. 9 Ch. D. 159.

(B) OF OTHER PAYMENTS.

*Costs, of.* [See SOLICITOR, 27.]

*Costs, of, under Lands Clauses Act, as between several railway companies.* [See LANDS CLAUSES CONSOLIDATION ACT, 37.]

*Damages, of, arising from negligence.* [See NEGLIGENCE, 11.]

*Damages, of, in Divorce Court.* [See DIVORCE, 18.]

*Paving expenses, of.* [See PUBLIC HEALTH, 24.]

*Purchase-money, of.* [See VENDOR AND PURCHASER, 30.]

APPROPRIATION.

*Consignments, of proceeds of sale of, to meet bills.* [See BILL OF EXCHANGE, 20-31.]

*Mortgage debt, of: primary and secondary securities.* [See MORTGAGE, 18.]

*Payments, of, in account.* [See DEBTOR AND CREDITOR, 3; LIMITATIONS, STATUTE OF, 11.]

*Remittances, of, to cover advances.* [See BILL OF EXCHANGE, 26.]

*Trust funds improperly mixed with moneys of trustee.* [See TRUST, C 7.]

ARBITRATION.

(A) SUBMISSION TO ARBITRATION.

(a) *Validity and effect of.*

(1) *Collateral and independent covenant or agreement.*

(2) *Pure question of law.*

(b) *When revocable.*

(c) *Staying proceedings under Common Law Procedure Act, 1854, s. 11.*

(d) *Making submission a rule of Court.*

(B) COMPULSORY REFERENCE.

(C) ARBITRATOR.

(a) *Powers of.*

(1) *To state case.*

(2) *To certify for costs under 30 & 31 Vict. c. 142, s. 5.*

(b) *Liability of, to action or injunction.*

(1) *Architect appointed under building contract.*

(2) *Misconduct: injunction.*

(c) *Decision of, when final.*

(D) UMPIRE.

(E) AWARD.

(a) *Appeal: reference after award and judgment on special case.*

(b) *Setting aside and remitting.*

(1) *Jurisdiction of court under County Courts Act, 1850, s. 14.*

(2) *Disputed compensation under Public Health Act, 1875.*

(3) *Time for setting aside, under 9 & 10 Will. 3. c. 15, s. 2.*

(c) *Interest on award.*

(d) *Signing judgment on award.*

(F) COSTS.

(a) *Order of reference silent as to costs.*

(b) *Award in action of contract for less than 20l.*

(c) *Taxation of costs out of sessions.*

(A) SUBMISSION TO ARBITRATION,

(a) *Validity and effect of.*

(1) *Collateral and independent covenant or agreement.*

1.—Declaration, that defendant became tenant to plaintiffs upon the terms that defendant would keep such number only of hares and rabbits as would do no injury to the trees, &c., of plaintiffs, or to the crops of their tenants, and that in case defendant should keep such a number of hares and rabbits as should injure the trees, &c., or crops, &c., defendant would pay to plaintiffs or their tenants a fair and reasonable compensation for such injury. Breach, that defendant did keep such a number of hares and rabbits as did injury to such trees and crops, and had not paid a fair and reasonable or any compensation. Plea, that one of the terms of the said tenancy was that in case any such injury should be done "defendant would pay a fair and reasonable compensation for the same, the amount of such compensation, in case of difference, to be referred" to arbitration. Averment, that a difference arose as to the amount of compensation, but no arbitrator had been appointed nor any award made. Demurrer and joinder in demurrer:—Held (reversing the

judgment of the Court below, 43 Law J. Rep. Exch. 19; Law Rep. 9 Exch. 7), that the plea was bad, for the stipulation as to compensation and reference, though in the form of one sentence, contained in reality two covenants, and such covenants were distinct and independent. *Dawson v. Fitzgerald* (App.), 45 Law J. Rep. Exch. 894; Law Rep. 1 Ex. D. 257.

(2) *Pure question of law.*

2.—A contract entered into between the plaintiffs and defendants for the purchase of some wheat contained the following clause: "Should any dispute arise, the same to be submitted for settlement to the arbitration of two London corn factors respectively chosen, whose decision shall be final and binding":—Held, that the clause in question formed part of the consideration for the contract, and was intended to include questions of law as well as of fact which might arise upon the construction of the contract. *Formood & Company v. Watney*, 49 Law J. Rep. Q.B. 447.

(b) *When revocable.*

3.—By articles of partnership between the plaintiff and other persons for performing a contract, it was agreed that any dispute between the partners should be settled by arbitration, but there was no agreement that the submission to arbitration might be made a rule of Court. One partner became a liquidating debtor, and the defendant was appointed his trustee, and he elected to carry on the contract. The defendant claimed to have purchased the shares of the plaintiff and other partners in the undertaking. The plaintiff brought an action against the defendant, asking for an account of the partnership dealings. The main questions at issue were, whether the shares of the other partners were purchased on behalf of the plaintiff and defendant or of the defendant alone, and whether the defendant had purchased the share of the plaintiff as well as of the other partners. The defendant moved for an order under the Common Law Procedure Act, s. 11, staying all proceedings in the action, and referring the matters in question to arbitration; but before the motion was heard the plaintiff revoked the agreement for arbitration:—Held, first, that although a particular submission to arbitration might be revoked, a general agreement to refer to arbitration could not be revoked by one of the parties; but, secondly, that the matters in dispute were not within the agreement for arbitration; and the motion was accordingly refused. The question whether the matters in dispute are within the agreement for arbitration is one which the Court will decide, and will not leave to the arbitrator. *Willesford v. Watson* (Law Rep. 8 Chanc. 473) distinguished. Whether the trustee in the liquidation was a party entitled to make the application within the 11th section of the Common Law Procedure Act, *quære*. *Piercy v. Young* (App.), Law Rep. 14 Ch. D. 200.

(c) *Staying proceedings under Common Law Procedure Act, 1854, s. 11.*

4.—To support an application for a stay of proceedings under section 11, or for an enlargement of time under section 15, of the Common Law Procedure Act, 1854, the agreement to refer must at the time of the application be still capable of being carried into effect. *Randell, Saunders & Company (Lim.) v. Thompson* (App.), 45 Law J. Rep. Q.B. 713; Law Rep. 1 Q.B. D. 748.

An agreement to refer is within section 11 of the Common Law Procedure Act, 1854, although contained in a separate instrument from that under which the dispute arose. *Ibid*.

The defendant, a builder, had contracted with the plaintiffs, also builders, for the execution by them of certain work. A dispute arose on the balance of accounts between them, and the matters were, by a letter signed by the agents of both parties, referred to W. in these terms: "We beg that you will undertake to arbitrate between us, and do hereby agree that your award shall be final and binding upon both parties without any appeal whatever." W. undertook the reference and heard all the evidence, but no award was published. The submission was not made a rule of Court. Ten months having elapsed, the plaintiffs gave notice that they revoked their submission, and they brought an action in respect of their claim. This action was by a Master's order stayed under section 11 of the Common Law Procedure Act, 1854. On appeal from the Master's order, on the ground that there was no power to order a stay of proceedings under that section, it was held (by Blackburn, J., and Field, J.—Quain, J., dissenting), that the Court had power to stay the action, because, although in consequence of the plaintiffs' revocation of their submission there was no pending reference, yet there was still an agreement to refer which brought the case within the section. Further, that an application for enlargement under section 15 may be made at any time, and the Court can always enlarge the time so as to keep the reference alive, if satisfied that there is no reason why the matters cannot be referred. *Ibid*.

The Court of Appeal reversed the decision of the majority on the above points, and held that sections 11 and 15 applied only where there was an agreement to refer, which was still capable of being carried into effect. *Ibid*.

5.—Where articles of partnership provided that all disputes should be referred to a foreign Court whose decision should be final, the English Court stayed proceedings in a partnership action until the result of the proceedings in the foreign Court should be known; and refused to appoint a receiver in the absence of evidence that the rights of the parties could not be properly protected in the foreign Court. *Law v. Garrett* (App.), Law Rep. 8 Ch. D. 26.

6.—Where in articles of partnership there is an agreement to refer all partnership disputes



to arbitration, the cases in which the Court ought to exercise the discretionary power given to it by section 11 of the Common Law Procedure Act, 1854, and refuse to refer the same, are few and exceptional. *Russell v. Russell*, 49 Law J. Rep. Chanc. 268; Law Rep. 14 Ch. D. 471.

The mere fact that personal fraud is in issue between the partners is not of itself a sufficient reason for such refusal; but the Court will exercise a judicial discretion in the matter, and in such a case there is a distinction whether the application to refer is made by the party charging or charged with the fraud. *Ibid.*

Where the person charging the fraud does not desire a reference, the Court will investigate the circumstances, and may, on a *prima facie* case of fraud being shewn, in the exercise of its discretion refuse the same; but where the person charged with the fraud desires an investigation before a public tribunal, the Court will, as a rule, exercise its discretion and refuse to refer the matters in dispute to arbitration. *Dista v. Wickens, V.C., in Willeford v. Watson* (42 Law J. Rep. Chanc. 90; Law Rep. 14 Eq. 152), disapproved of. *Ibid.*

(d) *Making submission a rule of Court.*

7.—Motion to make a submission to arbitration an order of Court, the order not being required for any present purpose, was refused with costs. *In re The Railway Passengers Assurance Company's Act*, 1864; *in re Liscomb*, 49 Law J. Rep. Chanc. 236.

8.—An application to make a submission to arbitration a rule of Court should be made *ex parte* by summons. *In re An Arbitration between Davey and The Railway Passengers Assurance Company* (App.), 49 Law J. Rep. Chanc. 568.

(B) COMPULSORY REFERENCE.

9.—An appeal from a compulsory order of reference, made under section 57 of the Judicature Act, 1873, by a Judge sitting at *nisi prius* or assizes, must be brought direct to the Court of Appeal. A Judge has jurisdiction, under section 57, to refer compulsory issues which involve questions of fraud, affecting the character and reputation of the parties, though, as a general rule, such issues ought not to be referred. *Hoch v. Boor* (App.), 49 Law J. Rep. C.P. 665.

10.—Where it appears that the matter in dispute in an action consists in part only of matters of account, the Court or Judge may not refer the whole matter compulsorily under 17 & 18 Vict. c. 125. s. 3. Therefore, where in an action for breach of covenants in a lease to repair and to leave the premises in substantial repair the defendant denies the whole of the breaches, thus raising a question as to his liability, the Court has no jurisdiction to refer the action compulsorily under the above section. So held by Cockburn, L.C.J., Brett, L.J., and Cotton, L.J.; Bramwell, L.J., *dubitante*. *Clow*

*v. Harper* (App.), 47 Law J. Rep. Exch. 393; Law Rep. 3 Ex. D. 198.

*Reference of action to official referees.* [See PRACTICE, Y 1-6.]

(C) ARBITRATOR.

(a) *Powers of.*

(1) *To state case.*

11.—An umpire appointed to ascertain the amount of compensation under the Lands Clauses Consolidation Act, 1845, has power to state a Special Case under the 5th section of the Common Law Procedure Act, 1854. *Rhodes v. The Airedale Drainage Commissioners* (App.), 45 Law J. Rep. C.P. 861; Law Rep. 1 C.P. D. 402.

*In re The Dare Valley Railway Company* (Law Rep. 4 Chanc. 554) followed. *Rhodes v. The Airedale Drainage Commissioners* (43 Law J. Rep. C.P. 323; Law Rep. 9 C.P. 508) overruled. *Ibid.*

(2) *To certify for costs, under 30 & 31 Vict. c. 142. s. 5.*

12.—An action to recover a sum above 20*l.* for work and labour was referred compulsorily under the Common Law Procedure Act, 1854, the costs of the cause and of the reference being left to the discretion of the arbitrator. The arbitrator made an award in favour of the plaintiff for 6*l.* 1*s.* 10*d.*, and directed the costs of the cause and reference to be paid by the defendant, but omitted to certify that the action was properly brought in the Superior Court, and the plaintiff, for want of such certificate, was unable to get his costs taxed. The arbitrator afterwards on an *ex parte* application indorsed a certificate on the award that the action was properly brought in the Superior Court:—Held, that the arbitrator's power of certifying expired when his award was made, and his certificate was therefore set aside. *Bedrell v. Wood*, 46 Law J. Rep. Q.B. 725; Law Rep. 2 Q.B. D. 627.

(b) *Liability of, to action or injunction.*

(1) *Architect appointed under building contract.*

13.—The statement of claim set out an agreement, under which the plaintiff contracted with a company to build for them a hall whereof the defendant was employed as architect. The defendant was to be allowed to order additions and deductions, the amount of which were to be ascertained by him in a certain manner; all matters of dispute were to be left to the defendant, and his decision was to be final; the plaintiff was to be paid on the certificate of the defendant. The statement of claim then alleged that the work was done and the certificate given, but that the defendant did not use due care and skill in ascertaining the amounts to be paid by the company to the plaintiff, and neglected and refused to ascertain the amount of the said additions and deductions in the manner

aforesaid, and knowingly or negligently certified for a much less sum than was, in fact, the net balance payable; and, further, that the defendant refused to reconsider the said certificate and allow plaintiff to point out to him the said errors in the bill of quantities:—Held, that no cause of action against the defendant was disclosed by the above statement of claim, the defendant's duties involving the exercise of judgment and skill. *Stevenson v. Watson*, 48 Law J. Rep. C.P. 318; Law Rep. 4 C.P. D. 148.

*Per Lord Coleridge, C.J.*—Had the defendant's duties been merely ministerial, the action would have been maintainable. *Ibid.*

### (2) *Misconduct: injunction.*

14.—*Semble*, the Court has jurisdiction to restrain by injunction an arbitrator from proceeding with a reference, on the ground of corruption. *The Malmesbury Railway Company v. Budd*, 45 Law J. Rep. Chanc. 271; Law Rep. 2 Ch. D. 113.

15.—The jurisdiction of the High Court to grant injunctions is more extensive than that formerly possessed by the Court of Chancery, which was limited by the practice of the Chancellors, and by precedents, to certain specified cases. *Beddon v. Beddon*, 47 Law J. Rep. Chanc. 588; Law Rep. 9 Ch. D. 89.

The Common Law Procedure Act gave to Common Law Courts power to grant injunctions in all cases in which it should seem just or reasonable—a power more extensive than that possessed by the Court of Chancery. The larger power conferred on Common Law Courts by the Common Law Procedure Act is now, by the 25th section, sub-section 8, of the Judicature Act, 1875, vested in the High Court. That power is practically unlimited. What the Court may do on interlocutory motion, it may, *a fortiori*, do at the trial of the action. *Ibid.*

Injunction granted to restrain an arbitrator from continuing to act who had misappropriated funds, the subject-matter of the arbitration, and become indebted to one of the parties. *Ibid.*

*Action against, for collusively refusing his certificate.* [See ACTION, 4.]

### (c) *Decision of, when final.*

16.—The Judicature Act, 1873 (36 & 37 Vict. c. 66), has not taken away the power of referring given by the Common Law Procedure Act, 1854, and therefore there may still be a reference of a cause to an arbitrator for decision, and in that case he cannot be required to report, but his decision is final and not liable to be reviewed by the Court, except on the ground on which an award might have been reviewed before the Judicature Act, 1873. *Cruikshank v. The Floating Swimming Bath Company*, 45 Law J. Rep. C.P. 684; Law Rep. 1 C.P. D. 260.

*Semble*, where one or all the questions in a cause are referred under the Judicature Act,

1873, the referee must report thereon, and his report may be reviewed. *Ibid.*

*Discontinuance of action after findings of arbitrator.* [See PRACTICE, G 3.]

### (D) UMPIRE.

*Appointment of, under Common Law Procedure Act.* [See METROPOLIS, 2.]

### (E) AWARD.

(a) *Appeal: reference after award and judgment on special case.*

17.—Order of reference by consent before the Judicature Acts, that neither the plaintiffs nor the defendants should bring any writ of error against each other concerning matters referred. Award made dependent upon opinion of Court upon Special Case stated by arbitrator. Judgment given for the plaintiffs. On appeal, held that no appeal would lie. Observations on *Grimm v. Fowler* (2 E. & E. 890; 29 Law J. Rep. Q.B. 189). *Jones v. The Victoria Graving Dock Company* (App.), Law Rep. 2 Q.B. D. 314.

### (b) *Setting aside and remitting.*

(1) *Jurisdiction of court under County Courts Act, 1850, s. 14.*

18.—There is no appeal from a refusal of a County Court Judge to set aside an award in an action referred by him to an arbitrator. *Mayer v. Farmer*, 47 Law J. Rep. Exch. 760; Law Rep. 3 Ex. D. 285.

(2) *Disputed compensation under Public Health Act, 1875.*

19.—The reference to arbitration of a question of disputed compensation, pursuant to section 180 of the Public Health Act, 1875, is a submission to arbitration by consent, within the meaning of the Common Law Procedure Act, 1854, and the Court has a discretionary power, under section 8 of that Act, "at any time" to remit the award back to the reconsideration of the arbitrator. The Court, however, in the exercise of its discretion, took into consideration the lapse of time between the making of the award and the application to remit, and refused the order to remit on the ground, amongst others, that it was too late. *Kellett v. The Local Board of Trammere* (34 Law J. Rep. Q.B. 87) dissented from. *Warburton v. The Haslingden Local Board*, 48 Law J. Rep. C.P. 451.

(3) *Time for setting aside, under 9 & 10 Will. 3. c. 15, s. 2.*

20.—The terms into which the legal year was formerly divided are kept alive by section 26 of the Judicature Act, 1873, in cases where they are used as a measure for determining the time within which any act is required to be done. Therefore, where, after the Judicature Acts, an award was made before Easter Term (old style) and an application was made during Easter

sittings, but after the 8th of May (the last day of Easter term), to set it aside, under 9 & 10 Will. 3. c. 15. s. 2.—Held, that the application was too late. *Governors of Christ's Hospital, Brecknock v. Martin* (App.), 46 Law J. Rep. Q.B. 591; Law Rep. 3 Q.B. D. 16.

(c) *Interest on award.*

21.—No interest is payable on the amount of an award settling the price to be paid for the purchase of the interest of a dissentient member under the Companies Act, 1862, s. 162, except from the date when payment of the amount awarded is demanded, and such interest is properly calculated at the rate of four per cent. *In re the United States Direct Cable Company (Lim.)*, 48 Law J. Rep. Chanc. 665.

(d) *Signing judgment on award.*

22.—Where a case was referred by order of *nisi prius* before the Judicature Acts, and the arbitrator gave this award after those facts came into force,—Held, that judgment might be entered at once upon the award, without setting down the case on motion for judgment under Order XL. rule 3, or applying to the Court for directions under section 22 of the Judicature Act, 1873. (*Per BRETT, J.A.*), Order XL. rule 3 has no application to references by order of *nisi prius*, whether before or after the Judicature Acts came into operation. *Lloyd v. Lewis* (App.), 46 Law J. Rep. Exch. 81; Law Rep. 2 Ex. D. 7.

(F) COSTS.

(a) *Order of reference silent as to costs.*

23.—Where an action had been by consent of the parties at the trial referred as a matter of account to a Master under the Common Law Procedure Act, 1854, the order of reference being silent as to costs,—Held, that as the proceedings were intentionally taken under the Common Law Procedure Act, and not under the Judicature Act, Order LV. of the Rules of Court, Judicature Act, 1875, did not apply, and the Court had no jurisdiction to make any order as to costs. *Winshurst, Hollick & Company v. The Barron Ship Building Company (Lim.)*, 46 Law J. Rep. Q.B. 477; Law Rep. 2 Q.B. D. 335.

(b) *Award in action of contract for less than 20l.*

24.—Where a cause has been referred by consent, and the order of reference leaves the costs of the reference and award in the discretion of the arbitrator, and the award is for less than 20l. in an action founded on contract, the arbitrator's control over the costs of the reference and award is not taken away by section 5 of the County Courts Act, 1867. *Galatti v. Wakefield* (App.), 48 Law J. Rep. Exch. 70; Law Rep. 4 Ex. D. 249.

DIGEST, 1875-1880.

(c) *Taxation of costs out of sessions.*

25.—Where the matter of an appeal at quarter sessions is referred to an arbitrator under 12 & 13 Vict. c. 45. s. 13, and the order of reference gives the arbitrator power over the costs, taxation of the costs may take place after the sessions are over at which the award is entered as the judgment of the Court, if such be the usual practice and no objection has been raised at the time. *The Southampton Gas Light and Coke Company v. The Guardians of Southampton Union*, 46 Law J. Rep. M.C. 238; Law Rep. 2 Q.B. D. 371.

ARCHES COURT.

[See CHURCH AND CLERGY, 31, 32.]

ARCHITECT.

*Action on certificate of.* [See ACTION, 4.]

*Liability of architect appointed under building contract for want of care and skill in certifying.* [See ARBITRATION, 13.]

ARMY.

[Amendment of the law relating to the discipline and regulation of the army. 42 & 43 Vict. c. 32 & 33.]

Every officer in Her Majesty's army holds his office subject to the will of the Crown, and is liable to be dismissed at any moment without cause assigned. No military appointment is permanent in the sense of being tenable for life, or until the holder is disqualified by misconduct or incapacity from fulfilling the duties attached to it. *In re Twinnell*, Law Rep. 3 Ch. D. 164.

Where a medical officer in the army was at his own request, and on condition of waiving his right to promotion, appointed to the permanent medical charge of the military prison at Dublin,—Held, first, that as a military officer he was subject to the rules and regulations of the service, and the Court had no jurisdiction on a petition of right or any after proceeding to enquire into the circumstances under which he ceased to hold office; and, secondly, that the office, like all others in the army, was only tenable *durante bene placito*. *Ibid.*

ARREST.

[See ATTACHMENT: DEBTORS ACT.]

*By constable without warrant in his possession.*

C. was summoned for trespassing in pursuit of coney. He absconded and a warrant was issued for his apprehension, addressed to all peace officers in the county of Devon. A constable in the county police force endeavoured to arrest C. at a time when he had not the warrant in his possession. C. resisted and assaulted

F

the constable:—Held, that as the offence with which C. was charged was not felony, C. was justified in resisting the attempt of the constable to arrest him without having the warrant in his possession. *Cod v. Cobe* (App.), 45 Law J. Rep. M.C. 101; Law Rep. 1 Ex. D. 352.

*Debtors Act: discharge from custody under.* [See DEBTORS ACT, 1, 13, 14.]

*Contempt: default in answering.* [See PRACTICE, 1; X.]

*Solicitor: attachment for non-delivery of bill: waiver of personal service of rule.* [See ATTACHMENT, 15.]

*Solicitor: attachment for non-payment of balance not issuable without notice.* [See ATTACHMENT, 17.]

### ARREST OF SHIP.

[See ADMIRALTY, 4, 6, 11, 35, 56, 63; SHIPPING LAW, H.]

### ARTICLED CLERK.

[See SOLICITOR, 1-5.]

### ARTICLES.

*Of association.* [See COMPANY, D 1-4.]

*Of partnership.* [See PARTNERSHIP, 7-11.]

*Of marriage settlement.* [See SETTLEMENT, 1, 2.]

### ARTISANS' DWELLINGS.

[The powers of the Artisans' Dwellings Act of 1868 extended by provisions for compensation and rebuilding. 42 & 43 Vict. c. 64.]

[The Artisans' and Labourers' Dwellings Improvement Act, 1875, amended. 42 & 43 Vict. c. 63.]

[Amendment of the Artisans' and Labourers' Dwellings Improvement (Scotland) Act, 1875. 43 Vict. c. 2.]

A leasehold interest, belonging to C., was included in the schedule of lands to be taken compulsorily by a local authority for the purposes of an improvement scheme under the Artisans' Dwellings Act, 1875. Notice was given by the local authority to C. to send in to them a statement of his claim in respect of such leasehold interest, and he did so. By a slip this claim was not forwarded to the arbitrator under clause 6 of the schedule to the Act, and C.'s interest was omitted from the provisional award framed by the arbitrator under clause 8. Before the provisional award had been confirmed under clause 12, the mistake was discovered, and C.'s claim was forwarded to the arbitrator, who thereupon gave him two days' notice to appear before him for the consideration of his claim. C. accordingly appeared before the arbitrator and stated what the nature of his claim was, and although protesting against the arbitrator's jurisdiction, said that if

he awarded him sufficient he would not object to the slip that had occurred. The arbitrator awarded C. a sum in respect of his interest, and entered this amount in the provisional award, which he subsequently confirmed under clause 12. C. was dissatisfied with the amount awarded him, and commenced an action to restrain the local authority from taking possession of his land:—Held, that C. was a person "interested" in the provisional award within the meaning of clause 11; that the arbitrator had moreover acted within the powers given him by that clause "to take any measures he may deem proper for ascertaining the compensation payable in respect of any such lands or interest as aforesaid" (meaning the lands scheduled to the scheme and the several interests therein) "or the justice or propriety of any other matter of such provisional award;" and therefore that the award was binding on C., and that the action must be dismissed. But held also, that even if C. was not a person "interested" in the provisional award within the meaning of clause 11, still that the same would be valid under clause 12, as the omission of his interest was only "an irregularity in matter of form." *Carr v. The Metropolitan Board of Works*, 49 Law J. Rep. Chanc. 272; Law Rep. 14 Ch. D. 807.

*Costs: Lands Clauses Act.* [See LANDS CLAUSES CONSOLIDATION ACT, 40.]

### ASSAULT.

#### *Previous conviction.*

1.—By 24 & 25 Vict. c. 100. s. 45, a person against whom a charge has been preferred before the Justices of, *inter alia*, a common assault, if he has obtained a certificate of dismissal or, being convicted, has either paid the amount adjudged or suffered the imprisonment awarded, is to be "released from all further or other proceedings, civil or criminal, for the same cause":—Held, that the words "same cause" mean the same assault or same offence, and that the protection given by this section is not limited to proceedings for the same cause of action. Therefore, a person who has been convicted of a common assault on a married woman and who has paid the whole amount adjudged to be paid, may rely on the protection given by this section as a bar to an action against him by the husband for the loss he, as such husband, has sustained by the assault on his wife. *Masper v. Brown*, 45 Law J. Rep. C.P. 203; Law Rep. 1 C.P. D. 97.

2.—A man and his wife having each been struck by the defendant, summoned him before Justices for the assaults. The Justices, after hearing the case, merely fined the defendant for the assault on the man, but committed him to prison for fourteen days in respect of the assault on the woman, who was much hurt. The defendant paid the fine and suffered the imprisonment. An action having been afterwards brought against him for the injuries to the wife

he set up his conviction and imprisonment as a release, under 24 & 25 Vict. c. 100. s. 45. The plaintiffs contended that he had been punished only for a common assault, and not for the distinct offence of an "aggravated" assault, and that therefore the action in respect of the more serious injury was not "for the same cause" within the meaning of the section. The Court (Cleasby, B.) thought that the whole case being before the Justices, they had power to deal with it as an "aggravated" assault, and had so treated it; and therefore the defendant was, by section 45, released from the action. *Holden v. King*, 46 Law J. Rep. Exch. 75.

*Assault on child of tender years.*

3.—The prisoner was indicted at quarter sessions for an indecent assault on a girl seven years of age. The chairman refused to allow the prisoner's counsel to address the jury on the question of the girl's consent to the prisoner's act, ruling that a child of seven years old might submit, but was incapable of giving consent in such a case:—Held, that such ruling was wrong. *Reg. v. Read* (2 Car. & K. 957; 3 Cox C.C. 256) followed. *Reg. v. Roadley*, 49 Law J. Rep. M.C. 88.

*Assault on constable arresting without warrant.*  
[See ARREST.]

*Order of justices' jurisdiction: bona fide belief of right.* [See JUSTICE OF THE PEACE, 2.]

ASSENT OF EXECUTOR.

[See TRUST, C 4.]

ASSESSMENT COMMITTEE.

[See RATES, 23.]

ASSETS.

[See ADMINISTRATION.]

ASSIGNMENT.

*All debtor's property, of.* [See BANKRUPTCY, B 6-17.]

*Copyright, of.* [See COPYRIGHT, 7.]

*Contract, of.* [See CONTRACT, 27.]

*Debt or other chose in action, of.* [See CHOSE IN ACTION; MANDAMUS, 2; STAMP, 5; SET-OFF, 3.]

ASSIZES.

[Amendment of the law respecting the holding of winter assizes. Power by Order in Council to unite counties for purpose of winter assizes. 39 & 40 Vict. c. 56.]

[Amendment of the law respecting the holding of assizes. 42 Vict. c. 3.]

ATTACHMENT.

(1) OF DEBTS.

- (A) CREDITOR ENTITLED TO GARNISHEE ORDER.
- (B) WHAT DEBTS MAY BE ATTACHED.
- (C) PROCEDURE.
- (D) EFFECT OF ATTACHMENT.
- (E) FOREIGN ATTACHMENT: CUSTOM OF CITY OF LONDON.

(2) OF PERSON.

(1) OF DEBTS.

- (A) CREDITOR ENTITLED TO GARNISHEE ORDER.

1.—By Order XLII. rule 20, "Every order of a Court or a Judge, whether in an action, cause or matter, may be enforced in the same manner as a judgment to the same effect." By Order XLV. rules 1 and 2, "Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to have the judgment debtor examined as to debts due to him, and the Court or Judge may upon the application of such judgment creditor . . . order that all debts owing from third persons, garnishees, to the debtor be attached to answer the judgment debt":—Held, that a person who had obtained an order dismissing with costs an action against him for want of prosecution, though entitled to enforce the order as a judgment, was not a judgment creditor within rule 2 of Order XLV. *Crometti v. Crom*, 48 Law J. Rep. Q.B. 337; Law Rep. 4 Q.B. D. 225.

[And see No. 11 infra.]

(B) WHAT DEBTS MAY BE ATTACHED.

2.—A mere notice to treat, under the Lands Clauses Consolidation Act, upon which no proceedings have been taken, is not "a debt owing or accruing" which can be attached under Order XLV. rule 2, Rules of Court, 1875. *Richardson v. Elmit*, Law Rep. 3 Q.B. D. 9.

3.—Salary, payable quarterly, and not due until a future date, is not a debt "due, owing or accruing," and cannot be attached under Order XXIV. rule 4, of the County Court Rules, 1875.—The observations of Wightman, J., and Crompton, J., in *Jones v. Thompson* (E. B. & E. 63; 27 Law J. Rep. Q.B. 234), approved and followed. *Hall v. Pritchett*, 47 Law J. Rep. Q.B. 14; Law Rep. 3 Q.B. D. 215.

4.—Where a cheque has been given in satisfaction of a debt, but payment of the draft has been stopped before it has been cashed, the debt and the position of the parties is just the same as though such cheque had never been given, and the debt revives and is capable of being attached under a garnishee order. *Cohen v. Hale*, 47 Law J. Rep. Q.B. 496; Law Rep. 3 Q.B. D. 371.

5.—The plaintiff had recovered judgment

against the defendant in an action of detinue, which judgment still remained unsatisfied. The defendant, under the will of her deceased husband, was entitled to an annuity for the maintenance of herself and her infant son:—Held, that the annuity was attachable in the hands of the trustees in whom it was vested, subject to an enquiry as to the proportion to be allowed for the maintenance of the son. *Nash v. Pease*, 47 Law J. Rep. Exch. 766.

6.—Money due from D. Company working a line of railway, to S. Company which made it, but payable as dividend by S. Company (under the terms of an arrangement between the two confirmed by an Act of Parliament) to certain shareholders of S. Company who took their shares on the security of their dividends being so provided for, is attachable by a judgment creditor of S. Company in the hands of D. Company. *Bouch v. The Sereenoaks, Maidstone and Tunbridge Railway Company*, 48 Law J. Rep. Exch. 338; Law Rep. 4 Ex. D. 138.

7.—Money paid into a County Court by the judgment debtor to answer a judgment obtained by A. cannot be attached by a judgment creditor of A. under a garnishee summons against the Registrar of the Court issued after the money has been paid into Court. *Dolphin v. Layton* (*Scott*, garnishee), 48 Law J. Rep. C.P. 426; Law Rep. 4 O.P. D. 130.

8.—A receiver appointed by the Court of an estate under administration was ordered to pay the rents and an annuity to a person entitled for life:—Held, that the sums so payable, including sums payable hereafter and not yet in the receiver's hands, were subject to attachment to answer a judgment debt of the beneficiary. *Tapp v. Jones* (44 Law J. Rep. Q.B. 127; Law Rep. 10 Q.B. 591) approved.

Quære, as to the correctness of *Dolphin v. Layton* (48 Law J. Rep. C.P. 426; Law Rep. 4 C.P. D. 130). *In re Cowans. Raptor v. Wright*, 49 Law J. Rep. Chanc. 402; Law Rep. 14 Ch. D. 638.

#### (C) PROCEDURE.

9.—Where, upon an attachment, under a garnishee order by a judgment creditor, of moneys due to the judgment debtor, a third party claims such moneys for a debt due to him from the judgment debtor, and consents to a Judge at chambers deciding the issue summarily between him and the judgment creditor, instead of asking, under Order XLV. rule 7, for an issue to be tried in the usual way, such decision of the Judge is final, and cannot be appealed against by such third party. *Eade v. Winsor*, 47 Law J. Rep. Q.B. 584.

[And see Nos. 1, 5 supra.]

#### (D) EFFECT OF ATTACHMENT.

10.—The plaintiff having recovered judgment against the defendant for 18*l.*, and the defendant having recovered judgment against B. for 44*l.*, the plaintiff obtained an order, attaching B.'s debt,

together with a summons, calling on B. to shew cause why he should not pay to the plaintiff 18*l.* of the amount of the debt due to the defendant. Afterwards, and before the return of the summons, the defendant taxed his costs as against B., and the same day issued a *fi. fa.* under which the sheriff took possession of the goods of B., who gave notice to the sheriff of the summons, and offered to pay the sheriff the debt due to the defendant, less the amount due to the plaintiff. This the sheriff refused to accept, and insisted on being paid the whole amount for which execution was levied. Whereupon B. paid the whole amount under protest:—Held, that B. having been compelled by process of law to pay the debt to the sheriff, could not be called upon to pay it a second time to the plaintiff. *Turnbull v. Robertson*, 47 Law J. Rep. C.P. 294.

11.—A judgment creditor having obtained, under Order XLV. rule 2, an order *nisi* for attachment of all debts owing or accruing from a third person to the judgment debtor, is a secured creditor in respect of such of those debts as have not yet become payable, and his title is good as against that of a trustee under a liquidation which has taken place subsequent to the garnishee order. *In re Watt; ex parte Jocelyne* (App.), 47 Law J. Rep. Bankr. 91; Law Rep. 8 Ch. D. 377.

12.—The rules as to the respective rights of secured and unsecured creditors being now by virtue of section 10 of the Judicature Act, 1875, the same in the winding up of a company under the Companies Act, 1862 and 1867, as in a bankruptcy, a judgment creditor of a company who obtains a garnishee order *nisi* before but does not serve it until after the commencement of the winding-up is not a "secured creditor" of the company within the meaning of sub-section 5 and section 16 of the Bankruptcy Act, 1869. The garnishee order *nisi* is also an attachment within section 163 of the Companies Act, 1862, and is void unless perfected by being served upon the garnishee before the commencement of the winding-up. *In re The Stanhope Silstone Collieries Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 409; Law Rep. 11 Ch. D. 160.

[And see SOLICITOR, 42.]

#### (E) FOREIGN ATTACHMENT: CUSTOM OF CITY OF LONDON.

13.—A corporation, carrying on business within the City of London, is not liable to the process of foreign attachment issuing out of the Mayor's Court. *London Joint-Stock Bank v. Mayor, &c., of London*, 45 Law J. Rep. C.P. 213; Law Rep. 1 O.P. D. 1; affirmed on appeal, Law Rep. 5 C.P. D. 494.

14.—A creditor who has issued and served a writ of foreign attachment upon a garnishee out of the Lord Mayor's Court is not a secured creditor within the meaning of section 12 of the Bankruptcy Act, 1869. The whole process of foreign attachment is a *meane process*, and for

the purpose of enforcing appearance of the defendant to the action in the Lord Mayor's Court; and although under certain circumstances the plaintiff in the Lord Mayor's Court may obtain payment out of the fund or debt attached, the process under which he may so obtain it cannot be held a security on the property of the debtor within the section. To be so called it must be a charge which is enforceable in all circumstances. *Levy v. Lovell* (App.), 49 Law J. Rep. Chanc. 305; Law Rep. 14 Ch. D. 234.

Decision of Bacon, V.C. (48 Law J. Rep. Chanc. 357; Law Rep. 11 Ch. D. 220), reversed. *Ibid.*

### (3) OF PERSON.

[See DEBTORS ACT.]

15.—Where a rule nisi for an attachment had got into the peremptory paper, and the counsel for the party against whom the rule had been obtained consented to its being postponed, but did not afterwards appear for such party, the Court made the rule absolute, though personal service had never been effected. *In re A Solicitor*, 45 Law J. Rep. C.P. 86; Law Rep. 1 C.P. D. 445 (*nom. Ex parte Alcock*).

16.—An attachment for disobedience to an Order of Court is irregular if the person sought to be attached has not been served with a true copy of the order, and the omission of the title in the matter of A., an infant, is a material error. *In re Holt* (App.), Law Rep. 11 Ch. D. 168.

17.—A notice of motion for a writ of attachment for disobedience to an order made on an original petition need not, as well as the order, be served personally on the respondent to the petition, but may be served by being left at his residence. *Browning v. Sabin* (46 Law J. Rep. Chanc. 728; Law Rep. 5 Ch. D. 511) explained. *In re A Solicitor*, 49 Law J. Rep. Chanc. 295.

### ATTORNEY.

[See SOLICITOR.]

ATTORNEY AND SOLICITORS ACTS, 1860, 1870.

[See CHAMPERTY: SOLICITOR, 15, 20, 37-45.]

### ATTORMENT CLAUSE.

[See MORTGAGE, 1.]

### ATTORNEY-GENERAL.

*Consent of, to prosecution for fabricating voting paper at election of local board.* [See PUBLIC HEALTH ACT, 2.]

### AUCTION AND AUCTIONEER.

1.—The defendants, auctioneers, held a sale on the premises of a railway company, which was

described as being of unclaimed property "by order of the directors." The conditions of sale contained these words: "The lots to lie at the purchaser's risk from time of sale, and to be cleared away within three days after the sale at the purchaser's expense with all faults and defects. If from any cause the auctioneer shall be unable to deliver any lot, then in such case the purchaser shall accept compensation calculated, &c. Upon failure of complying with the above conditions, all lots uncleared within the time aforesaid shall be resold." The plaintiff bought one lot, but did not apply for delivery until the fourth day after the sale, when it was not forthcoming, and the defendants said it had been delivered to some one else. There was evidence that it had been seen on a trolley as if for delivery on the morning of the third day. In an action for non-delivery against the auctioneers,—Held, that auctioneers not being in the position of ordinary agents, there was on the above facts evidence for the jury of a personal contract by the defendants to deliver; and if they were liable to be sued, then, not having exercised the power of resale, they were not absolved from the necessity of delivering the goods by reason of the breach by the plaintiff of the condition as to clearing within three days, that not being a condition precedent to his right to claim delivery, as it did not go to the whole root of the consideration. *Woolf v. Horne*, 46 Law J. Rep. Q.B. 534; Law Rep. 2 Q.B. D. 355.

2.—The privilege from distress which is afforded to goods sent to an auctioneer for the purpose of sale does not extend to them if removed from the premises in his occupation. *Lyons v. Elliott*, 45 Law J. Rep. Q.B. 159; Law Rep. 1 Q.B. D. 210.

An auctioneer advertised a sale of V.'s goods to be held upon V.'s premises. The plaintiff sent some plate to the auctioneer with a request that he would put it into V.'s sale, and the auctioneer took it to V.'s premises for that purpose. While it was there, the defendant, V.'s landlord, seized the plate as a distress for rent owing to him by V.:—Held, that the plate was not privileged from distress. *Ibid.*

3.—Goods, the separate property of a married woman, were placed by her husband in a hired warehouse, and entrusted to auctioneers for the purpose of sale:—Held, that the auctioneers became possessed of the goods; so that (having received notice of the wife's claim before sale) they were liable to the wife for the value of both the goods sold and goods not sold but afterwards removed by the husband. *Davis v. Artingtall*, 49 Law J. Rep. Chanc. 609.

4.—In actions for specific performance the auctioneer ought not, as a general rule, to be made a defendant in respect of the deposit, unless he has refused before action to pay the same into Court; but in a case where the deposit amounted to 6,850*l.*,—Held, that the largeness of the amount justified the auctioneer's being made a defendant in the first instance. *Earl of Egmont v. Smith*; *Smith v. Earl of Egmont*, 46

Law J. Rep. Chanc. 356; Law Rep. 6 Ch. D. 469.

*Misrepresentation by auctioneer: right of way.* [See WAY, 4.]

*Memorandum of sale: omission of reference to conditions of sale in auctioneer's book.* [See FRAUDS, STATUTE OF, 9.]

#### AWARD.

[See ARBITRATION, 17-22.]

#### BAIL IN ERROR.

*Practice as to giving.* [See HOUSE OF LORDS, 7.]

#### BAILMENT.

*Auctioneers: liability of, as bailees.* [See AUCTION, 1-3.]

*Cab-driver and cab-owner.* [See MASTER AND SERVANT, 13.]

*Railway cloak-room: deposit of property on condition.* [See CARRIER, 9.]

*Warehouseman: consignment of goods: pledge by consignee during voyage: sets of bills of lading: title of holder.* [See SHIPPING LAW, F 7.]

#### BALLOT.

*Election by, by parishioners in whom right of presentation vested.* [See CHURCH AND CLERGY, 1.]

*Prosecution for offences under Ballot Act: production of voting papers.* [See MUNICIPAL CORPORATION, 9.]

#### BANK OF ENGLAND.

*Order in chambers for transfer of stock: jurisdiction.* [See TRUSTEE ACTS, 18.]

#### BANKER AND BANKING COMPANY.

##### (A) BANKING COMPANY.

(a) *Directors, powers of.*

(b) *Manager, powers of.*

(c) *Branch banks.*

(d) *Winding-up.*

##### (B) BANKER AND CUSTOMER.

(a) *Letters of credit, effect of.*

(b) *Lien of bankers.*

(c) *Specific appropriation of funds in hands of bankers.*

[19 & 20 Vict. c. 25 and 21 & 22 Vict. c. 79 repealed (sec. 2). General and special crossings defined (sec. 4). Crossings after issue by lawful owner allowed (sec. 5). A crossing to be deemed a material part of a cheque (sec. 6). A cheque crossed generally to be paid to a banker only, and a cheque crossed specially only to that banker to whom it is crossed or to his agent (sec. 7). A cheque crossed specially to more

than one banker not to be paid (sec. 8). The banker properly paying and the drawer of a specially crossed cheque relieved from liability in respect thereof (sec. 9). A banker improperly paying a crossed cheque made liable to owner for loss occasioned by such payment (sec. 10). Bankers relieved from responsibility in certain cases (sec. 11). Taker of cheque marked "not negotiable" to have no better title than person from whom he took it. A banker properly receiving payment of a crossed cheque not to be liable to true owner by reason only of such receipt (sec. 12). 39 & 40 Vict. c. 81.]

##### (A) BANKING COMPANY.

###### (a) *Directors, powers of.*

1.—B. & Co. (Lim.) were largely indebted to the West of England Bank, who held several of the debentures of the company. Mrs. B., for valuable consideration, accepted a transfer from two of the directors of the bank, at their request, of 18,000*l.* of these debentures, provided the bank would guarantee the payment of the interest thereon. The bank gave the guarantee. The company was unable to pay the interest, and the bank went into liquidation. By the deed of settlement of the bank, the directors were empowered to carry on the business of banking in all its branches, and to act as might appear to them best calculated to promote the interest of the bank. Mrs. B. now claimed to be admitted as a creditor against the assets of the bank under the guarantee:—Held, that the directors, in giving the guarantee, as part of an arrangement which they considered to be for the benefit of the bank, were acting within their powers; and claim allowed. *In re The West of England Bank; ex parte Booker*, 49 Law J. Rep. Chanc. 400; Law Rep. 14 Ch. D. 317.

###### (b) *Manager, powers of.*

2.—Semble, it is *ultra vires* of the manager of a bank to accept for the bank the office of treasurer of a friendly society. *In re The West of England and South Wales District Bank; ex parte The Swansea Royal Friendly Society*, 48 Law J. Rep. Chanc. 577; Law Rep. 11 Ch. D. 768.

3.—The acting manager of a bank, there being also a general manager, commenced the prosecution of the plaintiff for stealing a bill of exchange:—Held, that such acting manager had no authority to institute a prosecution, and that the bank was not liable for his act. *The Bank of New South Wales v. Owston*, 48 Law J. Rep. P.C. 25; Law Rep. 4 App. Cas. 270.

###### (c) *Branch banks.*

4.—The holder of a promissory note presented it at the head office of the bankers of the maker for payment. They sent it to their branch at the place where the note was payable, where the clerk cancelled the signature, wrote "Paid" on



the note and transmitted a draft in respect of it to the head office:—Held, that the head office and branch being one and the same bank, the act of the clerk did not operate to charge the bank with money had and received to the use of the holder. *Prince v. The Oriental Bank*, 47 Law J. Rep. P.C. 42; Law Rep. 3 App. Cas. 325.

(d) *Winding-up.*

[See FRIENDLY SOCIETY, 2.]

(B) BANKER AND CUSTOMER.]

(a) *Letters of credit, effect of.*

5.—Letters of credit, containing a promise to accept bills, create a contract between the giver of the letters and the person who advances money on the faith of them only when such letters are intended to be shewn to third persons for the purpose of obtaining advances, or where the giver of the letter has so conducted himself that such an intention may fairly be presumed. *The Union Bank of Canada v. Cole* (App.), 47 Law J. Rep. C.P. 100.

Documents in the form of letters of credit were addressed by the defendants to S. & Co., corn merchants, authorising them to draw bills on the defendants against shipments of grain. To the documents certain conditions were appended. S. & Co. drew bills upon the defendants under the credit so opened without performing the conditions. The plaintiffs, having notice of the conditions, and knowing that they were unfulfilled, advanced money on the bills so drawn, which the defendants refused to accept. In an action against the defendants for not accepting the bills,—Held, that if the documents created a contract between the plaintiffs and defendants, it was subject to such of the conditions as were not necessarily subsequent to the advance. *Ibid.*

(b) *Lien of bankers.*

6.—Although bankers have a general lien on all securities deposited by their customers, circumstances may limit such lien to a particular security. *The London Chartered Bank of Australia v. White & Blackwood*, 48 Law J. Rep. P.C. 75; Law Rep. 4 App. Cas. 413.

[And see BANKRUPTCY, D 24.]

*Lien on cheque paid to them.* [See BILL OF EXCHANGE, 7.]

(c) *Specific appropriation of funds in hands of bankers.*

7.—C. obtained an advance of 2,000*l.* from his bankers, and gave them ten promissory notes for the amount, a surety undertaking in the event of the notes not being paid at the due dates to secure the amount due. When the first two notes fell due there was a balance in C.'s favour to meet them. When the other notes fell due, C.'s account was overdrawn, but he made subsequent payments which, if he had not been afterwards allowed to overdraw, would have met

all the notes. The bankers debited the first five notes to C.'s general account, but kept the last five notes out of the general account. On an action by the bankers to enforce the security against the surety,—Held, that the subsequent payments by C. must be considered to have been appropriated to the discharge of the amount due on the notes, and that the surety was discharged. *Kinnaird v. Webster*, 48 Law J. Rep. Chanc. 348; Law Rep. 10 Ch. D. 139.

[And see BILL OF EXCHANGE, 26.]

*Bank notes: banks of issue: Cape Colony.* [See COLONIAL LAW, 18.]

*Banker's deposit note: gift of: donatio mortis causa.* [See DONATIO MORTIS CAUSA, 2.]

*Cheque: alteration of date.* [See BILL OF EXCHANGE, 1.]

*Cheque: crossing: name of banker: 21 & 22 Vict. c. 79. s. 2.* [See BILL OF EXCHANGE, 2.]

*Cheque: payment by: payment stopped before cheque cashed.* [See ATTACHMENT, 4.]

*Cheque: payment to wrong bankers.* [See BILL OF EXCHANGE, 3.]

*Cheque: payment: indorsement of cheque to order.* [See BILL OF EXCHANGE, 10.]

*Cheque: postdated to bearer: admissibility in evidence.* [See BILL OF EXCHANGE, 8.]

*Death of partner in banking firm: liability of his estate: novation of contract.* [See PARTNERSHIP, 24.]

*Following money improperly mixed: rule in Clayton's Case.* [See TRUST, C 7.]

*Libel: circular: notice to customers that cheques of a certain bank would not be accepted.* [See LIBEL, 11.]

*Partnership account with bankers: duty of bankers as to.* [See PARTNERSHIP, 14.]

## BANKRUPTCY.

### (A) JURISDICTION OF THE COURT OF BANKRUPTCY.

(a) *As to locality.*

(b) *As to property.*

(c) *In composition and liquidation proceedings.*

(d) *Cases within Chancery jurisdiction.*

### (B) ACT OF BANKRUPTCY.

(a) *Fraudulent preference.*

(1) *What amounts to, generally.*

(2) *Assignment of entire property to secure past debt.*

(3) *Pressure by creditor.*

(b) *Personal act or default.*

(c) *Building agreement: fraud on bankruptcy law.*

(d) *Execution for sum exceeding 50*l.**

(e) *Failure to comply with debtor's summons.*

(f) *Notice of act of bankruptcy available for adjudication.*

- (g) *Infant trader.*
- (h) *Trader: lodging-house keeper.*
- (C) ADJUDICATION.
  - (a) *Petitioning creditor's debt.*
  - (b) *Tender at hearing of petition.*
  - (c) *Joint and separate estates.*
  - (d) *Advertisement of, in the "Gazette."*
  - (e) *Annulling adjudication.*
- (D) PROOF.
  - (a) *For goods sold: trade or cash discounts.*
  - (b) *Contingent liability.*
  - (c) *Debt capable of being estimated.*
  - (d) *Damages founded on tort.*
  - (e) *Gaming debt.*
  - (f) *By solicitor for his bill.*
  - (g) *Loan to trader, to be employed in his business.*
  - (h) *Partnership.*
    - (1) *Proof against co-partner.*
    - (2) *Outsensible partner.*
    - (3) *Joint and separate estates: double proof.*
    - (4) *Administration of same estate in two countries.*
  - (i) *Secured creditors.*
    - (1) *Who are.*
    - (2) *Mode of proof by.*
  - (k) *Fictitious bills.*
  - (l) *For sum embezzled without prosecuting felon.*
  - (m) *Preferential debts: priority.*
  - (n) *Procedure and evidence.*
- (E) MUTUAL CREDIT.
- (F) TRUSTEE.
  - (a) *Appointment of trustee.*
    - (1) *Enforcement of bond.*
    - (2) *Vacating appointment of trustee.*
  - (b) *Property in reputed ownership of bankrupt.*
    - (1) *General scope of order and disposition clauses.*
    - (2) *Custom of trade.*
    - (3) *Consent of true owner.*
    - (4) *Things in action.*
    - (5) *Apparent possession under Bills of Sale Act.*
  - (c) *Proceeds of sale and seizure of goods.*
    - (1) *Creditor holding security.*
    - (2) *Judgment for sum exceeding 50l.*
    - (3) *Notice of act of bankruptcy: protected transactions.*
  - (d) *After-acquired property of bankrupt.*
  - (e) *Avoidance of voluntary settlement.*
  - (f) *Disclaimer by.*
  - (g) *Other property devolving on trustee.*
  - (h) *Joint and separate estate: property devolving on trustee of.*
  - (i) *Powers and liabilities.*
  - (k) *Release of.*
- (G) PUBLIC EXAMINATION OF BANKRUPT.
- (H) ORDER OF DISCHARGE.
  - (a) *Effect of, generally.*
  - (b) *Discretion of court to refuse.*
  - (c) *Delegation of power to grant.*
  - (d) *Undischarged bankrupt.*
- (I) PROSECUTION OF BANKRUPT.
- (K) LIQUIDATION BY ARRANGEMENT.
  - (a) *Petition: description of petitioning debtor.*
  - (b) *Resolution: registration and validity of.*
  - (c) *Voting: proxies.*
  - (d) *Power to summon debtor for examination.*
  - (e) *Scheme of arrangement.*
  - (f) *Trustee.*
  - (g) *Close of liquidation.*
  - (h) *After-acquired property.*
- (L) COMPOSITION WITH CREDITORS.
  - (a) *Registration and validity of.*
  - (b) *Voting: proxies.*
  - (c) *Statement of affairs.*
  - (d) *Alteration of place of first meeting.*
  - (e) *Effect of composition.*
    - (1) *As regards creditors.*
    - (2) *As regards debtor.*
  - (f) *Proof.*
  - (g) *Default in payment of composition.*
    - (1) *Revival of original debt.*
    - (2) *Adjudication of debtor a bankrupt.*
    - (3) *Power of court over surety.*
    - (4) *Liability of surety.*
- (M) PRACTICE.
  - (a) *Appeals and rehearings.*
    - (1) *When appeal lies: "person aggrieved."*
    - (2) *Time for appealing.*
    - (3) *Leave to appeal.*
    - (4) *Non-appearance of appellant.*
    - (5) *Security for costs: amount of deposit.*
    - (6) *Parties to be served.*
  - (b) *Contempt of court.*
  - (c) *Debtor summons.*
    - (1) *Debt contracted abroad.*
    - (2) *Debt disputed.*
    - (3) *By receiver in Chancery.*
    - (4) *By or against infant, lunatic, married woman, &c.*
    - (5) *By several creditors.*
    - (6) *Evidence in support.*
    - (7) *Security: dismissal.*
  - (d) *Examination of trustee.*
  - (e) *New trial.*
  - (f) *Petition.*
    - (1) *Demurrable: amendment.*
    - (2) *Use of, for inequitable purpose.*
    - (3) *Adjournment of, in consideration of bonus.*
  - (g) *Service.*
  - (h) *Staying proceedings.*
  - (i) *Witness.*
- (N) INJUNCTION.
  - (a) *Jurisdiction to grant.*
  - (b) *Action against compounding debtor.*
  - (c) *Service of notice of.*
- (O) RECEIVER.
- (P) COSTS.
  - (a) *Adjudication: omission to give notice of intention to dispute.*
  - (b) *Appeal, of.*
  - (c) *Composition, of.*
  - (d) *Petitioning creditor.*

- (e) *Petitioning debtor's solicitors.*
- (f) *Set-off of other costs.*
- (g) *Shorthand writer's notes.*
- (h) *Taxation of: party interested.*
- (i) *Trustee, of.*

#### (A) JURISDICTION OF THE COURT OF BANKRUPTCY.

##### (a) *As to locality.*

1.—A debtor's summons may be served in this country in respect of a debt contracted abroad by a foreigner with a foreigner. *Ex parte Pascal*; in *re Myer* (App.), 45 Law J. Rep. Bankr. 81; Law Rep. 1 Ch. D. 509.

There was some question whether the debtor was "residing" in England:—Held, that this was immaterial, the provisions of rule 17 for the issue of the summons by the Court of the district where the debtor resides or carries on business being merely directory, and not intended to determine any question of jurisdiction. *Ibid.*

The dictum in *Ex parte O'Loghlen* (40 Law J. Rep. Bankr. 28) questioned. *Ibid.*

2.—After presentation of a bankruptcy petition in an English County Court against a trader, who carried on business in England and Ireland, and had creditors and assets in both countries, the trader obtained an adjudication against himself on his own petition in the Irish Bankruptcy Court before the English petition could be heard. It was alleged that if an adjudication was made on the English petition the title of the trustee would relate back so as to avoid certain transactions of the bankrupt which could not be avoided under the Irish adjudication. No one but the debtor opposed the English petition:—Held, that an adjudication ought to be made on the English petition for what it was worth, leaving for future determination the question in which Court the administration of the assets ought ultimately to take place. *Ex parte McCulloch*; in *re McCulloch* (App.), Law Rep. 14 Ch. D. 716.

3.—An English Court has no jurisdiction to adjudicate a foreigner domiciled and resident abroad, who is a member of an English firm, a bankrupt. *Ex parte Blain*; in *re Savers* (App.), Law Rep. 12 Ch. D. 480.

##### (b) *As to property.*

4.—Where there is a simple money demand by the trustee of a bankrupt's property, which is capable of being tried by the ordinary tribunals, the Court of Bankruptcy will not assume jurisdiction to try it under section 72 of the Bankruptcy Act, 1869. Whether the Court has such jurisdiction or not, *quære*. In *re Pollard, Sons & Company*; *ex parte Dickinson* (App.), 48 Law J. Rep. Bankr. 36; Law Rep. 8 Ch. D. 377.

M. & C. received goods from P. & Co. for sale on commission, and made advances to them by accepting their drafts for sums proportioned to the invoiced value. They afterwards sold the

goods for less than the amount of the acceptances, and mixed the proceeds with their own money. P. & Co. having gone into liquidation, some of the bills were dishonoured at maturity, and M. & C. compounded with their creditors, paying seven shillings in the pound, which was received by the holders of the bills, who proved against P. & Co. for the balance. The trustee in the liquidation of P. & Co. then applied for an order upon M. & C. for payment to him of the balance of the proceeds of sale, after deducting the sums paid to the holders of the bills:—Held (affirming the decision of the Chief Judge and reversing that of a County Court Judge), that the proceeds of sale not being earmarked, the claim was a mere money demand capable of being tried by the ordinary tribunals, and the Court of Bankruptcy would not exercise jurisdiction in the matter. *Ibid.*

5.—The Court of Bankruptcy has no jurisdiction to direct the taking of an account which, when taken, may result in a money demand by the trustee in bankruptcy against a third person, who is not a party to the bankruptcy proceedings. *Ex parte Dickinson* (No. 4 supra) followed. In *re Wood*; *ex parte Musgrave* (App.), 48 Law J. Rep. Bankr. 39; Law Rep. 10 Ch. D. 95.

6.—The Court of Bankruptcy has, under section 65 of the Bankruptcy Act, 1869, the same jurisdiction in interpleader as was formerly possessed by the Superior Courts of Common Law under 1 & 2 Will. 4. c. 58. In *re Buck*; *ex parte Sheriff of Middlesex* (App.), 48 Law J. Rep. Bankr. 33; Law Rep. 10 Ch. D. 575.

7.—A stranger to a bankruptcy who is willing to submit to the Court the determination of his right as to the property of the bankrupt ought to be encouraged so to do. The trustee in bankruptcy ought not to raise objections in such a case. *Ex parte Fletcher*; in *re Hart* (App.), Law Rep. 9 Ch. D. 381.

*White v. Simmons* (40 Law J. Rep. Chanc. 689; Law Rep. 11 Eq. 425) observed upon, and *Ex parte Dickinson* (No. 4 supra) distinguished. *Ibid.*

The trustee in a bankruptcy was ordered to deliver possession of a house of which the bankrupt had been weekly tenant, to the lessee, who was also, as between himself and the bankrupt, mortgagee of the lease. *Ibid.*

##### (c) *In composition and liquidation proceedings.*

8.—The Court of Bankruptcy has jurisdiction to order the taxation of the debtor's solicitor's costs under a composition. *Ex parte Shepherd*; in *re Dixon*, 45 Law J. Rep. Bankr. 103; Law Rep. 2 Ch. D. 430.

Where the debtor's solicitor brought an action against the debtor for costs incurred in composition proceedings, the Court restrained the action upon the terms of the trustee in the composition paying a sum into Court and undertaking to pay the balance of the costs when taxed. *Ibid.*

9.—Resolutions were passed in a liquidation that the debtor should have his discharge on the

trustee certifying that he had satisfied himself that the debtor had rendered all the assistance in his power in realising his estate. The trustee, without sufficient reason, refused so to certify and procure the debtor's discharge:—Held, that the Court had no power to compel the trustee to sign such certificate, but that it would order the debtor to be discharged. *In re Scholes*; *ex parte Boyle*, 47 Law J. Rep. Bankr. 28.

(d) *Cases within Chancery jurisdiction.*

10.—Where a mortgagor becomes bankrupt and his mortgagee applies in bankruptcy for foreclosure, the time fixed for payment should be six months, although the trustee may admit he has no assets. *Ex parte Fletcher*; *in re Hart* (App.), Law Rep. 10 Ch. D. 610.

Observations on the jurisdiction of the Court of Bankruptcy to make an order of foreclosure. *Ibid.*

11.—An equitable mortgagee, by deposit of title-deeds, having commenced an action for foreclosure against the trustees of a bankrupt's estate, the Court of Appeal (affirming the decision of one of the Registrars) declined to interfere under the 72nd section of the Bankruptcy Act, 1869. *In re England*; *ex parte Pennell* (App.), 47 Law J. Rep. Bankr. 21; Law Rep. 6 Ch. D. 335.

12.—The plaintiffs brought an action against the trustee of a composition deed, registered in bankruptcy, to compel him to sue for some of their debtor's estate, outstanding in Trinidad. The plaintiffs were the only creditors interested under the deed. They relied among other things upon this, that the deed contained clauses which, since it was executed, had been decided to be invalid. The defendant objected to the jurisdiction of the Court of Chancery:—Held, that the Court of Bankruptcy had not the exclusive jurisdiction; and a motion to stay this action, and transfer the matters to that Court, was refused, with costs. *Jenney v. Bell*, 45 Law J. Rep. Chanc. 369; Law Rep. 2 Ch. D. 547.

13.—Where a trustee in bankruptcy impugns a transaction between the bankrupt and a third party on the ground that it is void by virtue of the provisions of the Bankruptcy Acts, there the Court of Bankruptcy will decide the matter, but where the trustee has no better title than the bankrupt himself would have had, there the matter should be left to the ordinary tribunals. *In re Yates*; *ex parte Brown* (App.), 48 Law J. Rep. Bankr. 78; Law Rep. 11 Ch. D. 148.

14.—Mortgages executed by the bankrupt more than twelve months before the adjudication were impeached by the trustee in the bankruptcy, and the County Court Judge directed certain issues to be tried by a jury. The jury found that the mortgages were executed with intent to defeat and delay creditors, and the County Court Judge ordered the deeds to be delivered up to be cancelled. On appeal to the Chief Judge, the Court took the objection that as the deeds could not be impeached by virtue of the Bankruptcy Law, the

Court of Bankruptcy had no jurisdiction, and discharged the order of the County Court Judge without costs. *In re Harrison*; *ex parte Harrison*, 49 Law J. Rep. Bankr. 30; Law Rep. 13 Ch. D. 603.

15.—The Court of Bankruptcy has jurisdiction to restrain proceedings in the Supreme Court. *Ex parte Ditten*; *in re Woods* (App.), 45 Law J. Rep. Bankr. 87; Law Rep. 1 Ch. D. 557.

Proceedings in a foreclosure suit by an equitable mortgagee against a trustee in bankruptcy restrained; but held, that the mortgagee would not be ordered to deliver up his title-deeds to enable the trustee to complete a sale until payment into Court of a sufficient amount to answer his claim. *Ibid.*

16.—In 1873 a bankruptcy, under which no assets had been realised, was closed, but the bankrupt did not obtain an order of discharge. In April, 1877, the bankrupt died, leaving assets of which he had disposed by will. The petitioning creditor, then, with notice to the executors of the will, applied to the Bankruptcy Court for leave to enforce his debt against the estate of the bankrupt as a judgment debt, or for liberty to institute proceedings in the Chancery Division for the administration of the bankrupt's estate:—Held, that section 54 of the Bankruptcy Act, 1869, did not enable the Court to sanction proceedings against the estate of a deceased bankrupt, and that, as the creditor could commence proceedings for administration without the leave of the Court, such leave was unnecessary. *Ex parte Kelly*; *in re Simmons* (App.), 47 Law J. Rep. Bankr. 30; Law Rep. 7 Ch. D. 161.

17.—An objection to the extraordinary jurisdiction conferred on the Court of Bankruptcy by the 72nd section of the Bankruptcy Act, 1869, must be taken at the earliest possible opportunity, and, if not taken in the first instance, will not be entertained on an appeal; but the Court itself can at any time take the objection. *In re Shanko*; *ex parte Swinbanks* (App.), 48 Law J. Rep. Bankr. 120; Law Rep. 11 Ch. D. 525.

*Set-off: Scotch law: collateral security.* [See SCOTCH LAW, 2.]

(B) ACT OF BANKRUPTCY

(a) *Fraudulent preference.*

(1) *What amounts to, generally.*

1.—The rules of the Stock Exchange provide that a member who is unable to meet his engagements on the Stock Exchange shall be declared a defaulter, and thereupon cease to be a member, and shall not be re-admitted unless he shall pay at least one-third of his Stock Exchange debts; also that the official assignees of the Stock Exchange shall obtain from the defaulter and examine his books of account, collect his assets and administer his estate in conformity with the directions of the Stock Exchange creditors. C., a member of the Stock Exchange, being unable to meet his engage-

ments, was declared a defaulter. His Stock Exchange liabilities amounted to 24,790*l.*, and he also owed 107,000*l.* to another creditor. His assets amounted to 8,000*l.*, including 5,000*l.*, his balance at his bankers'. The secretary of the Stock Exchange gave notice to the bankers not to part with the balance. Next day the debtor attended with his books of account a meeting of his Stock Exchange creditors, and stated to them that he had no outside creditors. He was then informed that if he could pay to his Stock Exchange creditors a dividend of 13*s.* 4*d.* in the pound, his re-admission would not be opposed. He accordingly, in accordance with the request of the official assignees, handed to them a cheque for the 5,000*l.*, and out of this sum a dividend of 3*s.* 4*d.* was distributed among the Stock Exchange creditors. The debtor subsequently filed a liquidation petition, and was adjudicated a bankrupt:—Held, that the payment of the 5,000*l.* was a *cessio bonorum*, and also a fraudulent preference within the 92nd section of the Bankruptcy Act, 1869, and that the trustee in the bankruptcy was entitled to recover the money from the official assignees of the Stock Exchange. *Tomkins v. Saffery* (H.L.), 47 Law J. Rep. Bankr. 11; Law Rep. 3 App. Cas. 213; on appeal from the Court of Appeal (*nom. Ex parte Saffery*; *in re Cooke*), 46 Law J. Rep. Bankr. 34; Law Rep. 4 Ch. D. 555.

2.—When an insolvent debtor makes a general arrangement with his creditors, a private stipulation by one creditor for future payments by the debtor on account of his debt, *ultra* the composition, is so far in law fraudulent that money subsequently paid thereunder can be recovered back by the debtor. *In re Lenaberg's Policy*, 47 Law J. Rep. Chanc. 178; Law Rep. 7 Ch. D. 650.

3.—K. & Co. sent a cheque of 2,000*l.* to S. & Co. to provide funds to meet certain bills at maturity, which had been drawn by K. & Co. upon and had been accepted by S. & Co., who kept an account at the Bank of England for the purpose of meeting their acceptances. The cheque was by mistake paid into another bank, where S. & Co. had their general banking account, and such bank refused to allow them to withdraw it. Before the bills matured S. & Co., finding themselves insolvent, drew a cheque for the 2,000*l.* on the Bank of England, intending to remit it to K. & Co. but were advised they could not properly do so. The next day they stopped payment, and shortly afterwards went into liquidation. K. & Co. paid the bills at maturity, and the 2,000*l.* was placed *in medio*. An application by K. & Co. that the 2,000*l.* should be paid to them having been dismissed on the ground that the repayment of the money to them by S. & Co. would have been a fraudulent preference,—Held (on appeal), that as S. & Co. never intended to misappropriate the 2,000*l.* the payment of it by mistake into their general account was not a breach of trust, and therefore that the relation of debtor and creditor between S. & Co. and K. & Co. was never created,

and the question of fraudulent preference did not arise, and consequently that K. & Co. were entitled to the money. *In re Smith, Fleming & Company*; *ex parte Kelly & Company* (App.), 48 Law J. Rep. Bankr. 65; Law Rep. 11 Ch. D. 306.

4.—At a meeting of the defendant's creditors the plaintiff, one of the creditors, signed, in common with the others present, an agreement to accept "10*s.* in the pound," on the understanding that "no concealment or fraud has been practised, . . . the whole of the creditors receiving not exceeding a like sum in discharge of their debts." At the time of signing the creditors knew that the defendant was being sued in the County Court by another creditor who did not sign. The defendant having paid the last-mentioned creditor in full,—Held, that his so doing did not render the transaction void *Carey v. Barrett*, Law Rep. 4 C.P. D. 379.

5.—A loan was made to A. under a verbal agreement to execute a bill of sale when required. The lender died, and his executor obtained a bill of sale three months before A. became bankrupt, but agreed not to put it in force until other creditors pressed A. There was no further advance:—Held, void as against the trustee in bankruptcy. *Ex parte Bolland*; *in re Gibbon*, Law Rep. 8 Ch. D. 230.

(2) *Assignment of entire property to secure past debt.*

6.—A bill of sale of all the grantor's then existing and after-acquired property, to secure an existing debt and further advances, is not necessarily void under 13 Eliz. c. 5, but only if not made *bona fide*—that is, if it is a mere device for retaining a benefit to the grantor. *Ex parte Games*; *in re Bamford* (App.), Law Rep. 12 Ch. D. 314.

7.—A bill of sale was executed over stock-in-trade, machinery and furniture, to secure a debt due for goods delivered in the course of business, and as a security for a further supply of goods about to be sent. Further goods to a considerable amount were actually supplied. There was evidence that the bill of sale did not include the book debts and other matters, shewing, in the opinion of the Judge, that the transaction was *bona fide* for the purpose of enabling the debtor to carry on his business:—Held (affirming the decision of Bacon, C.J., 45 Law J. Rep. Bankr. 14; Law Rep. 1 Ch. D. 290), that as there was no fraudulent intention in the transaction, and as the stipulation to supply further goods was supported by a further supply to a considerable amount, the bill of sale was valid. *In re Winstanley*; *ex parte Sheen* (App.), 45 Law J. Rep. Bankr. 89; Law Rep. 1 Ch. D. 560.

8.—Where a debtor has an interest in a partnership which turns out to be insolvent, a bill of sale which comprises the whole of his separate estate, but does not include his partnership assets, and which was given to secure an antecedent debt, is an act of bankruptcy. *Ex parte Trevor*; *in re Burghardt*, 45 Law J. Rep. Bankr. 27; Law Rep. 1 Ch. D. 297.

Semble, a power in a bill of sale to seize mortgaged property if payment of the sum secured is not made upon demand after notice in writing, will not authorise the mortgagee to make a demand, and upon its not being complied with to seize the property on the same day. *Ibid.*

9.—C., a trader, being indebted to his brother J. to the extent of 800*l.*, applied to him for a further advance of 150*l.*, and J. agreed to advance the money to C. by instalments as wanted, if C. would agree to give him a mortgage. Accordingly J. advanced C. three several sums of 50*l.*, and on advancing the last sum of 50*l.* took from him a mortgage of what was substantially all his property, to secure 950*l.* and further advances. J. afterwards advanced a further sum of 100*l.* The Court of Appeal being of opinion under the circumstances that the mortgage was for a substantial advance *bona fide* made for the purpose of enabling C. to carry on his business,—Held (reversing the decision of the Chief Judge), that it was not an act of bankruptcy. *Ex parte Fisher; in re Ash* (41 Law J. Rep. Bankr. 62; Law Rep. 7 Chanc. 636), considered and distinguished. *In re King; ex parte King* (App.), 45 Law J. Rep. Bankr. 109; Law Rep. 2 Ch. D. 258.

10.—A publican, being indebted to his spirit merchants in 668*l.*, ordered from them goods to the value of 92*l.* 11*s.*, part of which were for immediate delivery and the rest in bond; and at the same time paid them on account 50*l.* in cash and a cheque for 100*l.* The merchants despatched the goods ordered for delivery, which were of the value of 52*l.*, but before they reached their destination the cheque was dishonoured. The merchants stopped the goods *in transitu*. Thereupon the customer paid the amount of the cheque, but was informed by the merchants that they would not release the goods *in transitu*, or supply him with more goods, unless he gave security for his account. He then, in consideration of their releasing the goods, executed a bill of sale in favour of the merchants of the bulk but not the whole of his property, defeasible on payment of their debt immediately upon demand, with power of seizure and sale in default of payment. The goods were delivered, and the debtor continued his business, but in the following week the merchants discovered that he was absenting himself from home at a busy time, and they took possession under the bill of sale. One week after this the debtor filed his petition for liquidation:—Held, upon these facts, that there was present consideration for the bill of sale, amounting to a substantial advance for the purpose of carrying on the business, and that the assignment was not an act of bankruptcy. *Ex parte Threlfall; in re Williamson*, 46 Law J. Rep. Bankr. 8.

11.—M., being already indebted to B., wrote telling him he had forged his signature to a bill of exchange for 100*l.*, and entreating B. to take up the bill to save him from prosecution and ruin, and offering, if B. would do so, to give a

bill of sale of all his property to secure the amount of the existing debt and the further advance. B. advanced the money and took the bill of sale. Shortly afterwards he took possession under it and sold the goods, and subsequently M. was adjudicated bankrupt, the execution of the assignment being the alleged act of bankruptcy. On an application by the trustee to recover the proceeds of the sale,—Held, that, assuming the transaction between B. and M. was illegal, yet as B. had obtained possession of the property, M. being *in pari delicto*, could not, if he had remained solvent, have recovered it back, and that there having been no offence against the bankruptcy laws, the trustee in bankruptcy stood in no better position. *Ex parte Butt; in re Mapleback* (App.), 46 Law J. Rep. Bankr. 14; Law Rep. 4 Ch. D. 150 (*nom. Ex parte Caldecott; in re Mapleback*).

Semble, that the transaction did not amount to compounding a felony, or to misprision of felony. *Ibid.*

12.—The appellant advanced 20*l.* to the debtor in May upon a bill of sale of the debtor's whole property, securing that sum and 40*l.* previous advances. It was at the same time agreed that this bill of sale should not be registered, but the debtor should, if required, execute another bill of sale. In July the debtor was called upon under the agreement to give another bill of sale, which was duly executed and registered. In the same month the appellant put a man in possession, and continued in such possession until September, when the debtor filed a petition for liquidation:—Held, that the second bill of sale was not an act of bankruptcy, and that the trustee under the liquidation could not claim the goods. *Ex parte Hall; in re Jackson*, 46 Law J. Rep. Bankr. 39; Law Rep. 4 Ch. D. 682.

13.—The question whether a further advance to a trader will sustain an assignment to secure it and a previous debt is not simply a question of amount, but a question whether the advance was made to enable the trader to continue business, or merely to enable the creditor to obtain a security. *Ex parte Greener; in re Vane* (App.), 46 Law J. Rep. Bankr. 769.

A firm of traders, one of the partners in which was an infant, in consideration of one of their creditors paying out an execution for about 100*l.*, executed an assignment to him of their whole joint and separate property to secure the repayment of the 100*l.*, and an existing debt of about 200*l.*, on demand. The business was carried on for about three weeks by the firm when the bill of sale holder took possession, and the firm then went into liquidation:—Held (reversing the decision of the Chief Judge), that the payment of the execution creditor was not a present advance such as to sustain the assignment. *Ibid.*

Quære, whether the trustee in the joint liquidation could set up the infancy of one of the debtors against the security. *Ibid.*

When the execution creditor was paid out,

the debtors had already committed an act of bankruptcy by non-compliance with a debtor summons in respect of the execution creditor's debt:—Held (by the Chief Judge), that the trustee in the liquidation could not avail himself of that act of bankruptcy, it having been annulled when the debt in respect of which it arose was satisfied. *Ibid.*

14.—A farmer, knowing that he was hopelessly insolvent, but, for the purpose of going on as long as he could, obtained an advance from a money lender, to whom he was already indebted, upon the security of a bill of sale of all his effects, stock, crops, &c., both present and future. Nine months afterwards he failed to pay an instalment due, and the grantee of the bill of sale took possession of and sold the effects. Upon action brought by the trustee in bankruptcy of the grantor's estate, claiming the proceeds of the sale,—Held (within *Mercer v. Paterson*, 27 Law J. Rep. Exch. 54), that the granting of the bill of sale did not amount to an act of bankruptcy so as to defeat the title of the defendant under it. *Heath v. Cochrane*, 46 Law J. Rep. Q.B. 727.

15.—A judgment debtor gave a written undertaking, in the event of the judgment creditor not levying execution for his judgment debt, to execute on demand a bill of sale of substantially the whole of his property. The creditor forbore to levy execution, gave time and made further advances. Ultimately a bill of sale was executed to secure the judgment debt and subsequent advances, no fresh advance being made on the execution of the bill of sale, the deed purporting to be made in pursuance of the undertaking. Two days afterwards the debtor filed a liquidation petition:—Held, that the bill of sale was an act of bankruptcy, and that the forbearance to levy execution was not a sufficient equivalent for it. *Woodhouse v. Murray* (36 Law J. Rep. Q.B. 282; Law Rep. 2 Q.B. 634) followed. *Philips v. Hornstedt* (Law Rep. 1 Ex. D. 62) questioned. *In re Baum*; *ex parte Cooper* (No. 2) (App.), 48 Law J. Rep. Bankr. 54; Law Rep. 10 Ch. D. 313.

16.—Where, on the eve of the grantor's bankruptcy, a bill of sale comprising the whole of his property is given to secure a pre-existing debt, and it is attempted to support it by an agreement alleged to have been made at the time when the money was advanced, it is for the Court to judge from all the surrounding circumstances whether the agreement was a *bona fide* one, or whether the giving of the bill of sale was purposely postponed in order to protect the grantor's credit. The fact that the agreement was to give the bill of sale "if or when required" by the creditor does not of itself necessarily invalidate it. *Ex parte Fisher* (41 Law J. Rep. Bankr. 62; Law Rep. 7 Chanc. 636) explained. The Court will require a very clear explanation of the delay in the execution of the bill of sale, and the *onus* is on the person who sets up the prior agreement to prove not only its existence, but the *bona fides* of it.

*Ex parte Kilner*; *in re Barker* (App.), Law Rep. 13 Ch. D. 245.

17.—Seventeen days before a trader filed a liquidation petition he executed a bill of sale of substantially the whole of his property, to secure the repayment of an advance which had been made to him two months previously. At the time when the advance was made the borrower agreed to give a bill of sale to secure it; but the agreement was that the bill of sale was not to be signed until the lender "lost confidence" in the borrower:—Held (reversing the decision of Bacon, C.J.), that this amounted to an agreement to postpone the giving of the bill of sale until the grantor should be on the verge of bankruptcy; and that, consequently, on the principle of *Ex parte Fisher* (41 Law J. Rep. Bankr. 62; Law Rep. 7 Chanc. 636), the bill of sale could not be supported. In estimating whether a bill of sale comprises the whole of a trader's property, the value of his book debts is to be taken into account. *Ex parte Foxley* (Law Rep. 3 Chanc. 515) explained. *Ex parte Burton*; *in re Tunstall* (App.), Law Rep. 13 Ch. D. 102.

[And see B 5 *supra*; M 3, 4, *infra*; BILL OF SALE, 38.]

### (3) Pressure by creditor.

18.—Where there is any pressure or negotiation by a creditor for a security on the part of the debtor, such security will not be a fraudulent preference, although the creditor knows the debtor to be in embarrassed circumstances. *Smith v. Pilgrim*, Law Rep. 2 Ch. D. 127.

*Departing from dwelling-house: intent to defeat or delay creditors.* [See M 37 *infra*.]

### (b) Personal act or default.

19.—An act of bankruptcy must be a personal act or default, not committed through an agent or by a firm as such. *Ex parte Blain*; *in re Samers* (App.), Law Rep. 12 Ch. D. 522.

### (c) Building agreement: fraud on bankruptcy law.

20.—A building contract contained a stipulation that in the event of the builder becoming bankrupt or insolvent, all materials, plant, chattels, &c., on the ground, which should not have been actually demised to the builder (under a previous clause, by which the landowner agreed to grant to the builder leases of the houses on completion), should become absolutely forfeited to the landowner. Power was also given to the landowner, in such an event, to enter and sell the materials, &c. The builder having filed a petition for liquidation, and building materials, &c., remaining on the land at that date,—Held (reversing the decision of Bacon, C.J.), that the agreement above set out was void, as being contrary to the policy of the bankrupt laws, and that the trustee in the liquidation was entitled to the materials. *Ex*

*parte Meade; in re Harrison*, 49 Law J. Rep. Bankr. 47; reported on appeal, Law Rep. 14 Ch. D. 19 (*nom. Ex parte Jay; in re Harrison*).

(d) *Execution for sum exceeding 50l.*

21.—Where the indorsement on a writ of execution is for levy of debt, poundage and other legal incidental expenses, possession-money, where possession is necessary, is to be calculated for the purpose of ascertaining whether the execution is for a sum exceeding 50l., within the meaning of section 87 of the Bankruptcy Act, 1869. Decision of Bacon, C.J. (Law Rep. 4 Ch. D. 521), affirmed. *Ex parte Sims; in re Grubb* (App.), 46 Law J. Rep. Bankr. 103; Law Rep. 5 Ch. D. 375.

22.—A plaintiff in an action for a sum exceeding 50l. is entitled, if he signs judgment and levies execution for a sum under 50l., to avoid the operation of the 87th section of the Bankruptcy Act, 1869. *In re Salinger; ex parte Roya* (App.), 46 Law J. Rep. Bankr. 122; Law Rep. 6 Ch. D. 332.

23.—A creditor having obtained judgment against a debtor for an amount exceeding 50l., issued execution for a less amount, so that the whole expenses of the execution were less than 50l. The debtor having filed a liquidation petition,—Held, that the creditor was entitled to the benefit of the execution. *In re Hinks; ex parte Berthier & Company*, 47 Law J. Rep. Bankr. 64; Law Rep. 7 Ch. D. 882.

[And see F 24 *infra*.]

(e) *Failure to comply with debtor's summons.*

24.—Subsequently to the service of a debtor's summons, and before the expiration of the time limited for payment of the debt, the summoning creditor presented a bankruptcy petition against the debtor, founded on the same debt, but on an alleged prior act of bankruptcy. The debt was not paid within the time limited, and the creditor then presented a second petition founded on the alleged neglect of the debtor to pay the debt according to the requirements of the summons:—Held, that the mere fact of the pendency of the first petition was not a sufficient reason for saying that the debtor had been prevented from paying the debt by the act of the petitioning creditor, and that, therefore, there had been no neglect to pay and no act of bankruptcy; but that to resist adjudication on the second petition the debtor must prove, as a matter of fact, that he had been prevented from paying the debt by the pendency of the first petition. *Ex parte Musgrove* (3 Mont. D. & D. 386) considered. *Ex parte Greener; in re Greener* (App.), Law Rep. 15 Ch. D. 457.

(f) *Notice of act of bankruptcy available for adjudication.*

25.—B. filed a petition for liquidation on the 19th of October, 1874. A composition was resolved upon, and G. guaranteed the payment of the third instalment. Default was made by

B., and G. had to pay the third instalment. On the 14th of October, 1875, B. was adjudicated bankrupt. G. sent in a proof in the bankruptcy for the amount he had paid under his guarantee. The trustee rejected the proof on the ground that G. had had notice of an act of bankruptcy available for adjudication prior to the time when the debt had been contracted, but the Registrar admitted the proof:—Held, that the words in section 31, "notice of an act of bankruptcy available for adjudication," mean notice of an act of bankruptcy available for the making of the adjudication under which the proof was tendered. As the act of bankruptcy had been in this case committed more than six months prior to the adjudication, it was not so available, and the proof must be admitted. *In re Bodell; ex parte Crosbie* (App.), 47 Law J. Rep. Bankr. 19; Law Rep. 7 Ch. D. 123.

26.—Notice that a petition in bankruptcy has been filed is notice of an act of bankruptcy, since such petition must be founded on an act of bankruptcy. On the 7th of May, 1879, after seizure under an execution by a judgment creditor, but before sale, such creditor received a letter from the solicitor for the execution debtor, giving him notice that a petition in bankruptcy had on the 1st of May in the same year been filed in a certain County Court by A. B. against the execution debtor. The debtor having been afterwards adjudged bankrupt on such petition,—Held, that this letter was sufficient notice of an act of bankruptcy committed by the bankrupt, within the meaning of section 95 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), to deprive the execution creditor of the protection of that section. *Lucas v. Dicker*, 49 Law J. Rep. C.P. 415; Law Rep. 5 C.P. D. 150; affirmed on appeal, 50 Law J. Rep. C.P. 190; Law Rep. 6 C.P. D. 84.

(g) *Infant trader.*

27.—A trader who, being an infant, has represented himself to be of full age, was, after majority, adjudicated bankrupt in respect of a debt incurred under age. *In re Lynch*, 45 Law J. Rep. Bankr. 48; Law Rep. 2 Ch. D. 227.

(h) *Trader: lodging-house keeper.*

28.—A person who keeps lodgings for the reception of invalids, nursing them and supplying them with provisions at a profit, is an hotel keeper within the meaning of the 1st schedule of the Bankruptcy Act, 1869. *In re Jones; ex parte Thorne* (App.), 45 Law J. Rep. Bankr. 158; Law Rep. 3 Ch. D. 357.

(C) ADJUDICATION.

(a) *Petitioning creditor's debt.*

1.—The words of the 118th section of the Bankruptcy Act, 1869, enacting that no person not being a trader shall be adjudged a bankrupt in respect of a debt contracted before the date of the passing of the Bankruptcy Act, 1861, are to be construed as meaning what they say, and



they do not apply to a debt contracted after the passing of the Act but before the date fixed for its commencement. *Ex parte Rashleigh*; *in re Dalzell* (App.), 45 Law J. Rep. Bankr. 29; Law Rep. 2 Ch. D. 9.

The debt of a partner who covenants with his co-partners for payment of a sum of money found due in respect of the partnership transactions is a debt incurred at the time of executing the covenant and not at the date of those transactions. *Ibid.*

Whether when there is in a mortgage a covenant for repayment of a sum of money and future advances the future advances are a debt created at the date of the mortgage, *quære* (per Brett, J.) *Ibid.*

*Williams v. Harding* (35 Law J. Rep. Bankr. 25; Law Rep. 1 E. & L. App. 9) considered. *Ibid.*

2.—Damages awarded by a jury in a divorce suit against the co-respondent, and ordered by the Court to be paid to the petitioner, he undertaking to pay the same immediately into Court, will not constitute a good petitioning creditor's debt on which to found an adjudication in bankruptcy. *In re Muirhead*; *ex parte Muirhead* (App.), 45 Law J. Rep. Bankr. 65; Law Rep. 2 Ch. D. 22.

Whether the Divorce Court has power to make such an order instead of the usual order for payment into the Registry of the Court, and if so, whether the person to whom the payment is ordered to be made can prove for the amount under the bankruptcy of the co-respondent, *quære*, notwithstanding *Patterson v. Patterson* (40 Law J. Rep. Prob. & M. 5). *Ibid.*

3.—The old rule in bankruptcy that, where the legal owner of a debt is a mere trustee for an absolute beneficial owner, who is capable of dealing with the debt, the beneficial owner must concur with the legal owner in a petition for adjudication against the debtor, still remains in force. *In re Adams*; *ex parte Culley* (App.), 47 Law J. Rep. Bankr. 97; Law Rep. 9 Ch. D. 307.

4.—A debtor tendered to his creditors an admitted debt of 29*l.*, but the creditors refused to accept it unless the debtor would pay an acceptance for 30*l.*, which was disputed by the debtor, and on his refusal so to do they issued a debtor's summons for 59*l.*:—Held, not a sufficient debt to support a petition. *Ex parte Astrup*; *in re Le Fevre* (App.), Law Rep. 11 Ch. D. 303.

5.—A married woman is not liable to be made a bankrupt, though she has a separate estate, and has incurred debts subsequent to her marriage. The Married Woman's Property Act, 1870, has made no difference. Although the distinction between traders and non-traders has been abolished, a person to be made a bankrupt must still be one who can be sued personally, as upon and for a debt, and against whom judgment can be given with all its consequences, which is not the case with a married woman with separate estate, for the separate estate

only is liable to be attached to satisfy engagements contracted on the faith of it. *Ex parte Jones*; *in re Grissell* (App.), 48 Law J. Rep. Bankr. 109; Law Rep. 12 Ch. D. 484.

6.—A debtor against whom a bankruptcy petition had been presented, after giving notice, under rule 36 of the Bankruptcy Rules, 1870, of his intention to dispute the petitioning creditor's debt, afterwards withdrew the notice, but on the hearing of the petition, without having given a fresh notice, claimed the right to dispute the amount of the debt, on the ground that, since the withdrawal of the notice, he had made a payment to the creditor which reduced the debt below 50*l.* The creditor was not present, and the Registrar dismissed the petition:—Held, that the debtor was not precluded from disputing the amount of the debt, but that the creditor ought to have an opportunity of giving evidence to contradict the debtor; and the petition was accordingly referred back to the Registrar. *Ex parte Learoyd*; *in re Luttmann* (App.), Law Rep. 13 Ch. D. 321.

*Petition for inequitable purpose.* [See M 39 *infra*.]

#### (b) Tender at hearing of petition.

7.—A debtor made default in complying with a debtor's summons, but at the hearing of the petition for an adjudication the petition was adjourned for an arrangement to be made by the debtor with the creditor's solicitor, who was also acting for other creditors. On the petition again coming on, the debtor tendered the amount of the petitioning creditor's debt (alone), but the tender was refused, and an order of adjudication was made. On appeal,—Held, that without saying that there might not be cases in which the Court might compel a tender to be accepted at the hearing of the petition, yet in the present case an adjudication was properly made. *Ex parte Boss* (43 Law J. Rep. Bankr. 110; Law Rep. 18 Eq. 375) discussed. *Ex parte Brigstocke*; *in re Brigstocke* (App.), 46 Law J. Rep. Bankr. 50; Law Rep. 4 Ch. D. 348.

#### (c) Joint and separate estates.

*Guarantee by partners to bank: joint and several liability of partners.* [See PRINCIPAL AND SURETY, 2.]

#### (d) Advertisement of, in the "Gazette."

8.—An adjudication of bankruptcy advertised in the *Gazette* is, under sections 10 and 11 of the Bankruptcy Act, 1869, so long as it remains standing, conclusive, not only as between the debtor and his assignees, but also against third persons, that the act of bankruptcy on which the adjudication was founded has in fact been committed, and that the trustee's title relates back to such act of bankruptcy. Therefore, where the holder of an unregistered bill of sale allowed the goods to remain in the apparent possession of the grantor till the 1st of January,

1878, and the grantor was adjudged a bankrupt on the 2nd of January upon an act of bankruptcy stated in the petition to have been committed on the 31st of December, 1877, and the bill of sale holder took no steps to annul the adjudication, it was held that the advertisement of the adjudication was conclusive against him, that the act of bankruptcy had been committed on that day, and consequently that the trustee was entitled to the goods comprised in the bill of sale. *Ex parte Learoyd; in re Foulds* (App.), 48 Law J. Rep. Bankr. 17; Law Rep. 10 Ch. D. 3.

(c) *Annuling adjudication.*

9.—H. was, without opposition on his part, adjudged bankrupt. At the first meeting of creditors no quorum was present, and this fact was represented to the Judge, who directed the adjudication to go on with the Registrar as trustee. There were only three creditors besides the petitioning creditor. The bankrupt and the three creditors applied to have the bankruptcy annulled, and raised a question as to the sufficiency of the petitioning creditor's debt:—Held, that as the bankrupt had not disputed the debt at the time of the adjudication he could not do so now, and that neither he nor the creditors had any right now to ask to have the adjudication annulled on this ground. There would be a proper opportunity in the bankruptcy proceedings to dispute the debt. *Ex parte Hooper; in re Hooper*, 45 Law J. Rep. Bankr. 88.

10.—A debtor intended to dispute a petition for adjudication, but by inadvertence his solicitor neglected to give the three days' notice of such intention required by rule 36. His solicitor appeared on the hearing to dispute the debt, but the Registrar refused to hear him, and made the order for adjudication. The Chief Judge annulled the adjudication, but directed the appellant to pay the cost occasioned by the inadvertence. *Ex parte Dale; in re Dale*, 45 Law J. Rep. Bankr. 129; Law Rep. 3 Ch. D. 322.

11.—J. W. having been adjudicated bankrupt, the adjudication was annulled, and under the 81st section of the Bankruptcy Act, 1869, his property vested by assignment in the plaintiff as the person appointed by the Court under that section. The plaintiff, as such assignee, having sued the defendant for money payable under the common counts, the defendant pleaded a set-off for debts due to him from J. W. before the adjudication, and for damage provable in the bankruptcy:—Held, that the plea was good, as under the 81st section the defendant had the same rights of set-off as he would have had against the trustee in bankruptcy. *West v. Baker*, 45 Law J. Rep. Exch. 113; Law Rep. 1 Ex. D. 44.

12.—By section 81 of the Bankruptcy Act, 1869, "whenever any adjudication in bankruptcy is annulled . . . the property of the debtor who was adjudged bankrupt . . . shall in such case vest in such person as the Court may appoint, or, in default of any such appoint-

ment, revert to the bankrupt for all his estate or interest therein, upon such terms and subject to such conditions (if any) as the Court may declare by order." The defendants, having recovered judgment against the plaintiff, issued a writ of execution, under which the sheriff seized the plaintiff's goods. The plaintiff thereupon filed a petition for liquidation, and an injunction was granted restraining the defendants from proceeding further under the execution until after the date named for hearing. On that date the plaintiff was adjudicated bankrupt; the sheriff then withdrew voluntarily, and a trustee was appointed who took possession of the plaintiff's estate. The creditors subsequently agreed to accept a composition "upon the debts proved and admitted in the bankruptcy," to annul the adjudication, and to hand back his property to the plaintiff. The Court affirmed the resolution, and an order was made accordingly. The defendants, who were no parties to the composition, directed the sheriff to retake the goods, and the sheriff again seized the plaintiff's effects under the same writ of execution:—Held, that, by virtue of section 81 of the Bankruptcy Act, the property of the bankrupt reverted to him unconditionally; that the resolutions being not binding on the defendants, their unexhausted right to retake the goods under the original writ was preserved by the words, "shall revert to the bankrupt for all his estate and interest therein;" and that the second seizure was therefore lawful. *Crow v. Terry*, 46 Law J. Rep. C.P. 787; Law Rep. 2 C.P. D. 403.

13.—A. issued a writ against B. claiming 49l. 11s. 7d. debt and 3l. costs. On the same day B. executed a deed assigning all his property to trustees for the benefit of his creditors. A. afterwards signed judgment for 49l. debt and costs which were taxed at 8l. 9s. 6d., making 58l. 1s. 1d. in all, and then presented a bankruptcy petition against B., alleging as the act of bankruptcy the execution of the creditors' deed. The County Court Judge having adjudicated B. bankrupt, the trustees of the creditors' deed appealed:—Held, that the trustees had a right to appeal as "persons aggrieved" under section 71. Held also, that there was no good petitioner's debt at the date of the act of bankruptcy, and that the adjudication must be annulled. *In re Whelan; ex parte Sadler*, 48 Law J. Rep. Bankr. 43.

14.—J. claimed to be a secured creditor of S., a bankrupt, and to be entitled to the whole of the property set forth by S. in his statement of affairs by virtue of two bills of sale. The securities were disputed by the trustee, and ultimately the creditors passed resolutions under the 28th section of the Bankruptcy Act, 1869, that the offer of J. to pay 620l. to the trustee be accepted, that the bankruptcy be thereby annulled and that J. releasing his claim upon the estate his securities be not disputed by the trustee. This compromise was entered into on the basis that the property held

by J. comprised the whole of the debtor's estate, and was carried into effect. S. having subsequently come into possession of property which he had omitted in his statement of affairs, the order annulling the adjudication was discharged, and the bankruptcy was revived. J. thereupon tendered a proof for the balance which remained due to him after he had realised his securities, which was rejected:—Held, on appeal, that the effect of the order reviving the bankruptcy was to destroy the resolutions *in toto*, and that all parties were remitted to their original rights and position. *In re Spanton; ex parte Jarvis* (App.), 48 Law J. Rep. Bankr. 73; Law Rep. 10 Ch. D. 179.

15.—After the expiration of twelve years, without payment of interest or acknowledgment of his right, a judgment creditor is not entitled to obtain an adjudication in bankruptcy against the debtor, though within the twelve years a suggestion has been entered on the roll under the Common Law Procedure Act, 1852, s. 129. *Ex parte Tynte; in re Tynte*, Law Rep. 15 Ch. D. 125.

[And see M 31 *infra*.]

#### (D) PROOF.

##### (a) For goods sold: trade or cash discounts.

1.—W. supplied C. with ale, and the course of business was that C. made monthly cash payments and had twenty per cent. discount. C. made some monthly payments by acceptances, and three of these were dishonoured at maturity. C. filed his petition, under which resolutions for composition were passed. W., notwithstanding the acceptances for the cash prices, presented a proof for the full amount for the ale supplied, without deducting the twenty per cent.:—Held (reversing the decision of the County Court Judge), that the proof must be admitted for the full amount. *Ex parte Worthington; in re Cumberland*, 45 Law J. Rep. Bankr. 135; Law Rep. 3 Ch. D. 803.

##### (b) Contingent liability.

2.—The appellant entered into a bailbond jointly with another on behalf of the appellant for the payment of any damages and costs which might be awarded in a suit then pending in the Admiralty Court. The appellant having become insolvent, presented a petition under the Bankruptcy Act, 1869, for liquidation by arrangement or composition. He inserted in his statement the name and address of the respondent as creditor in respect of a certain sum not connected with the bailbond, but the statement did not contain any mention of the contingent liability on the bailbond. The respondent claimed a larger sum in respect of the inserted debt, and the statement was amended accordingly. The respondent proved for and received a composition on this debt, but no composition was paid to him in respect of the liability on the bailbond. Subsequently

the suit in the Admiralty Court was decided against the appellant, and, on his default, the respondent had to pay the amount secured by the bailbond:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. C.P. 593; Law Rep. 2 C.P. D. 314; *debitante* Lord Gordon), that the respondent was not bound by the composition proceedings in respect of the contingent debt, and that he was entitled to recover what he had paid under the bailbond. *Breslau v. Brown* (H.L.), 47 Law J. Rep. C.P. 729; Law Rep. 3 App. Cas. 672.

3.—X. covenanted with the trustees of his marriage settlement to keep up certain policies on his life. He afterwards became bankrupt, and the trustees kept up the policies out of other funds applicable for that purpose until his death. They proved against X.'s estate for the estimated value of his covenant, but before the amount was paid X. died:—Held, that the trustees were entitled to receive from his estate only the amount of premiums actually paid by them, and not the whole dividend which had been declared in respect of the amount proved. *Ex parte Wardley; in re Miller*, Law Rep. 6 Ch. D. 790.

4.—Under a deed of arrangement P. covenanted to pay an annuity of 200*l.* to trustees for the separate use of his wife, and shortly afterwards was adjudicated bankrupt. The annuity was valued in the usual way, and the trustees carried in a proof for such valuation, which was allowed, and they received a dividend. The wife died so soon after the payment of the dividend that the dividend largely exceeded the sum which the trustees would have received if P. had not become bankrupt:—Held (reversing the decision of the Registrar), that although the amount of the proof was greater than that which the bankrupt would have had to pay if he had remained solvent, yet the provisions of the 31st section of the Bankruptcy Act, 1869, were clear, and the trustees of the deed could not be made to refund the difference between the two sums. *Ex parte Wardley* (Law Rep. 6 Ch. D. 790) distinguished. *In re Pannell; ex parte Bates* (App.), 48 Law J. Rep. Bankr. 113; Law Rep. 11 Ch. D. 914.

[And see K 18 *infra*.]

##### (c) Debt capable of being estimated.

5.—An annuity terminable on second marriage is not "incapable of being fairly estimated," for the purposes of proof in bankruptcy. *Ex parte Blakemore; in re Blakemore* (App.), 46 Law J. Rep. Bankr. 118; Law Rep. 5 Ch. D. 372.

6.—By a separation deed between a husband and wife the husband covenanted with trustees to pay to them an annuity of 350*l.*, during the joint lives of himself and his wife, for her benefit. The annuity was to be determinable in case the wife should not lead a chaste life; in case the husband and wife should resume cohabitation; and in case the marriage should be dissolved in respect of anything done, com-

mitted or suffered by the other party after the date of the deed, and was to be proportionally diminished in the event of the wife becoming entitled to any income independent of the husband exceeding 350*l.* a year. After the execution of the deed the husband filed a liquidation petition:—Held, that the value of the annuity was capable of being fairly estimated, and was provable in the liquidation. Held also, that the trustee in the liquidation was entitled, if he desired it, to have the value assessed by a jury. *Ex parte Neal*; *in re Batey* (App.), Law Rep. 14 Ch. D. 579.

7.—Where a lease for twenty-one years from 1872, determinable at the lessee's option at the end of seven or fourteen years, was disclaimed in 1878 by the lessee's trustee in bankruptcy,—Held, that the lessee could prove for the amount necessary to put the premises in repair, and any loss he might sustain by diminution in rent up to 1879 only. *Ex parte Blake*; *in re McEwan* (App.), Law Rep. 11 Ch. D. 572.

[And see K 16 *infra*.]

(d) *Damages founded on tort.*

8.—Damages recovered in an action of tort are not provable in the bankruptcy of the defendant under section 31 of the Bankruptcy Act, 1869, unless judgment is signed before the adjudication. If judgment is not signed until after the adjudication, even though the verdict was obtained before, the bankrupt is not discharged from liability. *Ex parte Peacock* (42 Law J. Rep. Bankr. 78; Law Rep. 8 Chanc. 682) distinguished. *In re Newman*; *ex parte Brooke* (App.), Law Rep. 3 Ch. D. 494.

[And see D 17 *infra*.]

(e) *Gaming debt.*

9.—A promissory note, given to secure money advanced for payment of racing bets, is not to be deemed to have been given for an illegal consideration within the meaning of 5 & 6 Will. 4. c. 41. *In re Lister*; *ex parte Pike* (App.), 47 Law J. Rep. Bankr. 100; Law Rep. 8 Ch. D. 754.

(f) *By solicitor for his bill.*

10.—Where a solicitor tenders a proof in the bankruptcy of his client, in respect of costs due to him by the client, he is not entitled to insist on having his bill referred for taxation to the Taxing Master, but the Registrar has jurisdiction to determine the amount due, availing himself, if necessary, of the advice of the Taxing Master. *Ex parte Ditton*; *in re Woods* (App.), Law Rep. 13 Ch. D. 318.

A solicitor has no statutory right to have the amount of his charges ascertained by taxation only. *Ibid*.

A solicitor is not entitled to charge a profit upon the addressing and posting of documents for his client. *Ibid*.

(g) *Loan to trader, to be employed in his business.*

11.—The debtor, a trader, lived with his deceased wife's sister as her husband. In 1858 she received a legacy of 3,000*l.*, which she handed over to the debtor upon an agreement that the money should be advanced to and used by him in his business, but that as to 2,000*l.*, part thereof, he should be a trustee for her, and a settlement should be executed to carry out that agreement. The money was accordingly used by the debtor in his business, but no settlement was ever executed. The debtor having gone into liquidation in 1858,—Held, that inasmuch as by its primary destination under the agreement the fund was to be and was used in the business, no trust could be imposed upon it to the disadvantage of the creditors, and the wife could not prove in the liquidation for any part of it. Order of the County Court Judge allowing proof as to 2,000*l.* discharged, but, under the circumstances, without costs. *In re Beale*; *ex parte Corbridge*, 46 Law J. Rep. Bankr. 17; Law Rep. 4 Ch. D. 246.

12.—A creditor who advances money to a trader under Bovill's Act (28 & 29 Vict. c. 86. s. 5) cannot prove for such loan in the trader's bankruptcy until all the other creditors entitled to prove in such bankruptcy have been paid in full, and this rule applies although the trader may have wound up the business for which the money was advanced and commenced a fresh one, unless the loan has been *bona fide* repaid and re-advanced on new conditions. *Ex parte Taylor*; *in re Grason* (App.), Law Rep. 13 Ch. D. 366.

(h) *Partnership.*

(1) *Proof against co-partner.*

13.—The rule which prevents a partner from proving in bankruptcy against the joint estate of the partnership for a private debt while there are joint debts unpaid, is a rule of general application, and such application is not to be narrowed by considerations as to what would be its precise effect in individual instances. *Nanson v. Gordon* (H.L.), 45 Law J. Rep. Bankr. 89; Law Rep. 1 App. Cas. 195.

Five persons carried on a partnership business under articles whereby it was agreed that any partner might retire upon twelve months' notice to the others, and that upon the retirement or death of any partner, his share should be taken at a valuation by the surviving partners, who should pay for it by instalments. One partner died, one afterwards retired and the remaining three filed a petition in liquidation. There were debts of the partnership which were contracted during the lifetime of the deceased partner. The separate estate of such partner was alleged to be solvent, both as regarded these debts and the claims of separate creditors. The executors of the deceased partner claimed to prove in the liquidation for the unpaid instalments of the value of his share, with

interest:—Held, that the proof was inadmissible, as being in competition with the joint creditors. *Ibid.*

(2) *Ostensible partner.*

14.—A few creditors of a bankrupt trader alleged that he had represented A. to be in partnership with him. A. was, in fact, a creditor, and claimed to prove:—Held, that he was entitled to do so, and that if any such representation had been made, with his consent, the remedy of the creditors to whom it was made was against him personally. *Ex parte Sheen; in re Wright* (App.), Law Rep. 6 Ch. D. 285.

15.—A bank proved in the liquidation of A. for a debt of 5,600*l.*, which they claimed from him, and afterwards sued for the same debt S., who had given them a guarantee of 1,000*l.* on behalf of A., and whom they alleged to have been a partner with A. S. denied the partnership, and ultimately a compromise was entered into between him and the bank, by which the bank were to receive 2,800*l.* in satisfaction of their claim against him and against another person who had been given another guarantee on behalf of A. The guarantee of S. was given up to him, with a receipt indorsed upon it by the bank, expressed to be for 1,000*l.*, "in payment and discharge of the within guarantee, and also of all claims against him in reference to or in connection with" A.'s firm:—Held (by the Court of Appeal), that, assuming S. to have been a partner with A., this receipt did not operate as a release of S., and consequently that the bank were entitled to maintain their proof. *Ex parte Good; in re Armitage* (App.), 46 Law J. Rep. Bankr. 65; Law Rep. 5 Ch. D. 46.

Per Bacon, C.J.—The rule that a release of one joint debtor operates to release the other also is founded upon the fact that the second would, if he were sued by the creditor, have a right to enforce contribution from the first. The rule, therefore, does not apply to a release of a merely ostensible partner, between whom and the person with whom he has held himself out to be a partner no such right of contribution exists. *Ibid.*

The bank's proof was sent to the trustee in December, 1872. In December, 1875, he gave notice of rejection:—Held (by Bacon, C.J.), that it was too late for the trustee to proceed in that way, but that the proper course would have been to apply to the Court under rule 73 to have the proof expunged. *Ibid.*

[And see F 5 *infra*.]

(3) *Joint and separate estates: double proof.*

16.—D. was a partner in trade with others, under a deed which provided that D. was to be a partner in the profits of the business, but not in the capital thereof. In the event of D.'s death during the continuance of the partnership, his share in the profits was to revert to the other partners, but his representatives were to be entitled to a proportionate part of the profits up to the day of his death. D. was not

to advance any part of the capital of the firm. D. died, leaving two partners, A. and B., him surviving. Then A. died. B. carried on the business alone for some months after A.'s death, and ultimately filed a liquidation petition. At this time there were existing in specie some assets which had formed part of the assets of the firm before D.'s death:—Held, that, notwithstanding the provisions of the partnership articles, the representatives of D. would have had a right on his death to have the partnership debts paid out of the then existing assets of the firm, and that, consequently, there being assets of the three partners, A., B. and D., existing at the date of B.'s liquidation, a joint creditor of the three could not prove against the separate trade assets of B., or of A. and B., but could only prove against the joint assets of A., B. and D. *Ex parte Dear; in re White* (App.), 45 Law J. Rep. Bankr. 22; Law Rep. 1 Ch. D. 514.

17.—A. proved against the joint estate of C. & Co. for bills drawn upon him by the firm, and accepted on the false representations that the bills represented the purchase-moneys of cotton purchased by the firm on the joint account of A. and the firm, the arrangement being that A. should supply the money for the purchase of cotton to be bought by the firm, and that the profit on the resales should be equally divided between A. and the firm. A dividend was declared and paid on the joint estate. At the time of making his proof A. did not know that he had the right to prove either against the joint estate or the separate estates. Having subsequently ascertained that the separate estates would give larger dividends than the joint estate, A. tendered proofs against the separate estates for the same debt, and offered to withdraw his proof against the joint estate, and to refund the dividend received. The proofs were rejected on the ground that A., having elected to prove against the joint estate, and received a dividend, was bound by such election. On appeal,—Held, that as A. did not know at the time he proved against the joint estate that he had the right of electing between the joint and separate estates, he could not be deemed to have elected, that he had done nothing to estop himself from asserting that right, and was therefore entitled to prove against the separate estates on refunding to the joint estate the dividend he had received, with interest thereon at four per cent. *In re Collie; ex parte Adamson* (App.), 47 Law J. Rep. Bankr. 103; Law Rep. 8 Ch. D. 807.

Held also (per James, L.J., and Baggallay, L.J.; *dissentiente* Bramwell, L.J.), that the proof was not for a fraud or tort, but for an equitable debt or liability in the nature of a debt, in respect of which a Court of equity would always grant relief, and therefore that the claim was a debt provable in the bankruptcy. But held (per Bramwell, L.J.), that the proof was a claim for liquidated damages founded on tort or fraud in respect of which a judgment had not been

obtained, and therefore that the claim was not a debt provable in the bankruptcy within the meaning of the 31st section of the Bankruptcy Act, 1869. *Ibid*.

18.—When there is a bankruptcy of a firm and a bankruptcy of an individual member of the firm, the general rule is, that the joint estate of the firm and the separate estate of the partner are kept distinct, so that neither estate is allowed to prove in competition with the other; but this rule does not apply where there has been a fraudulent conversion by a partner to his own purposes of the property of the firm. *Read v. Bailey* (H.L.), 47 Law J. Rep. Chanc. 160; Law Rep. 3 App. Cas. 94.

H., a banker, took into partnership K., who was unacquainted with banking, and took no part in the business of the firm. H., who managed the business, from time to time drew large sums out of the bank, concealing the overdrawings by means of fictitious entries in the books of the bank. On the death of H. it was discovered that by reason of the overdrawings and the employment of the moneys abstracted in losing speculations on the Stock Exchange, the bank was utterly insolvent, and K. was adjudicated bankrupt. An action was instituted for the administration of the separate estate of H., in which the trustee in bankruptcy of the firm claimed to prove in respect of the funds fraudulently drawn out by H.:—Held (affirming the decision of the Court of Appeal, Law Rep. 4 Ch. D. 537—*nom. Lacey v. Hill; Lacey v. Hill*), that the trustee was entitled to prove. *Ibid*.

19.—The rights of the joint creditors of a firm cannot be affected by any act of one member of that firm. *Ex parte The Manchester and County Bank; in re Mellor*, 48 Law J. Rep. Bankr. 94; Law Rep. 12 Ch. D. 917; affirmed on appeal, Law Rep. 13 Ch. D. 465 (*nom. Ex parte Butcher; in re Mellor*).

A. and B. carried on in partnership, under the firm of A. & Co., a business of which the capital and stock-in-trade belonged to A. A. died, having appointed B. and C. his executors, with power to continue to carry on the business, and to employ in it his capital and stock-in-trade. B. and C. carried on the business under the same firm of A. & Co., and continued to use in it A.'s capital and stock-in-trade. B. and C. became bankrupt. Part of the stock-in-trade which existed at A.'s death still remained "in specie":—Held, that the joint creditors of A. and B. were entitled to have the joint assets of A. and B. which remained "in specie" applied first in payment of their debts. *Ex parte Morley* (43 Law J. Rep. Bankr. 28; Law Rep. 8 Chanc. 1026) followed. *In re Simpson* (43 Law J. Rep. Bankr. 147; Law Rep. 9 Chanc. 573) distinguished. *Ibid*.

20.—Four partners took a lease of the partnership premises and entered into the usual joint and several covenants of lessees. One partner died. The three survivors carried on the business, and became bankrupt. The trustee, who was trustee both of the joint estate of

the firm and the separate estates of the three partners, disclaimed the lease. The lessor claimed under sections 37 and 38 of the Bankruptcy Act to prove against the joint and separate estates for damages for loss of rent and dilapidations:—Held, first, that section 37 only applied to proofs under contracts, and therefore did not apply to the present case, which was a statutory right of proof under section 23 for the injury caused by the disclaimer; secondly, that as the trustee who disclaimed was trustee as well of the separate estates as of the joint estate of the partners, and the disclaimer released each of them from his liability under his separate covenant, there was a right of proof for the injury against the separate estates. *In re Shand; ex parte Corbett* (App.), 49 Law J. Rep. Bankr. 74; Law Rep. 14 Ch. D. 122.

#### (4) Administration of same estate in two countries.

21.—Two persons carried on business, under one firm, as wine exporters in Portugal, and under another as wine merchants in London. Bills were drawn by the Portuguese firm on, and accepted by, the English firm. The English firm became bankrupt, and before the adjudication proceedings in insolvency were taken in Portugal, under which the property there was administered and divided exclusively among the Portuguese creditors. One of these creditors, who had received a dividend on bills drawn by the Portuguese firm, then sought to prove in the English bankruptcy in respect of the same bills against the English firm as acceptors:—Held (on appeal from the Court of Appeal, *nom. Ex parte Banco de Portugal; in re Hooper*, 48 Law J. Rep. Bankr. 73; Law Rep. 11 Ch. D. 317), that he could only do so on condition of bringing into account the dividend received in Portugal. The words, "in whole or in part composed of the same individuals," in section 37 of the Bankruptcy Act, 1869, do not apply to the case of two firms consisting entirely of the same individuals, but to the case where all the members of one firm form part of another firm. *Selbrig v. Davies* (20 Dowl. 230; 2 Rose, 97, 291) and *Ex parte Wilson* (41 Law J. Rep. Bankr. 46; Law Rep. 7 Chanc. 490) followed. Admission refused of evidence which had not been used before the Court below. Observations of Lord Lyndhurst in *Atwood v. Small* (6 Cl. & F. 232) approved. *Banco de Portugal v. Waddell* (H.L.), 49 Law J. Rep. Bankr. 33; Law Rep. 5 App. Cas. 161.

#### (5) Secured creditors.

##### (1) Who are.

22.—A creditor who has issued and served a writ of foreign attachment upon a garnishee out of the Lord Mayor's Court is not a secured creditor within the meaning of section 12 of the Bankruptcy Act, 1869. The whole process of foreign attachment is a mesne process, and for the purpose of enforcing appearance of the

defendant to the action in the Lord Mayor's Court; and although under certain circumstances the plaintiff in the Lord Mayor's Court may obtain payment out of the fund or debt attached, the process under which he may so obtain it cannot be held a security on the property of the debtor within the section. To be so called it must be a charge which is enforceable in all circumstances. *Levy v. Lovell* (App.), 49 Law J. Rep. Chanc. 305; Law Rep. 14 Ch. D. 234.

Decision of Bacon, V.C. (48 Law J. Rep. Chanc. 357; Law Rep. 11 Ch. D. 220), reversed. *Ibid.*

23.—Section 87 of the Bankruptcy Act, 1869, does not apply to a judgment executed by means of a writ of *elegit*. And therefore, the sheriff having under such a writ seized goods of a debtor before he committed the act of bankruptcy, though the inquisition of the jury as to the value of the goods was not completed until after the act of bankruptcy,—Held, that the execution creditor held a security within the meaning of sections 12 and 16 (sub-section 5), and was not deprived of it by section 87. *In re Gourlay*; *ex parte Ormandy*, 49 Law J. Rep. Bankr. 23; affirmed on appeal, 50 Law J. Rep. Chanc. 80; Law Rep. 15 Ch. D. 447; *nom. Ex parte Abbott*; *in re Gourlay*.

24.—The appointment of a receiver, at the instance of the plaintiff, in an action in the Chancery Division for the possession of land, where the plaintiff has only an equitable title, is a delivery in execution by virtue of "a lawful authority" other than a writ of *elegit* within 27 & 28 Vict. c. 112, s. 1, so as to render the judgment creditor a "secured creditor," within the Bankruptcy Act, 1869, s. 16, sub-s. 5, although no writ of *elegit* has been issued. *Ex parte Evans*; *in re Watkins*, 48 Law J. Rep. Bankr. 97; Law Rep. 11 Ch. D. 691.

Where a person who is appointed receiver of property upon his giving security fails to do so, although the Court will appoint another receiver, yet the appointment of the first is not invalidated, and the property is in the custody of the law from the date of the first appointment. *Ibid.*

25.—A judgment creditor issued a writ of sequestration and served it upon executors holding in their hands a legacy payable to the judgment debtor, who shortly afterwards went into liquidation:—Held, that the creditor, as against the trustee in liquidation, was not a secured creditor within sub-section 5 of section 16 of the Bankruptcy Act, 1869. Quære, whether the judgment creditor, if he had obtained an order restraining the debtor from receiving the legacy, would have been a creditor holding a charge or lien on the debtor's property within the section. *In re Hoare*; *ex parte Nelson* (App.), 49 Law J. Rep. Bankr. 44; Law Rep. 14 Ch. D. 41.

*Judgment creditor who has obtained garnishee order nisi: right of, as secured creditor.* [See ATTACHMENT, 11.]

## (2) Mode of proof by.

26.—Shares in a bank, held by one partner and originally belonging to him, became (unknown to the bank) partnership property, and were such when the firm became bankrupt. The firm were then largely indebted to the bank on their account, which debt accrued after the shares became partnership property. The bank had an undisputed charge on the shares under their articles of association, which gave a lien for all debts due from the holder alone or jointly with any other person, but they claimed to realise such lien as a separate security, and to prove for the whole debt without deducting the amount so realised:—Held (by Mellish, L.J., and Baggallay, J.A.; James, L.J., *dubitante*), that the Court must look only at the fact whether the creditors held a security on the bankrupt's property, and could not consider whether the creditors had believed it to be such, and that therefore the amount of the security must be deducted from the proof. *Ex parte The Manchester and County Bank*; *in re Collie* (App.), 45 Law J. Rep. Bankr. 149; Law Rep. 3 Ch. D. 481.

27.—Where a man had borrowed money upon the guarantee of a surety, and the surety held a security from the borrower, in the bankruptcy of the borrower the principal creditor was allowed to prove his debt without regard to the security. *In re Yewdall*; *ex parte Braithwaite*, 46 Law J. Rep. Bankr. 87; affirmed on appeal, 46 Law J. Rep. Bankr. 109.

28.—A loan was secured by bills of exchange drawn by the lender upon the borrower, and accepted by him, and also by the hypothecation to the lender of debts due to the borrower, notice of the hypothecation being given to the debtors. The lender discounted the bills with his bankers. Afterwards the borrower filed a liquidation petition, and the bankers proved in the liquidation for the full amount of the bills. By an arrangement between the trustee and the lender (made without prejudice to his right), the trustee collected the hypothecated debts, but refused to pay them over to the lender unless he would take up the bills:—Held (without deciding in the absence of the bankers whether their proof ought to be reduced by the amount of the hypothecated debts), that the lender was not entitled to receive the amount of the hypothecated debts unless he took up the bills, but that the amount should be applied in discharging the lender's liability upon the bills. *Ex parte Mann*; *in re Kattengell* (App.), 46 Law J. Rep. Bankr. 107; Law Rep. 5 Ch. D. 367.

29.—Where on the bankruptcy or liquidation of a mortgagor a first mortgagee elects to give up his security altogether, and prove for the whole of his mortgage debt, the security so given up does not merge in the equity of redemption for the benefit of a second mortgagee, but is available in the hands of the trustee in the bankruptcy or liquidation for the benefit of the general creditors. *Cracknell v. Janson*, 46 Law J. Rep. Chanc. 652; Law Rep. 6 Ch. D. 735.

**30.**—H. pledged tobacco to a bank to secure advances, representing the tobacco to be his own. H. was afterwards adjudicated bankrupt, when it was discovered that he had prior to the advance sold a large portion of the tobacco to J., receiving the purchase-money from him. J. brought an action against the bank and recovered as damages the price he had paid to H., together with his costs of the action, and that judgment was affirmed on appeal. The bank afterwards sold the bales originally sold to J. for less than he paid for them, and tendered a proof in the bankruptcy for the balance of the debt, beyond the value of their security:—Held, that in estimating the value they were entitled to bring into account the costs (their own and the plaintiff's) incurred in the action, but not the costs of the appeal, and were also entitled to bring into account the difference between the price paid by them for damages and the amount realised on the sale by the bank, there being no evidence to shew that the loss had been caused by any unreasonable delay on the part of the bank. *Ex parte Stephens* (2 Mont. & Ayr. 31) disapproved. *Ex parte Carr*; *in re Hofmann* (App.), 48 Law J. Rep. Bankr. 69; Law Rep. 11 Ch. D. 62.

**31.**—Bills of exchange indorsed by a bankrupt to his bankers to be discounted, against which they make advances to him on his general account, but which they do not fully discount pending enquiries about the acceptors, are not "securities" within the 16th section of the Bankruptcy Act, 1869, which the bankers, on proving for their debt, are bound either to value or give up to the trustee. *In re Frith*; *ex parte Schofield* (App.), 48 Law J. Rep. Bankr. 122; Law Rep. 12 Ch. D. 332.

**32.**—The defendant became surety for the payment of a debt of 400l. owing from P. to the plaintiff; and by agreement between the parties, P. handed over a policy of insurance on his life to the plaintiff as collateral security. P. afterwards became bankrupt, and at that time two of the premiums on the policy remained unpaid, and the policy had lapsed. The plaintiff proved in P.'s bankruptcy for the full amount of her debt, stating in her proof that she held the policy as collateral security, but putting no value on it. The policy was afterwards given up to the trustee in bankruptcy for the benefit of the creditors, and the insurance company agreed to reinstate it. The plaintiff sued the defendant, as surety, for the amount of P.'s debt, and at the trial the plaintiff's counsel agreed to credit the defendant with 32l., being the admitted value of the policy when reinstated:—Held (affirming the judgment of Manisty, J., 49 Law J. Rep. Q.B. 353; Law Rep. 5 Q.B. D. 138), that the defendant's position as a surety was not altered so as to discharge him from liability, by reason of the course the plaintiff had pursued in the bankruptcy, as the policy was valueless when she sent in her proof. Held also, that, if the policy was of value when the plaintiff proved in the bank-

ruptcy, and if she exercised her option, under the bankruptcy law, of handing over her security to the trustee, and proving for the whole amount of her debt, the defendant was not thereby wholly discharged from liability as a surety, but only to the extent of the value of the policy. *Rainbow v. Juggins* (App.), 49 Law J. Rep. Q.B. 718; Law Rep. 5 Q.B. D. 422.

**33.**—A trustee on declaring a dividend is not bound to make a reserve in respect of a proof by a secured creditor who has not realised or put a value on his security. In such a case the creditor has no debt provable until he has realised or valued his security; and if, by force of circumstances, he is unable so to do before a dividend is declared, his proper course is to apply to the Court, under section 72, to postpone the dividend, and the Court has jurisdiction to make such order as the justice of the case may require. *In re Lee*; *ex parte Good* (App.), 49 Law J. Rep. Bankr. 49; Law Rep. 14 Ch. D. 82.

**34.**—Semble, where by mistake a secured creditor has omitted from his proof of debt a part of his security, he will not necessarily be held to have forfeited that part, but may be allowed to rectify his proof. Observations on *Ex parte Ashworth* (43 Law J. Rep. Bankr. 142; Law Rep. 18 Eq. 705) and *Ex parte King* (44 Law J. Rep. Bankr. 92; Law Rep. 20 Eq. 273). *Ex parte Bagshaw*; *in re Ker* (App.), Law Rep. 13 Ch. D. 304.

**35.**—By a composition deed, dated the 4th of November, 1864, and duly registered under the Bankruptcy Act, 1861, a debtor, in consideration of a covenant on the part of himself and a surety to pay a composition of 10s. in the pound, obtained a release from his scheduled debts by a statutory majority of his creditors. The deed contained a proviso that every secured creditor should have the full benefit and advantage of his security, and should be entitled to the composition after allowing for the value of such security. One of the secured creditors held as security for 229l. 8s. 5d. a policy of assurance on the life of the debtor. This creditor valued the policy at 16l.; and for the difference, namely, 213l. 8s. 5d., he received the composition of 10s. in the pound. The policy having fallen in after some premiums had been paid by the creditor,—Held, upon the construction of the deed, that the creditor, upon the execution of the deed, remained a creditor for 16l. only, and that (the composition having been duly paid) the proceeds of the policy, after payment of 16l. and interest, belonged to the debtor's estate subject to repayment with interest to the creditor of the premiums paid by him. *Bolton v. Ferro*, 49 Law J. Rep. Chanc. 569; Law Rep. 14 Ch. D. 171.

#### (k) Fictitious bills.

**36.**—Bills of exchange were drawn by S., who was London agent for the firm of G. & Co., and accepted by them. The drawer and acceptors were at the time in a position of hopeless insol-



veny and contemplating bankruptcy. The bills were then offered for discount to J., who retained them for some time in his hands and made enquiries, whereby he ascertained that the acceptors would be unable to pay the bills in full, as they were in difficulties, but that they were possessed of assets, and there was a fair prospect of his being able to obtain payment of part of the amount. He did not make any enquiry as to the solvency of the drawer. He then gave 200*l.* for the bills, which were of the nominal value of 1,727*l.* in all: one of them for 237*l.* falling due within a month. The firm of G. & Co. soon afterwards filed a petition for liquidation and were adjudicated bankrupts. J. then sought to prove for the whole nominal amount of the bills. The trustee in the bankruptcy gave him notice "that at the date of the bankruptcy you were not the holder of the bills of exchange in the affidavit mentioned or any of them for value, and could not then have maintained an action against G. & Co. thereon if they had not become bankrupt." A preliminary point was now raised for the first time in the House of Lords, that the notice of objection was insufficient by reason of too great generality:—Held, that the preliminary point was raised too late, and also that the notice was sufficient. Held also, that the circumstances affected J. with notice; that the bills were concocted in fraud of the creditors of G. & Co.; and that consequently J. could not prove for more than the amount actually given by him for the bills. *Jones v. Gordon* (H.L.), 47 Law J. Rep. Bankr. 1; Law Rep. 2 App. Cas. 616.

Decision of the Court of Appeal (45 Law J. Rep. Bankr. 1; Law Rep. 1 Ch. D. 137—*nom.* *Ex parte Gordon*; *in re Gomersall*) affirmed. Ibid.

(f) *For sum embezzled without prosecuting felon.*

37.—S., a banker's clerk, committed a felony by embezzling his employers' moneys, and absconded, and was afterwards made a bankrupt. The bankers carried in a proof for the sum S. had embezzled. The proof was rejected by the trustee, whose decision was affirmed by the County Court Judge, on the ground that by the settled rule of law it was the duty of the bankers to prosecute S., and that, until after prosecution, or after prosecution had become impossible through no fault of theirs, they were not entitled to prove, and that on the evidence they had not exercised due diligence in their efforts to prosecute S. The Chief Judge, on appeal by the trustee in liquidation of the bankers, who had in the meantime gone into liquidation, held (Law Rep. 9 Ch. D. 704; *nom.* *Ex parte Turquand*; *in re Shepherd*) that the rule existed, but that, on the evidence, the bankers had used due diligence in endeavouring to prosecute S., and ordered the proof to be admitted. On appeal by the trustee of S.'s estate,—Held (per James, L.J., and Bramwell, L.J.; *dissentiente* Baggallay, L.J.),

that, assuming the rule, to exist, which they doubted, the disability to prove was personal to him in whom was the duty to prosecute, and did not pass to his trustee in bankruptcy or legal personal representatives, and therefore that the trustee in liquidation of the bankers could maintain the proof. Held (per Baggallay, L.J.), that the rule existed, and that the disability to prove passed to a trustee in bankruptcy or legal personal representative, but that, on the evidence, the bankers had used due diligence in their efforts to prosecute S., and therefore the proof was admissible. *Wellcock v. Constantine* (2 Hurl. & C. 146; 32 Law J. Rep. Exch. 285) questioned. *Wells v. Abrahams* (41 Law J. Rep. Q.B. 306; Law Rep. 7 Q.B. 554) discussed. *In re Shepherd*; *ex parte Ball* (App.), 48 Law J. Rep. Bankr. 57; Law Rep. 10 Ch. D. 667.

(m) *Preferential debts: priority.*

38.—A gas company, having under its private Act of Parliament a power to levy by distress all sums of money due for the supply of gas, &c., is not a landlord or other person to whom rent is due within the meaning of section 34 of the Bankruptcy Act, 1869, and such a company having distrained upon the goods of a liquidating debtor will be restrained from dealing with the distress. *In re Roberts*; *ex parte Hill* (App.), 46 Law J. Rep. Bankr. 116; Law Rep. 8 Ch. D. 621.

39.—A mortgage by mortgagors in possession of premises used for the purposes of trade, contained a provision that the mortgage should continue for five years if the interest should be regularly paid, and the mortgagors should not become bankrupt or take proceedings for liquidation or composition, and also an attornment clause, whereby the mortgagors attorned tenants to the mortgagee at a rent far exceeding the interest on the mortgage or the annual value of the property. The mortgagors having gone into liquidation, the mortgagee claimed under the attornment to distrain for a year's rent,—Held (affirming the decision of one of the Registrars), that the attornment clause was a mere device for making the chattels subject to the mortgage without a bill of sale, and, being a fraud upon the bankruptcy laws, an injunction must be granted to restrain him from proceeding with his distress. *In re Thompson*; *ex parte Williams* (App.), 47 Law J. Rep. Bankr. 26; Law Rep. 7 Ch. D. 138.

40.—By section 32 of the Bankruptcy Act, 1869, all debts provable under the bankruptcy after those to which priority is given by that section are to be paid *pari passu*; and therefore the rule of equity that creditors by specialty who are mere volunteers are not entitled to compete with creditors on simple contract for valuable consideration is no longer applicable. *In re Stewart*; *ex parte Pottinger* (App.), 47 Law J. Rep. Bankr. 43; Law Rep. 8 Ch. D. 621. *Rent accrued due after commencement of liquidation.* [See LANDLORD AND TENANT, 14.]

## (n) Procedure and evidence.

[And see *infra* (M) PRACTICE.]

41.—A compromise or arrangement having been made under section 27, sub-section 3, of the Bankruptcy Act, 1869, with a person claiming to be a creditor, that he should be admitted to prove, but so that, as to the first 18s. in the pound, his dividend should be postponed to those of the other creditors,—Held, that the bankrupt had such a peculiar interest as to be entitled to examine the creditor on his proof. *Ex parte Austin*; *in re Austin* (App.), 46 Law J. Rep. Bankr. 1; Law Rep. 4 Ch. D. 13.

*Delay in proof: rejection by trustee.* [See No. 15 *supra*.]

*Bill of exchange: right of proof against acceptor's estate: guarantee for payment of bills.* [See BILL OF EXCHANGE, 32.]

## (E) MUTUAL CREDIT.

1.—The right of set-off given by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 39, cannot be excluded by mutual agreement. *Ex parte Fletcher*; *in re Vaughan*, Law Rep. 6 Ch. D. 350.

2.—A contract for executing sewage works made between a contractor and Improvement Commissioners, provided that all plant brought by the contractor on to the works should be deemed to be the property of the commissioners, and should not be removed during the progress of the work without the written order of their engineer; and in case of suspension of the works by their engineer for any default of the contractor, or of the work being taken out of the contractor's hands, the same should be subject to be used as should be ordered by the engineer in and about the completion of the works. The engineer suspended the works, and the commissioners took possession of the plant and completed the works. The contractor having become bankrupt, and a sum of 2,876l. 7s. 5d. having been certified to be due to the commissioners from him for default under the contract, the commissioners claimed to retain the plant, which was sold by consent for 686l.:—Held, first, that the contract gave the commissioners no property in the plant, but only a right of user; and secondly, that this right of user was not such a "dealing" within the meaning of section 39 of the Bankruptcy Act, 1869, as to give them a right to set off the value of the plant against the sum due to them from the contractor. *In re Winter*; *ex parte Bolland*, 47 Law J. Rep. Bankr. 52; Law Rep. 8 Ch. D. 225.

3.—A. and B., executors under a will, under which A. was also residuary legatee, kept an executorship account with a bank, at which A. kept also a private separate account. The bankers stopped payment, and filed a liquidation petition, and a trustee was appointed. Previously to the stoppage the executors had paid all the debts and funeral and testamentary

expenses, and set apart securities to answer the annuities bequeathed by the will, but the executors were jointly liable for two small sums for rates and taxes, and their solicitor's bill of costs in relation to the estate. At the date of the stoppage a sum of 1,400l. was due from the bank on the executorship account, while a sum of 1,200l. was owing by A. on his separate account. A. claimed to prove in the liquidation for the difference between the two sums, as having a right to set off, as against the debt due from him, the money owing from the bank on the executorship account, on the ground that the money on that account constituted in fact a clear net residue in which he was absolutely interested:—Held, that the one account could not be set off against the other, the rules of equitable set-off or mutual credit not applying, unless A. was so much the person solely beneficially interested in the balance of the joint account that a Court of equity would, without any terms or further enquiry, have obliged B. to transfer the account into the name of A. alone. *Ex parte Morier*; *in re Willis, Percival & Company* (App.), 49 Law J. Rep. Bankr. 9; Law Rep. 12 Ch. D. 491.

## (F) TRUSTEE.

## (a) Appointment of.

## (1) Enforcement of bond.

1.—A bond with sureties given by a trustee in bankruptcy to the Chief Judge, as security for the faithful discharge of his duties, according to Form No. 40 of the Bankruptcy Forms, 1870, may be enforced by the order of a County Court. *In re Parry*, Law Rep. 4 Ch. D. 250.

## (2) Vacating appointment of trustee.

2.—The appointment of a trustee in bankruptcy will not be vacated merely because a proof has been improperly rejected, but special circumstances must be shewn, as, for instance, that the rejection of the proof has been procured by fraud. *Ex parte Crowther* (24 Law Times, N.S. 330) not followed. *Ex parte Kimber*; *in re Thrift* (App.), Law Rep. 11 Ch. D. 869.

## (b) Property in reputed ownership of bankrupt.

## (1) General scope of order and disposition clauses.

3.—Husband and wife, the wife being under age, by deed unacknowledged, conveyed the wife's freeholds to a purchaser for 500l., the husband receiving the money. Afterwards a sub-purchaser required the concurrence of the wife, who was then of age, in the conveyance to him, but she refused to concur unless the husband would execute a bill of sale over his furniture for 425l. to a trustee for her separate use. This was accordingly done, and the furniture remained in the joint occupation of husband and wife until he became a liquidating debtor:—Held, that the bill of sale was a purchase of the

wife's concurrence, that the possession was consistent with it, and that the wife's trustee was entitled to the furniture. *Ex parte Cox; in re Reed*, Law Rep. 1 Ch. D. 302.

4.—*Semble*, that 32 & 33 Vict. c. 71. s. 15 applies to goods in the possession of a factor only when it is notorious that he is merely a factor. A. carried on business in his own name, as agent for B., under an agreement which was not made public. He dealt with the goods in his possession as if he were absolute owner, accounting to B.; and accepted bills drawn on him by B. on the understanding that they were to be protected by B. On the bankruptcy of A. and B.,—Held, that A. had a lien upon the goods in his hands to the extent of the bills accepted by him and unpaid. *Ex parte Buck; in re Fancius*, Law Rep. 3 Ch. D. 795.

5.—P., carrying on business alone under the style of P., Son & Co., employed his son to assist in the management of the business and held him out as a partner to some of his creditors. P. and his son having been jointly adjudicated bankrupts as ostensible partners,—Held, that the entire separate estate of P., which was the only asset of the business, being in the apparent possession and reputed ownership of the firm, with the consent of the true owner, formed the joint estate of the firm. Leave to appeal to the House of Lords refused. *In re Pulford; ex parte Hayman* (App.), 47 Law J. Rep. Bankr. 54; Law Rep. 8 Ch. D. 12.

6.—A horse-dealer sent a pair of horses to a customer in exchange for another pair, for which she had paid 170*l.*, but which she had returned as not being according to warranty. He requested the customer to keep the second pair until he could supply a suitable pair. She accordingly used the horses until the horse-dealer became bankrupt, when it was found that the horses belonged to a third person who had entrusted them to the bankrupt on such general terms that the County Court Judge had held (in another proceeding) that they were in the bankrupt's order and disposition at the time of the bankruptcy, with the consent of the true owner. The customer claimed a lien upon the horses:—Held, that the bankrupt could not create such a lien, and that they must be given up to the trustee. *In re Silenos; ex parte Roy*, 47 Law J. Rep. Bankr. 36; Law Rep. 7 Ch. D. 70.

7.—B. & Co., manufacturers, consigned their goods to S. & Co. for sale on commission as *del credere* agents. S. & Co. also sold goods for other manufacturers on similar terms. S. & Co. described themselves in their invoices and on the brass plate on the business premises as "merchants and manufacturers' agents." On the bankruptcy of S. & Co.,—Held, that the creditors of S. & Co. had sufficient notice that the bankrupts were trading as agents as well as principals; and that goods of B. & Co. in the possession of S. & Co. at the commencement of the bankruptcy were not within the mischief of the reputed ownership clause. *In re Smith; ex*

*parte Bright* (App.), 48 Law J. Rep. Bankr. 81; Law Rep. 10 Ch. D. 566.

8.—On the bankruptcy of a miller C. claimed as his own, and removed from the mill without the knowledge of the receiver, 109 sacks of wheat, which he had sent five weeks previously (as he alleged) on approval. It was proved by the evidence of the bankrupt and his clerk, and from his books, that he was not in the habit of receiving other people's corn to grind and return as flour, but that he used to receive corn from C. and keep it until a price was fixed for it, when he debited himself with such price. C. deposed that the bankrupt might have found a purchaser for it, or have bought it for himself, or that he, C., might have taken it back:—Held, that the wheat was in the order and disposition of the bankrupt at the time of the bankruptcy with the consent of the true owner, and must be given up to the trustee. *In re Bell; ex parte Clarke*, 47 Law J. Rep. Bankr. 33.

[And see D 19 *supra*.]

*Provisions not applicable to windings-up of companies.* [See COMPANY, H 25.]

## (2) Custom of trade.

9.—In order to establish a custom of trade of which the Court will take judicial notice, it must be proved to have existed so long and to have been so extensively acted upon that the ordinary creditors of the debtor in his trade may be reasonably presumed to have known it. *In re Matthews; ex parte Powell* (App.), 45 Law J. Rep. Bankr. 100; Law Rep. 1 Ch. D. 501.

The Court will not overrule the decision of the Court below in favour of the existence of a custom of trade, though the evidence establishing it may be slight, if the person interested in disputing the custom declines an issue to try it. *Ibid*.

10.—The debtor, a trader, hired a piano from H. & Co. at 15*l.* a year, payable by monthly instalments on the terms that, in the event of default in payment of the instalments, or of the debtor's death, bankruptcy or insolvency, or execution issuing against him, H. & Co. might put an end to the hiring and take possession of the instrument; and that when the instalments amounted to 45*l.*, H. & Co. should assign the piano to the debtor, but that till such payment the debtor should have no property in the piano. The debtor paid one instalment under the agreement, and four months afterwards filed a liquidation petition, still having the piano in his possession:—Held, that, a custom to let pianos on hire on the above terms being established, there was nothing in the agreement obnoxious to the provisions of the bankruptcy law, and that the piano did not pass to the trustee under the order and disposition clause. *In re Blanchard; ex parte Hattersley*, 47 Law J. Rep. Bankr. 113; Law Rep. 8 Ch. D. 601.

11.—Goods sent to a person who becomes bankrupt, on sale or return, pursuant to a custom in any particular trade, are not within his dis-

position as owner or reputed owner until he has exercised his option to keep them. *Ex parte Wingfield*; in *re Florence* (App.), Law Rep. 10 Ch. D. 591.

### (3) *Consent of true owner.*

12.—A trader, having a shop and dwelling-house situate in different streets of the same town, executed a bill of sale of his stock-in-trade in his shop and his furniture in his dwelling-house to secure a debt. The agent of the holder of the bill took possession of the stock-in-trade immediately before the trader filed a liquidation petition, but did not take possession of the furniture until after receiving notice of the petition:—Held, that the taking possession of the stock-in-trade constituted a withdrawal of the creditor's consent to the furniture remaining in the debtor's order and disposition. *Semble*, also, the instructions to take possession given by the bill-holder to his agent (the day before possession was taken) also constituted a withdrawal of consent. *In re Eslick*; *ex parte Phillips*; *ex parte Alexander*, Law Rep. 4 Ch. D. 496.

13.—A testator directed his debts to be paid, and gave the residue of his estate to his wife, whom he appointed executrix. The widow proved the will, paid some of the debts, and for four years carried on, ostensibly on her own account, her late husband's business of a cow-keeper. At the end of that period she married a second husband, who shortly afterwards became bankrupt. There were then creditors of the testator still unsatisfied, who had been throughout aware of the widow's dealings in relation to the business:—Held, that they had no interest in the stock and property of the business as against the trustee in bankruptcy. *In re Fells*; *ex parte Andrews*, 46 Law J. Rep. Bankr. 43; Law Rep. 4 Ch. D. 509.

A person claiming under an assignment was in possession of the property upon premises occupied by the bankrupt. The trustee impeached the assignment, and himself took possession, but without ousting the other party. Before the validity of the assignment had been determined the assignee took away part of the property:—Held, that the trustee was entitled to a summary order for the restoration of the property removed. *Ibid.*

### (4) *Things in action.*

14.—A mortgage by a partner of his share in a partnership is an assignment of a *chose in action*, and not within the order and disposition clauses of the Bankruptcy Act, 1869, or the Bills of Sale Act. *In re Bainbridge*; *ex parte Fletcher*, 47 Law J. Rep. Bankr. 70; Law Rep. 3 Ch. D. 219.

The bearing of the decision in *Ryall v. Rowles* (1 Ves. sen. 348) on the present law considered. *Ibid.*

Under a will B. was entitled to a share in a distillery business, carried on in partnership

with A., in trust for himself and his three brothers equally. B., in 1872, purchased the interests of his brothers under the will, and secured the purchase-money by assignment of all his share and interest in the distillery, and the partnership and goodwill. The deed was never registered under the Bills of Sale Act. B. & A. then entered into fresh articles of partnership, under which they became interested in the business in equal moieties. In 1877 B. became bankrupt:—Held, that the assignment by B. in favour of his brothers created a valid charge against the trustee in bankruptcy, both on the plant, stock-in-trade, assets, goodwill and book debts of the partnership and on the tenant's or trade fixtures. *Ibid.*

15.—A debenture of a limited company due to a bankrupt is a *chose in action* within 32 & 33 Vict. c. 71. s. 15. sub-s. 5, and the equitable interest will pass by indorsement in blank and delivery, as against a trustee in bankruptcy. The words "due to a bankrupt in the course of his trade," mean in connection with his trade. *Ex parte Rensberg*; in *re Pryce*, Law Rep. 4 Ch. D. 685.

16.—The purchaser of real estate from a bankrupt vendor having no notice of the bankruptcy, which had not been advertised, paid the balance of the purchase-money to the vendor:—Held, that they had no equity against the trustee to compel conveyance of the property, without payment of the money to him. *In re Pooley*; *ex parte Rabbidge* (App.), 48 Law J. Rep. Bankr. 15; Law Rep. 8 Ch. D. 367.

17.—A policy of life insurance being a "thing in action," is not within the operation of 32 & 33 Vict. c. 71. s. 15. *Ex parte Ibbetson*; in *re Moore* (App.), Law Rep. 8 Ch. D. 519.

18.—An undertaking by B. to pay over "when and as received" all dividends coming to him in respect of his proof for 800*l.* upon the estate of I., who was then a bankrupt,—Held, to be a good equitable assignment of the dividends as against the trustee under B.'s subsequent bankruptcy. *In re Irving*; *ex parte Bushby*, 47 Law J. Rep. Bankr. 38; Law Rep. 9 Ch. D. 419 (*nom. Ex parte Brett*).

19.—S., trustee in bankruptcy of W., issued a writ in an action, claiming to have a deed which had been executed by the bankrupt prior to his bankruptcy, purporting to be an absolute conveyance by the bankrupt to the defendant of the equity of redemption in certain mortgaged freehold and leasehold hereditaments, set aside, so far as it purported to be an absolute conveyance, and a declaration that the deed ought only to stand as security for the sum actually paid by the defendant. Subsequently an agreement was come to between C. and S., with the sanction of the committee of inspection, that C. should purchase all the trustee's right in the property, and a deed was executed to carry that agreement into effect. C. thereupon obtained, under Order L. rule 1, an order *ex parte*, appointing him plaintiff in the place of S. On motion by the defendant in the action to dis-

charge the last-mentioned order on the ground that the sale by S. was in reality the sale of a right to bring an action, and therefore within the rule against champerty and maintenance,—Held (affirming Bacon, V.C.), that the right to bring the action was part of the "property" of the bankrupt within the definition of section 4 of the Bankruptcy Act, 1869. That as such "property" it was by force of section 17 vested in the trustee, and that (whether B. himself could have assigned the right or not) his trustee was by section 25, sub-section 6, empowered to sell it, and that the rule against champerty and maintenance had no application. *Seear v. Lawson. Chatterton v. Lawson* (App.), 49 Law J. Rep. Bankr. 69; Law Rep. 15 Ch. D. 426.

(5) *Apparent possession under Bills of Sale Act.*

[See BILL OF SALE.]

(c) *Proceeds of sale and seizure of goods.*

(1) *Creditor holding security.*

20.—A judgment creditor issued a writ of sequestration and served it upon executors holding in their hands a legacy payable to the judgment debtor, who shortly afterwards went into liquidation.—Held, that the creditor, as against the trustee in liquidation, was not a secured creditor within sub-section 5 of section 16 of the Bankruptcy Act, 1869. Quære, whether the judgment creditor, if he had obtained an order restraining the debtor from receiving the legacy, would have been a creditor holding a charge or lien on the debtor's property within the section. *In re Hoare; ex parte Nelson* (App.), 49 Law J. Rep. Bankr. 44; Law Rep. 14 Ch. D. 41.

21.—Subsequently to the issue of a writ of *f. fa.* against a non-trader, but before any levy had been made, an arrangement (which the Court held to be fraudulent) was, with the knowledge of the under-sheriff, made between the debtor and H., an auctioneer, that H. should, after a levy had been made, purchase goods of the debtor sufficient to satisfy the amount to be levied, and that he and the debtor should at once select the goods which H. was to purchase. H. knew that the debtor was about to file a liquidation petition. The goods were selected on the 19th of March, and were pointed out to B., a clerk of the under-sheriff, who took a list of them, which he handed to the under-sheriff; and on the 20th of March B. seized the goods, and put a man in possession. Shortly afterwards the debtor filed a liquidation petition, but, before notice of the petition had been served on the under-sheriff, he had sent to H., telling him that the seizure had been made, and that the selected goods were his property, and asking him to send a cheque for the amount of the levy. Later in the same day the under-sheriff, under the mistaken impression that the debtor was a trader, gave up possession of the goods to a receiver who had been appointed under the petition. The next day H. sent a cheque

for the amount of the levy to the under-sheriff, and out of the proceeds the execution debt was paid. A trustee having been appointed under the petition, H. applied to the Court for an order that the trustee should deliver up the selected goods to him, or pay him the amount which they had produced. The trustee had sold them for double what H. had paid:—Held, that the goods had never become the property of H., and that, although, by virtue of the seizure before the filing of the petition, the execution creditor had acquired a security for his debt on the debtor's property, yet H., who had chosen to enter into a fraudulent arrangement with the debtor with knowledge that he was about to commit an act of bankruptcy, had no equity to be allowed to stand in the place of the execution creditor, notwithstanding the fact that, by paying the execution debt, he had relieved the debtor's estate from payment thereof. Decision of Bacon, C.J., affirmed. *Ex parte Hall; in re Townsend* (App.), Law Rep. 14 Ch. D. 132.

The sheriff cannot make a valid contract for sale of the goods of a judgment debtor against whom he holds a writ of *f. fa.* until he has actually seized the goods. *Ibid.*

(2) *Judgment for sum exceeding 50l.*

22.—By section 87 of the Bankruptcy Act, 1869, where the goods of any trader have been taken in execution in respect of a judgment for a sum exceeding 50l. and sold, the sheriff . . . shall retain the proceeds of such sale for fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee:—Held, that this section applies, although the goods have been taken in execution for a sum only exceeding 50l. by the amount of the sheriff's poundage, or of the officer's fee, and although no sale may have been made. *Homes v. Young and Homes v. Stone*, 45 Law J. Rep. Exch. 499; Law Rep. 1 Ex. D. 146.

23.—Where the goods of a trader have been taken in execution for a sum exceeding 50l., and, bankruptcy ensuing, the sheriff has been restrained from selling, the sheriff is entitled to be paid by the trustee out of the estate of the bankrupt all expenses properly incurred by him in keeping and taking possession of the goods and preparing for a sale, notwithstanding that no sale has taken place. *In re Craycroft; ex parte Browning*, 47 Law J. Rep. Bankr. 96; Law Rep. 8 Ch. D. 596.

24.—A judgment creditor issued execution on the goods of a trader for a debt over 50l. A prior claim was put in by a bill of sale holder, and on an interpleader summons taken out by the sheriff, the Judge made an order, after payment of costs, to pay the amount of the debt of the bill of sale holder into Court, and to pay the balance to the execution creditor. Before sale the debtor filed his petition for liquidation.

The execution creditor claimed the goods, as against the trustee, under the Judge's order:—Held, that the trustee was entitled to the goods, subject to the claim of the holder of the bill of sale. *Ex parte Halling; in re Haydon* (App.), 47 Law J. Rep. Bankr. 25; Law Rep. 7 Ch. D. 157.

*Parsons v. Lloyd* (35 Law J. Rep. Exch. 190 n; Law Rep. 1 Exch. 302 n) disapproved. *Ibid.*

25.—The sheriff seized the goods of a trader under an execution for an amount less than 50*l.* Two days after the debtor filed a petition, and the judgment creditor was restrained from selling by an *interim* injunction, granted the 30th of April, and continued from time to time till the 6th of May, when it fell through. The sheriff then sold the goods, but owing to expenses, including possession-money, incurred by the sheriff after the injunction had been granted, the amount for which the execution was levied exceeded 50*l.*:—Held, that the execution was “an execution in respect of a judgment for a sum exceeding 50*l.*,” and that the trustee was entitled to the proceeds of sale. *In re Fenton; ex parte Lythgow*, 48 Law J. Rep. Bankr. 64; Law Rep. 10 Ch. D. 169.

[And see B 21-23 *supra*.]

(3) *Notice of act of bankruptcy: protected transactions.*

26.—By 9 & 10 Vict. c. 95. s. 106, no sale of goods taken in execution under process issuing from the County Court shall be made till the end of five days following the day of seizure, unless the goods are perishable, or upon the request in writing of the party whose goods are seized. A creditor who had recovered less than 50*l.* in the County Court seized non-perishable goods of the debtor, and sold the same within two days, with the consent of persons claiming the same under a bill of sale. The debtor was adjudicated bankrupt, the act of bankruptcy being the execution of the said bill of sale. The execution creditor had no notice of the act of bankruptcy at the time of seizure or sale, but had notice within five days of the seizure:—Held, that the creditor was not protected by section 94, sub-section 3, of the Bankruptcy Act, 1869, since he had notice of an act of bankruptcy before a legal sale could have been made, and since the holders of the bill of sale having no title could not consent to an earlier sale. *In re Hughes; ex parte Bulmer*, 48 Law J. Rep. Bankr. 62.

27.—After receipt of a letter from the debtor's solicitor that he had received instructions to file a liquidation petition, such petition having been in fact filed at the time the letter was received, but without knowledge of the actual filing, the holder of a bill of sale on the debtor's property took possession thereunder. The trustee claimed the goods as in the bankrupt's reputed ownership at the commencement of the liquidation:—Held, that the taking possession was a “dealing” with the bankrupt

“in good faith,” “for valuable consideration,” and without notice of the act of bankruptcy, and was therefore a protected transaction under section 94, sub-section 3, of the Bankruptcy Act, 1869. *Ex parte Arnold; in re Wright* (App.), 45 Law J. Rep. Bankr. 180; Law Rep. 3 Ch. D. 71.

28.—The plaintiff in an action for specific performance of an agreement to execute a bill of sale, was appointed *interim* receiver and took possession of the defendant's stock-in-trade. Early next morning the defendant absconded and filed a liquidation petition:—Held, that the plaintiff was entitled to the stock-in-trade as against the trustee in the liquidation. *Taylor v. Eckersley*, Law Rep. 5 Ch. D. 740.

29.—A building contract contained stipulations that in the event of the insolvency or bankruptcy of the builder, the architect of the proprietors should have power, after two clear days' notice, to appoint other persons to complete the work, and should also in such case have power to seize and retain all materials, plant and implements, and might either proceed with the work or sell them and apply the proceeds to the completion of the work; and that in the event of the contract being put an end to as aforesaid, the contractor should not remove either work, materials, implements, scaffolding or plant, from the premises, but all materials and work should be left or appropriated for the use of whosoever might be appointed to finish the work. After being engaged on the contract for about eighteen months, and receiving sums on account thereof which covered the value of the materials, plant and implements then upon the premises, the contractor filed a petition for liquidation. Three days afterwards the proprietors gave him notice that they intended to employ other means to finish the work, and claimed the materials, plant and implements under the contract. It did not appear whether the proprietors at that time had notice of the petition, but they had such notice before the expiration of two days, and before they took possession:—Held, that under the contract the proprietors acquired a right to a lien upon the goods in the events which happened; and that the contract and the possession taken thereunder was a transaction protected by section 94, sub-section 3, of the Bankruptcy Act, 1869, and not invalidated by the act of bankruptcy. *Ex parte Dickin; in re Waugh*, 46 Law J. Rep. Bankr. 24; Law Rep. 4 Ch. D. 524.

[And see B 26 *supra*.]

(d) *After-acquired property of bankrupt.*

30.—Suspension of proceedings under 24 & 25 Vict. c. 134. s. 110 does not release the bankrupt's after-acquired property unless followed by an order of discharge. *Ex parte Carter; in re Carter* (App.), 45 Law J. Rep. Bankr. 145; Law Rep. 2 Ch. D. 806.

An undischarged bankrupt who has recovered judgment against his debtor cannot issue a

debtor's summons after his assignee has claimed the debt. *Ibid.*

31.—Reversionary property of an insolvent which does not fall into possession until after his death does not vest in his assignee, and the remedy of unsatisfied creditors is by action for administration. *Ex parte Wolchman; in re Hare* (App.), Law Rep. 11 Ch. D. 48.

Section 9 of the Act 5 & 6 Vict. c. 116 applies only to a living insolvent. *Ibid.*

32.—The remedies given to creditors by section 54 against after-acquired property of an undischarged bankrupt are not confined to creditors who have proved before the close of the bankruptcy. A debtor was adjudicated bankrupt in 1870, and the Registrar became trustee. In 1874 the bankruptcy was closed but no dividend was declared, and the bankrupt was not discharged. In 1878 a decree was made in a suit declaring the bankrupt entitled to certain property. Thereupon certain creditors, who had not previously proved, proved their debt, and applied to the Court for leave to enforce payment against the bankrupt's property:—Held, that they were entitled to an order for execution under section 54, but that enquiries as to subsequent creditors must first be made. *In re Westby; ex parte The Lancaster Banking Company*, 48 Law J. Rep. Bankr. 89; Law Rep. 10 Ch. D. 776.

33.—Two debtors filed their petition in 1870. The creditors resolved on liquidation, and that the debtors should have their order of discharge when they had paid a composition of 2s. in the pound. The estate only produced 10d. in the pound. One of the debtors went into business again, and in 1873 filed a second petition, under which the creditors again resolved upon liquidation. There was no sufficient evidence to shew that either the creditors or the trustee under the first petition were aware of the continued trading. On the question whether the assets under the second petition belonged to the creditors under the first or to those under the second petition,—Held (affirming the decision of the County Court Judge), that the whole of the assets under the second petition must go towards payment of the balance of the 2s. in the pound due under the first liquidation. *Ex parte Ford; in re Caughey*, 45 Law J. Rep. Bankr. 19; affirmed on appeal, 45 Law J. Rep. Bankr. 96; Law Rep. 1 Ch. D. 521.

34.—After an order closing a bankruptcy had been made, but before the bankrupt had been discharged, a testator died leaving the bankrupt a legacy:—Held, that the legacy was to be paid to the bankrupt and not to the trustee in bankruptcy. *In re Pettit's Trust*, 45 Law J. Rep. Bankr. 63; Law Rep. 1 Ch. D. 478.

35.—A trustee under a liquidation, who, with the authority of the creditors, permits the debtor to remain in possession of his furniture as apparent owner, does not, in the absence of knowledge that the debtor was holding himself out as the real owner and dealing with it as such, forfeit his right to it so long as there has been

no closing of the liquidation or order of discharge; and his right to it and to any after-acquired property cannot be defeated by a bill of sale given by the debtor subsequently to the liquidation. Where a liquidating debtor has separate as well as joint creditors and assets, an order of discharge by the joint creditors will not operate to discharge him from his separate debts, and any after-acquired property will therefore vest in the trustee appointed under the liquidation. *Meggy v. The Imperial Discount Company (Lim.)*, 47 Law J. Rep. Q.B. 119; affirmed on appeal, 48 Law J. Rep. Q.B. 54; Law Rep. 3 Q.B. D. 711.

[And see F 56, H 11, *infra*.]

*Insolvent lunatic: contingent interest omitted from statement of affairs.* [See *INSOLVENCY*.]

*Personal earnings of bankrupt: right of trustee to.* [See F 55, 56, *infra*.]

#### (c) Avoidance of voluntary settlement.

36.—More than two but less than ten years before his bankruptcy a trader executed a voluntary settlement of real property that was subject to a mortgage, covenanting with the trustees to pay the interest, and at their request, the principal of the mortgage debt. His other assets were then sufficient to pay his debts, exclusive of the mortgage debt, but not including it:—Held, that the property freed from the mortgage, and not merely the equity of redemption, was settled, and that therefore the settlor was not able to pay his debts without the aid of the property comprised in the settlement, and the settlement was void under section 91 of the Bankruptcy Act, 1869. *Ex parte Hunttable; in re Contibee* (App.), 45 Law J. Rep. Bankr. 59; Law Rep. 2 Ch. D. 54.

37.—A covenant by a trader in his marriage settlement to settle his share (whether appointed or not) of property to which he and his brothers and sisters are entitled equally, subject to their mother's life interest, and to a power to her to appoint among them, is not void as against his trustee in bankruptcy under §2 & 33 Vict. c. 71. s. 91. *In re Andrews' Trusts*, Law Rep. 7 Ch. D. 635.

38.—The word "purchaser" in the 91st section of the Bankruptcy Act, 1869, must be construed in the ordinary commercial sense of the word—that is, a "buyer." Where, therefore, a trader within two years of his bankruptcy made a *bona fide* settlement of leaseholds upon trust for his wife and children, and the trustees entered into the usual covenants to pay the ground rent and perform the covenants in the lease,—Held, that the trustees were not purchasers for value within the exception contained in the 91st section of the Bankruptcy Act, 1869, and therefore that the settlement was void. *In re Pumfrey; ex parte Hillman* (App.), 48 Law J. Rep. Bankr. 77; Law Rep. 10 Ch. D. 622.

## (S) Disclaimer by.

39.—The Court refused to entertain an appeal from an order giving leave to disclaim a lease where the trustee had *bona fide* disclaimed before notice of appeal and nearly three weeks after the order. *Ex parte Ditton*; *in re Wood* (App.), 45 Law J. Rep. Bankr. 141; Law Rep. 3 Ch. D. 459.

40.—The right of a tenant to tenant's fixtures is a qualified right, and is dependent on the tenant removing them during the term, or during some period after its termination in which he may be considered as still in possession under the landlord. *In re Davies*; *ex parte Stephens & Company* (App.), 47 Law J. Rep. Bankr. 22; Law Rep. 7 Ch. D. 727.

When a trustee in bankruptcy disclaims a lease, then, as under section 23 the disclaimer relates back to the adjudication, the trustee has no interest in the lease, and no right to the tenant's fixtures, which pass to the landlord. *Ibid.*

Quære, whether if the trustee sold the fixtures he could not afterwards disclaim. *Ibid.*

41.—A trustee in liquidation after having received notice to disclaim a lease sold the tenant's fixtures on the premises, and afterwards elected to disclaim the lease and executed a disclaimer:—Held, that the trustee, and not the landlord, was entitled to the proceeds of the sale of the fixtures. *In re Roberts*; *ex parte Foster*, 47 Law J. Rep. Bankr. 101.

[But see No. 44 infra.]

42.—A lease of chattels is not a "leasehold interest" within the meaning of rule 28 of the Bankruptcy Rules, 1871; and therefore a trustee in bankruptcy may disclaim a lease of chattels under section 23 of the Bankruptcy Act, 1869, without leave of the Court. *The Sheffield Wagon Company v. Stratton* (App.), 48 Law J. Rep. Exch. 35.

43.—A trustee in bankruptcy having taken possession of the leasehold property of the bankrupt, cannot divest himself of his personal liability to the landlord for the rent except by executing a disclaimer in writing under section 23 of the Bankruptcy Act, 1869. *In re Solomon*; *ex parte Dressler*, 48 Law J. Rep. Bankr. 20; Law Rep. 9 Ch. D. 252.

44.—Whatever may be the rights (if any) of a lessee to sever and remove his trade fixtures within a reasonable time after the determination of his tenancy by forfeiture or effluxion of time, no such right exists in the case of a surrender of a lease. *In re Roberts*; *ex parte Brook* (App.), 48 Law J. Rep. Bankr. 22; Law Rep. 10 Ch. D. 101.

Where a trustee severed and sold the trade fixtures of a liquidating debtor and afterwards disclaimed the lease,—Held, that as the disclaimer by force of the 23rd and 125th sections of the Bankruptcy Act, 1869, operated as a surrender of the lease as from the date of the appointment of the trustee, the landlord, and not the trustee, was entitled to the proceeds of the sale. *Ibid.*

Quære, whether a trustee by severing and selling the fixtures estops himself from disclaiming the lease. *Ibid.*

45.—Trustees in a liquidation, being required to decide whether they would disclaim contracts to repair railway waggons for a term, did not disclaim, but continued to perform the contracts for two years, and then discontinued to do so:—Held (affirming the decision of the Chief Judge), that the contractees had no personal remedy against the trustees, and no right to payment in full of damages for the breach out of the estate, but merely a right to prove for the amount of such damages. *Ex parte Davis*; *in re Smeorum* (App.), 45 Law J. Rep. Bankr. 137; Law Rep. 8 Ch. D. 463.

46.—Where landlords required a trustee to disclaim the bankrupt's lease within twenty-eight days, and then wrote again on the twenty-seventh day, asking for an answer "at the earliest convenience" of the trustee,—Held, that they had waived their right to insist on an answer within the twenty-eight days, and that the trustee might disclaim after the expiration of that time. *Ex parte Moore*; *in re Stokes* (App.), Law Rep. 2 Ch. D. 802.

47.—Leave to disclaim a lease which had expired was given to a trustee in bankruptcy without prejudice to the rights of any person (including the lessor) not before the Court. *Ex parte Paterson*; *in re Throsmorton* (App.), Law Rep. 11 Ch. D. 908.

48.—A trustee in bankruptcy used and occupied leasehold premises of the bankrupts, and paid the next quarter's rent to the landlord. Thenceforth the trustee ceased to use the premises, but for a time retained the key of them, and ultimately disclaimed the lease and handed over the key to the landlord:—Held, that the trustee was not personally liable, either upon an implied contract of tenancy or as a trespasser, to pay the landlord in respect of the possession of the premises between the time when the trustee's actual operation ceased and the date of the disclaimer. *Lowrey v. Barker & Sons* (App.), 49 Law J. Rep. Exch. 433; Law Rep. 5 Ex. D. 170.

Sed quære (per Cockburn, C.J., and Thesiger, L.J.), whether a trustee in bankruptcy, although he has disclaimed, would not be personally liable to the lessor in respect of any actual use and occupation of the premises. *Ibid.*

49.—By section 23 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), the trustee is empowered by writing under his hand to disclaim any onerous property of the bankrupt, and section 24 limits the time for disclaimer by the trustees to twenty-eight days after "application in writing made to him by any person interested in such property requiring him to decide whether he will disclaim or not." Rule 28 of the General Rules of 1871 says that "where any property of a bankrupt acquired by a trustee under the Act shall consist of a leasehold interest, the trustee shall not execute a disclaimer of the same without the leave of the



Court being first obtained for that purpose:—Held, that the rule merely regulated the procedure of the Court, and that a disclaimer duly made in time was effectual though no leave had been asked for or obtained. *Reed v. Harvey*, 49 Law J. Rep. Q.B. 295; Law Rep. 5 Q.B. D. 184.

Where a registered letter containing a notice requiring the trustee to disclaim had been posted, but the trustee denied having ever received it,—Held, that some evidence of the delivery of the letter to the trustee or at his office must be given to affect the trustee with notice, under section 24 of the Bankruptcy Act, 1869. *Ibid*.

50.—The leaseholds of a debtor liquidating under the Bankruptcy Act, 1869, are vested absolutely in the trustees on their appointment, subject to the right to disclaim, and the trustees are personally liable on the covenants unless they have made a valid disclaimer. A letter signed by the solicitor of the trustees in his own name is not a "writing under their hand" sufficient for the purposes of disclaimer within section 23 of the Bankruptcy Act, 1869. *Wilson v. Wallant*, 49 Law J. Rep. Exch. 437; Law Rep. 5 Ex. D. 155.

51.—The trustee of a bankrupt desiring to disclaim a lease which the bankrupt has deposited by way of equitable mortgage will not be permitted to do so to the prejudice of the mortgagee, but if he assigns the lease to the mortgagee, the latter must covenant to indemnify him against liability under the lease. *Wilkins v. Fry* (1 Mer. 244) considered. *Ex parte Buxton*; in *re Müller*, Law Rep. 15 Ch. D. 289.

*Equitable mortgage of freeholds by bankrupt: disclaimer by trustee in bankruptcy: legal estate.* [See MORTGAGE, 37.]

(g) Other property devolving on trustee.

52.—A lease of a public-house, determinable on the bankruptcy of the lessee, contained a covenant by the lessee upon the determination of the term to assign the licences to the lessor. The lessee having become bankrupt before the expiration of the term,—Held, that his trustee in bankruptcy took no interest in the licences, and that the covenant was valid, entitling the lessor to have the licences delivered up to him, though they were not assignable. *Ex parte Royle*; in *re Britnor*, 46 Law J. Rep. Bankr. 85.

53.—Testator directed his debts to be paid, and gave the residue of his estate to his wife, whom he appointed executrix. The widow proved the will, paid some of the debts, and for four years carried on, ostensibly on her own account, her late husband's business of a cow-keeper. At the end of that period she married a second husband, who shortly afterwards became bankrupt. There were then creditors of the testator still unsatisfied, who had been throughout aware of the widow's dealings in

relation to the business:—Held, that they had no interest in the stock and property of the business as against the trustee in bankruptcy. *In re Fells*; *ex parte Andrews*, 46 Law J. Rep. Bankr. 23; Law Rep. 4 Ch. D. 509.

A person claiming under an assignment was in possession of the property upon premises occupied by the bankrupt. The trustee impeached the assignment, and himself took possession, but without ousting the other party. Before the validity of the assignment had been determined the assignee took away part of the property:—Held, that the trustee was entitled to a summary order for the restoration of the property removed. *Ibid*.

54.—Damages recovered in an action brought by a bankrupt before his discharge for a personal wrong will not belong to the trustee. *In re Wilson*; *ex parte Vine* (App.), 47 Law J. Rep. Bankr. 116; Law Rep. 8 Ch. D. 631.

55.—O., being an uncertificated bankrupt, became editor of a newspaper. The proprietors of the newspaper became bankrupts, but O. continued to act as editor, till, on the sale of the paper, he was dismissed without notice. For the dismissal he was awarded by the Court six months' salary in lieu of notice. The money was claimed by W., who had recovered judgment against him subsequent to his bankruptcy, and by M., the trustee in the bankruptcy. W. alleged, first, that M. was estopped from disputing a subsequent creditor's claim; and secondly, that this sum was personal earnings to which the trustee had no title as against the bankrupt or a creditor claiming through him:—Held, that the trustee was entitled to the money, there being no facts to raise an estoppel, and the money being in the nature of damages for a breach of contract, and not money earned by personal labour. *Wadding v. Oliphant*, 45 Law J. Rep. Q.B. 173; Law Rep. 1 Q.B. D. 145.

The question of the right of an uncertificated bankrupt to his personal earnings discussed. *Ibid*.

56.—An undischarged liquidating debtor, being a master painter, took a job in the way of his trade, upon which, besides his own labour, he employed three workmen, and supplied the necessary materials. He received for the job 49*l.*, of which he stated in evidence that the cost of the materials was 10*l.*, and of the hired labour 15*l.*:—Held, that the debtor was carrying on his business within the rule of *Crofton v. Poole* (1 B. & Ad. 568; 9 Law J. Rep. K.B. 59), and that the entire proceeds belonged to his trustee. *In re Dowling*; *ex parte Banks*, 46 Law J. Rep. Bankr. 74; Law Rep. 4 Ch. D. 689.

57.—A. obtained an advance of 200*l.* from his bankers, and gave them a letter (which was unstamped) addressed to his tenants directing the tenants, when their rent became payable, to pay 200*l.* to the bankers, for which he would accept their receipt as so much of the rent discharged. Before the rent became payable A. was adjudicated bankrupt:—Held, that the bankers had no right to be repaid out of the

rent as against the trustee in bankruptcy of A. *In re Whitting; ex parte Romell*, 48 Law J. Rep. Bankr. 46.

Semble, that the letter was an order for payment of money, and as such, being unstamped, was inadmissible in evidence. *Ibid.*

*Sequestration of profits of benefice: priority of sequestration.* [See SEQUESTRATION.]

(k) *Joint and separate estate: property devolving on trustees of.*

*Proceeds of sale of machinery.* [See D 19 supra.]

*Title of trustee: relation back.* [See K 23 infra.]

#### (i) Powers and liabilities.

58.—A trustee in bankruptcy having, in respect of his title to the bankrupt's property, a right to sue in his own name, and also in his official name, under section 83, sub-section 7 of the Bankruptcy Act, 1869, has all the rights of an ordinary litigant, including the right to compromise any action instituted by him, and he may consent to take less than was originally claimed. The 27th section of the Bankruptcy Act, 1869, which gives a trustee general power to make compromises with the sanction of the committee of inspection, does not affect his right to compromise actions instituted by him as trustee. *Leeming v. Lady Murray*, 48 Law J. Rep. Chanc. 737; Law Rep. 13 Ch. D. 123.

[And see P 11 infra.]

#### (k) Release of.

59.—The fact that a release has been prospectively granted to a trustee, as from a particular date, will not operate to prevent the Court having jurisdiction to make an order upon him for the payment of dividends upon debts which have, subsequently to that date, been properly proved against the estate. *Ex parte The Soci  t   John Cochrill; in re Prager*, 45 Law J. Rep. Bankr. 124; Law Rep. 3 Ch. D. 115.

60.—Section 83 of 32 & 33 Vict. c. 71 applies to liquidation proceedings as well as to bankruptcy, and therefore where a liquidation had been closed and the trustee released,—Held, that the release protected the trustee from liability in respect of rent due to the debtor's landlord, which he alleged he had paid to the debtor to hand over to the landlord. *Ex parte Carter; in re Ware* (App.), Law Rep. 8 Ch. D. 731.

#### (G) PUBLIC EXAMINATION OF BANKRUPT.

1.—A bankrupt was being publicly examined on behalf of the trustee, with a view to shewing fraudulent dealings, when the Registrar, sitting as Chief Judge, thinking that the public time was being wasted, adjourned the examination, and directed the trustee to deliver written requisitions setting out the particulars in respect of which he required information; but upon appeal it was held that he had no authority to make such an order on the trustee, and that if

he had, this was not a case in which it ought to be exercised. *In re Hendrey; ex parte Crump* (App.), 45 Law J. Rep. Bankr. 98; Law Rep. 1 Ch. D. 530.

*Disallowance of remuneration of trustee.* [See M 11 infra.]

#### (H) ORDER OF DISCHARGE.

##### (a) Effect of, generally.

1.—A certificate of discharge obtained by a debtor whose affairs have been liquidated by arrangement under section 125 of the Bankruptcy Act, 1869, is a good bar to an action by a creditor whose name and address have been omitted from the list of creditors delivered to the Registrar, and who has had no notice of the proceedings, and is distinguishable in this respect from a composition with creditors under section 126. *Heather v. Webb* (46 Law J. Rep. C.P. 89; Law Rep. 2 C.P. D. 1) approved. *Elmslie v. Corrie* (App.), 48 Law J. Rep. Q.B. 462; Law Rep. 4 Q.B. D. 295.

2.—The defendant having been indebted to the plaintiff, and having been released from the debt by discharge in bankruptcy, promised the plaintiff, for a new consideration, to pay the debt:—Held, that the Bankruptcy Act, 1869, did not render this promise invalid. *Jakeman v. Cook*, 48 Law J. Rep. Exch. 165; Law Rep. 4 Ex. D. 26.

3.—An adjudication against a debtor who has not obtained his discharge under a previous adjudication, and has been allowed by the trustee to resume business, is not void. *Morgan v. Knight* (15 Com. B. Rep. N.S. 669) followed. *Ex parte Sydney* (44 Law J. Rep. Bankr. 21; Law Rep. 10 Chanc. 208) distinguished. *Ex parte Watson; in re Roberts* (App.), Law Rep. 12 Ch. D. 380.

4.—A creditor who dissents from but who accepts the composition paid under resolutions adopted for the liquidation by arrangement of a debtor's affairs, cannot, the debtor having duly received his discharge and certificate, on default being afterwards made in the payment of a part of the composition, impugn the validity of the resolutions and sue on the original debt. *Lewis v. Leonard & Son* (App.), 49 Law J. Rep. Exch. 308; Law Rep. 5 Ex. D. 165.

5.—The certificate of discharge obtained by a debtor who has gone through liquidation by arrangement, under the Bankruptcy Act, 1869, s. 125, is a defence to an action for a debt provable in the liquidation proceedings, although the name of the creditor to whom the debt is due has been fraudulently omitted by the debtor from the list of creditors delivered to the Registrar. *Wadsworth v. Pickles*, 49 Law J. Rep. Q.B. 464; Law Rep. 5 Q.B. D. 470.

6.—A liquidating debtor who has obtained an order for discharge, may, even though the liquidation be still pending, be sued for a debt incurred fraudulently, and this liability is not affected by section 15 of the Debtors Act, 1869. Whether liquidations by arrangement are excluded from the scope of section 15 of the

Debtors Act, 1869, quare. *In re Chatterton*; *ex parte Hemming* (App.), 49 Law J. Rep. Bankr. 17; Law Rep. 13 Ch. D. 163.

Semble, that section refers to arrangements made by a bankrupt with his trustees, which are made valid and binding under section 28 of the Bankruptcy Act, 1869. *Ibid.*

The time from which the debtor's right to after-acquired property dates is also the time when the right of a creditor to take proceedings against the debtors' person or property in respect of a debt incurred by fraud accrues. *Ibid.*

*Liquidation proceedings: discharge binding on creditors without notice.* [See K 8 *infra*.]

(b) *Discretion of court to refuse.*

7.—Where creditors resolve to discharge a bankrupt, and the terms of section 48 of 32 & 33 Vict. c. 71 are strictly complied with, the Court has no discretion to refuse an order on the ground that his failure to pay more than 10s. in the pound arose from gambling transactions on the Stock Exchange. *Ex parte Hamilton*; *in re Hamilton*, Law Rep. 9 Ch. D. 694.

8.—In a liquidation by arrangement, the Court of Bankruptcy has no jurisdiction to interfere with the fair and reasonable discretion of the creditors in refusing to grant a debtor his discharge. *In re Dempster*; *ex parte Chesney*, 47 Law J. Rep. Bankr. 117; Law Rep. 9 Ch. D. 701.

Creditors resolved that a liquidating debtor's discharge should be granted on the certificate of the committee of inspection that he was entitled thereto. The committee refused to grant the certificate, on the ground that he had done everything in his power to obstruct his creditors and caused much expense before his affairs could be wound up, and in particular had given 5s. to a person to induce him not to bid at an auction of the debtor's book debts, with a view to reduce the competition:—Held, that the Court would not interfere to grant the debtor his discharge. *In re Scholes*; *ex parte Royle* (A 9 *supra*) distinguished. *Ibid.*

(c) *Delegation of power to grant.*

9.—The power which a general meeting of creditors has of granting a debtor his discharge cannot be delegated. *In re Hope*; *ex parte Hope* (App.), 47 Law J. Rep. Bankr. 78; Law Rep. 9 Ch. D. 639.

(d) *Undischarged bankrupt.*

10.—A resolution of the creditors of a bankrupt, under section 110 of the Bankruptcy Act, 1861, suspending proceedings in the bankruptcy, does not, without the order of the Court, operate as a discharge of the bankrupt, and in the absence of such order any after-acquired property still vests in the assignee. *In re Carter*; *ex parte Carter* (App.), 45 Law J. Rep. Bankr. 145; Law Rep. 2 Ch. D. 806.

11.—Merchants in London were in the habit of dealing with "Reed Brothers," of Old Town

Street, Plymouth. On receipt of an order from "Joseph Reed & Sons," of Mincing Lane, Plymouth, they forwarded the goods asked for, under the mistaken belief that they were dealing with their old customers. It appeared that the person trading as "Joseph Reed & Sons" was an uncertificated bankrupt, and his trustee at once seized the goods:—Held, that the trustee was bound to restore the goods, or pay the amount due for them. *Ex parte Barnett*; *in re Reed*, 45 Law J. Rep. Bankr. 120; Law Rep. 3 Ch. D. 123.

12.—An undischarged liquidating debtor filed a second petition, under which resolutions were passed and registered, empowering the trustee to sell the estate to the debtor for a certain sum, on payment whereof the debtor was to be entitled to his discharge. The sale was made, the debtor paid the money, took over the property, traded therewith, and acquired other property. The creditors under the first liquidation established their claim to the whole of the purchase-money. All parties having throughout been aware of the facts,—Held, that the debtor had, by paying the money to the trustee, performed the condition on which he was entitled to his discharge, and that his subsequently acquired property was free from any claim under the second liquidation. *Ex parte Caughey*; *in re Caughey*, 46 Law J. Rep. Bankr. 18; Law Rep. 4 Ch. D. 533.

13.—A trustee under a liquidation, who, with the authority of the creditors, permits the debtor to remain in possession of his furniture as apparent owner, does not, in the absence of knowledge that the debtor was holding himself out as the real owner, and dealing with it as such, forfeit his right to it so long as there has been no closing of the liquidation or order of discharge; and his right to it and to any after-acquired property cannot be defeated by a bill of sale given by the debtor subsequently to the liquidation. *Meggy v. The Imperial Discount Company (Lim.)*, 47 Law J. Rep. Q.B. 119; affirmed on appeal, 48 Law J. Rep. Q.B. 54; Law Rep. 3 Q.B. D. 711.

Where a liquidating debtor has separate as well as joint creditors and assets, an order of discharge by the joint creditors will not operate to discharge him from his separate debts, and any after-acquired property will therefore vest in the trustee appointed under the liquidation. *Ibid.*

14.—A person to whom an undischarged bankrupt has assigned the surplus (if any) of his estate is not a person interested in the assets and cannot interfere in the bankruptcy proceedings. *Ex parte Sheffield*; *in re Austin* (App.), Law Rep. 10 Ch. D. 434.

15.—An undischarged debtor, with the knowledge and assent of his creditors and of the trustee under the liquidation, continued trading, and dealt with his property as his own. A fully secured creditor, who had not proved under the liquidation, relying on the statement of the trustee that the debtor was a free man, con-

tinued to deal with and give him credit. The security was subsequently realised, and a surplus remained in the hands of the creditor, which the trustee under the liquidation claimed:—Held, that such creditor was entitled, as against the trustee, to deduct from such surplus the debts due to him from the debtor in respect of the subsequent trading. *In re Dyson; ex parte Bolland* (App.), 47 Law J. Rep. Bankr. 74; Law Rep. 9 Ch. D. 312.

16.—The Bankruptcy Act, 1869, does not in any way affect the right of an uncertificated bankrupt to sue in respect of causes of action accruing after bankruptcy. *Herbert v. Sayer* (5 Q.B. Rep. 965; 12 Law J. Rep. Q.B. 286) followed. *Jameson v. The Brick, Stone & Lime Company (Lim.)* (App.), 48 Law J. Rep. Q.B. 249; Law Rep. 4 Q.B. D. 208.

[And see F 30–35 supra.]

#### (I) PROSECUTION OF BANKRUPT.

An application for an order to prosecute a bankrupt under section 16 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), ought to be made *ex parte*. *In re Marsden; ex parte Marsden* (App.), 45 Law J. Rep. Bankr. 141; Law Rep. 2 Ch. D. 786.

[And see DEBTORS ACT, 17, 18.]

#### (K) LIQUIDATION BY ARRANGEMENT.

##### (a) *Petition: description of petitioning debtor.*

1.—A debtor who had ceased to carry on business described himself in his liquidation petition by his late business address only, and did not mention his private residence:—Held, that the omission by the debtor to give his private residence was a defect, not of form merely, but of substance, which could not be cured by amendment; and that, therefore, the resolutions passed by his creditors could not be registered. *In re Jerningham; ex parte Jerningham* (App.), 47 Law J. Rep. Bankr. 115; Law Rep. 9 Ch. D. 466.

##### (b) *Resolution: registration and validity of.*

2.—Where there has been a simple adjudication in bankruptcy, without any stay of proceedings, and resolutions are afterwards duly passed in favour of liquidation, it is the duty of the Registrar to register such resolutions, whatever may be the consequences of such registration. *Ex parte Davis; in re Russ*, 45 Law J. Rep. Bankr. 61; Law Rep. 2 Ch. D. 231.

3.—The fact that a debtor included in his statement of affairs the names of creditors whose debts, being illegal, could not be proved against the estate,—Held, not to be a sufficient reason for refusing to register the resolutions. *Ex parte Day; in re Day*, 45 Law J. Rep. Bankr. 53; Law Rep. 1 Ch. D. 699.

4.—Where a liquidation has been resolved upon, the Registrar on the application to register the resolution has no jurisdiction to entertain any question as to the accuracy of the debtor's statement of affairs. *Ex parte Walker; in re*

*Webb* (App.), 45 Law J. Rep. Bankr. 105; Law Rep. 2 Ch. D. 326.

Creditors who have not been heard before the Registrar on an application to register have nevertheless a *locus standi* to appeal against an order cancelling the registration. *Ibid.*

5.—Though a creditor's name has been left out of the statement of a liquidating debtor, the certificate of discharge is, in the absence of fraud, a complete answer to an action for a debt due before the liquidation commenced. *Elmslie v. Corrie* (App.), 48 Law J. Rep. Q.B. 462; Law Rep. 4 Q.B. D. 295.

6.—Resolutions which in form are resolutions for liquidation by arrangement, but amount in fact to resolutions for a composition, are an evasion of the Act, and ought not to be registered. *Ex parte Harold; in re Meade*, 45 Law J. Rep. Bankr. 121; Law Rep. 3 Ch. D. 119.

7.—Where the resolutions passed at a first meeting of creditors are invalid the Court has power to order a fresh first meeting to be called. Secus, where the resolutions passed are valid, or where the creditors have come to a determination to pass no resolution. *In re Terrell; ex parte Terrell*; and *In re Terrell; ex parte The Sheffield and Rotherham Joint-Stock Banking Company (Lim.)* (App.), 46 Law J. Rep. Bankr. 47; Law Rep. 4 Ch. D. 293.

8.—In liquidation by arrangement, under section 125 of the Bankruptcy Act, 1869, a creditor is, in the absence of fraud, bound by the resolutions then passed, if duly registered under section 127, though he has no notice of the proceedings, and though his name and debt be omitted from the list of creditors. And no subsequent promise to pay will support an action founded on a debt from which the debtor is released by virtue of the Bankruptcy Act, 1869. *Heather v. Webb*, 46 Law J. Rep. C.P. 89; Law Rep. 2 C.P. D. 1.

To a claim for work and labour done, the defendant pleaded a discharge under a liquidation by arrangement subsequent to the accruing of the plaintiff's claim. Reply, that the plaintiffs had no notice of the proceedings in liquidation, that the defendant had not inserted the names of the plaintiffs or their debt among his creditors or in any lists of debts in the course of the proceedings, and that the defendant had since promised to pay the amount of the claim:—Held, a bad replication. *Ibid.*

9.—The procedure of the Court of Bankruptcy must not be made use of for a mere idle purpose, and therefore where a debtor's statement of affairs shews no assets available for distribution among his creditors, the Registrar is justified in refusing to register a resolution for liquidation by arrangement. *In re Aaronson; ex parte Aaronson* (App.), 47 Law J. Rep. Bankr. 60; Law Rep. 7 Ch. D. 718.

10.—The power which a general meeting of creditors has of granting a debtor his discharge cannot be delegated. *In re Hope; ex parte Hope* (App.), 47 Law J. Rep. Bankr. 78; Law Rep. 9 Ch. D. 398.

Under the Bankruptcy Act, 1869, s. 125, sub-s. 3, a debtor is only bound to answer such questions as are properly put for the purpose of shewing the state of the assets; he is not bound to answer vexatious questions or questions put by a creditor for the purpose of obtaining information to be used in a matter not affecting the interest of the creditors. *Ibid.*

At a first meeting of creditors held under a petition for liquidation, the debtor's statement of affairs shewed liabilities exceeding 43,000*l.*, and assets 120*l.*, and it was also stated that the debtor was prosecuting two pending actions, in one of which he expected to recover a very large sum, and in the other a considerable sum. The solicitor for certain creditors, who were defendants in one of these actions, made enquiries of the debtor which he refused to answer, on the ground that they were made with a view to obtain information which would prejudice him in the trials of his actions, and were not made in the interests of the creditors, and the majority of the creditors being of this opinion, passed resolutions for liquidating the debtor's affairs by arrangement, appointing a trustee without a committee of inspection, and giving the trustee power to grant the debtor his discharge when he should think fit to do so, and declaring that the debtor was justified in declining to answer the questions. Upon the application of dissentient creditors, the Chief Judge held (reversing the decision of a County Court Judge), that the resolutions were invalid; but, upon appeal,—Held by James, L.J., and Brett, L.J., *dubitante* Cotton, L.J.), that, with the exception of the resolution giving the trustee power to grant the debtor his discharge, which was *ultra vires*, the resolutions were proper, and ought to be registered. (And *per* Cotton, L.J.), whether the resolution giving the trustees power to grant the discharge was not evidence of a want of *bona fides*, *quære*. *Ibid.*

11.—At a meeting convened under rule 305 of the Bankruptcy Rules, 1870, certain resolutions were passed by a statutory majority removing a trustee. At this meeting S., who was a creditor for a small amount and also proxy for another large creditor, attended. The proofs for his own and his principal's debts had been put in and filed some years previously at the first meeting. He stayed throughout the meeting but did not sign the resolutions, and stated that he did not intend to take any part in the meeting. Registration of the resolutions was objected to on the ground that S. must be taken to have attended on the authority of *Ex parte Orde*; *in re Horsley* (40 Law J. Rep. Bankr. 60; Law Rep. 6 Chanc. 881), he having been present and not having withdrawn the proof. If S. had been counted as present on behalf of his principal, the resolutions would not have been passed by the statutory majority:—Held (on appeal from the Registrar), that the resolutions were properly registered; that even if the principle of the above case would have

applied to S. in his own character as creditor (the smallness of his debt rendering the decision unnecessary), it could not apply to the case of his principal as being a person "present by proxy;" and that therefore the principal of S. in spite of S.'s actual presence could not be said to be present at that meeting, S. having done no act to shew that he intended to be present there on her behalf. *Ex parte Orde* (40 Law J. Rep. Bankr. 60; Law Rep. 6 Chanc. 881) distinguished. *Ex parte Evans*; *in re Baum* (App.), 49 Law J. Rep. Bankr. 26; Law Rep. 13 Ch. D. 424.

*Quære*, whether the principle of that case applies to any meeting held after the registration of liquidation or composition proceedings. *Ibid.*

The fact that some of the creditors signing the notice summoning the meeting under rule 305 and voting on the resolutions at the meeting had previously sold their debts to another creditor was held not to constitute an objection to the notice or to the resolutions. *Ibid.*

12.—The plaintiff entered into a composition with his creditors, under section 126 of the Bankruptcy Act, 1869. In his statement of affairs, presented at the meeting of creditors, he set down the defendants as his creditors for a certain amount, but set down a second debt really due to them as due to some one else. The defendants attended the meeting, tendered proof of the second debt, which was admitted, took part in the discussion, opposed the resolution for a composition, and, when it was carried, declined to accept the amount of the composition:—Held (affirming the Common Pleas Division, 48 Law J. Rep. C.P. 441), that the defendants were not bound by the resolution for composition as to this debt, because the plaintiff had not complied with the requirements of section 126 of the Bankruptcy Act, that there had been no waiver by the defendants, and that the case was governed by *Ex parte Lang* (Law Rep. 5 Ch. D. 971). *Oppenheim v. Jackson* (App.), 49 Law J. Rep. C.F. 216.

13.—Rules 97 and 98 of the Bankruptcy Rules, 1870, apply to bankruptcy only, and not to liquidation by arrangement or composition. *Ex parte Dean*; *in re Dean* (App.), Law Rep. 13 Ch. D. 313.

The affidavit, under rule 256, of the posting to creditors of notices of a general meeting under a liquidation petition, is only *prima facie*, not conclusive, evidence that the creditors have received the notices. *Ibid.*

Accordingly, the Registrar has a judicial discretion to require further evidence of the receipt of the notices, and, if satisfied that some of the creditors have not received notice, to direct the summoning of a fresh meeting; and the Court of Appeal will not interfere with the exercise of his discretion, unless very clearly satisfied that it has been wrongly exercised. *Ibid.*

14.—Where a farmer, who had also carried on the business of a cattle dealer, filed a liquidation petition, in which he gave his correct

address, but described himself only as a cattle dealer:—Held (by Bacon, C.J., and by the Court of Appeal), that this was not a misdescription such as to invalidate the proceedings, and that the resolutions passed by the creditors ought to be registered. *Ex parte Jerningham* (47 Law J. Rep. Bankr. 115; Law Rep. 9 Ch. D. 466) distinguished. But leave was given to amend the petition by adding the description, "farmer." *Ex parte Kirkwood*; in *re Mason* (App.), Law Rep. 11 Ch. D. 724.

A person, who alleged that he was a creditor, tendered a proof of debt at the first meeting of the creditors but withdrew it. He attended before the Registrar to oppose the registration of the resolutions passed by the creditors:—Held (by Bacon, C.J., and *semble per James, L.J.*), that the objector had no *locus standi*, and the Registrar could not put his proof on the file for the purpose of giving him a *locus standi*. *Ibid*.

15.—Resolutions were passed by the creditors under a liquidation petition, but registration was refused and leave was given to the debtor, a trader, to summon a fresh first meeting of the creditors. The fresh meeting was held more than two months after the original meeting, but the debtor produced the same statement of his affairs as he had produced at the original meeting:—Held, that it could not be taken that the statement was necessarily inaccurate, there being no evidence that the state of the debtor's affairs had changed in the interval. *Ex parte Early*; in *re Golding* (App.), Law Rep. 13 Ch. D. 300.

The creditors of a debtor, whose statement of affairs shewed that his debts amounted to 534*l.* and his assets to 85*l.*, resolved on a liquidation by arrangement, and gave the debtor an immediate discharge. The registration was opposed by one creditor, who had, after the filing of the petition, seized the whole of the debtor's goods under a *f. fa.*:—Held, that the resolutions could not be treated as any abuse of the procedure of the Court, or as having been passed *mala fide*. *Ibid*.

#### (e) Voting: proxies.

16.—The committee of a lunatic who holds a security on a bankrupt's property cannot, by appointing a proxy who proves for the debt, without the sanction of the Lords Justices, abandon the lunatic's security. *Ex parte Wood*; in *re Wright* (App.), Law Rep. 10 Ch. D. 554.

17.—A creditor of a liquidating debtor, who signs a proxy in blank and sends it to his solicitor, who forwards it to the debtor's solicitor, without any express instructions as to the use to be made of it, thereby confers on him an implied authority to fill up the proxy with his own name and to vote on his behalf. *Ex parte Duce*; in *re Whitehouse* (App.), Law Rep. 13 Ch. D. 429.

18.—A liquidating debtor, by a separation deed, covenanted to pay to a trustee an annuity during the joint lives of himself and his wife, for the maintenance of his wife and child, such

annuity to cease in case the husband and wife should cohabit again:—Held, that, the value of the annuity not having been ascertained, the trustee was not entitled to vote in respect of it at a meeting of creditors in the liquidation. *Ex parte Pearce*; in *re Grieve* (App.), Law Rep. 13 Ch. D. 262.

#### (d) Power to summon debtor for examination.

19.—The power given to the Court by section 96 of the Bankruptcy Act, 1869, applies to liquidation as well as to bankruptcy, and the trustee is entitled to summon the debtor for examination, without shewing in the first instance that he has made default in giving the information required by rule 301. Decision of Bacon, C.J., in *Ex parte Glare* (45 Law J. Rep. Bankr. 126; Law Rep. 3 Ch. D. 315), reversed. *Ex parte Close*; in *re Bennett* (App.), 46 Law J. Rep. Bankr. 81; Law Rep. 5 Ch. D. 145.

#### (e) Scheme of arrangement.

20.—Under a scheme of arrangement in the liquidation of a firm, a company was formed to take over the business of the liquidating firm, and debentures were issued to creditors for the amounts of their proved debts. A., who was a creditor in respect of accommodation bills, went into liquidation and paid some of the bill-holders 4*s.* in the pound, and the bill-holders proved against the firm also:—Held, that A. had a right to receive debentures in respect only of the amount of composition paid by him to those bill-holders who proved first against his estate. *Ex parte Turquand*; in *re Fithergill* (App.), Law Rep. 3 Ch. D. 445.

Held also, that the scheme of arrangement made no difference in the relation of principal and surety existing between the liquidating firm and A. *Ibid*.

[And see C 11, 12, *supra*; L 19, 21, *infra*.]

#### (f) Trustee.

21.—A meeting under a liquidation petition was adjourned for more than six months and then a trustee was appointed:—Held, that the appointment of the trustee was void, and that the resolution ought not to be registered, as more than six months had elapsed since the act of bankruptcy on which it was founded. *Ex parte Fenning*; in *re Wilson & Armstrong* (App.), Law Rep. 3 Ch. D. 455.

22.—Section 30 of the Bankruptcy Act, 1869 (as to the investment of moneys in the trustee's hands), applies only to a trustee in bankruptcy, and not to a trustee in a liquidation by arrangement. *Ex parte Brooker*; in *re Fastledge* (App.), 45 Law J. Rep. Bankr. 51; Law Rep. 3 Ch. D. 57.

23.—One of the trustees of joint and separate estate having resigned, at a meeting of creditors the remaining trustee was appointed sole trustee of the joint estate, and a certificate of his appointment was issued entitled only in the matter of the joint estate:—Held, that he could convey real estate of one partner.

*In re Waddell & Tatham's Contract*, 45 Law J. Rep. Chanc. 647; Law Rep. 2 Ch. D. 172.

*Release of: jurisdiction of Court notwithstanding.* [See F 59 supra.]

*Title of, as against Crown.* [See CROWN, 4.]

(g) *Close of liquidation.*

24.—Malpractice in obtaining a single vote is sufficient to vitiate a resolution, however large may be the majority by which it has been passed. *In re Baum*; *ex parte Baum* (App.), 47 Law J. Rep. Bankr. 48; Law Rep. 7 Ch. D. 719.

(A) *After-acquired property.*

[See H 6, 12, 13; F 33, 34, supra.]

(L) COMPOSITION WITH CREDITORS.

(a) *Registration and validity of.*

1.—The power of the statutory majority of creditors to bind the minority must be exercised *bona fide* for the benefit of the creditors, and not from motives of kindness to the debtor. *In re Page*; *ex parte Page* (App.), 45 Law J. Rep. Bankr. 119; Law Rep. 2 Ch. D. 323.

2.—Creditors duly resolved to accept a composition, and that A. & Co. should be appointed solicitors to register the resolution:—Held, that the creditors having made no provision for payment of A. & Co.'s costs of registering the resolutions, the Court had no jurisdiction to compel the debtor to pay them. *Ex parte Gush*; *in re Pratt*, 48 Law J. Rep. Bankr. 69; Law Rep. 12 Ch. D. 915.

3.—The Court will not rescind the registration of resolutions for composition on the ground of mis-statement of assets by the debtor, except upon evidence sufficient to convict him of a misdemeanour under the Debtors Act, 1869, s. 11, sub-s. 6. *In re Law*; *ex parte Hart*, 47 Law J. Rep. Bankr. 88.

A compounding debtor whose statement of affairs showed debts amounting to 5,146*l.*, with assets 3,485*l.*, was proved to have estimated six specified debts at 63*l.* 15*s.* 7*d.* only in his statement of affairs, while in the course of the next two years he recovered 249*l.* 3*s.* 8*d.* in respect of them. On an application by a creditor to rescind the registration of the resolutions on the ground, amongst others, that the debtor had fraudulently mis-stated his assets,—Held, that the evidence being insufficient to establish an intent to defraud, the application must be dismissed, but without costs. Also, that the application, under the circumstances, was not barred by delay, though made more than two years after the date of the resolutions. *Ibid.*

4.—At the first meeting of creditors of a debtor who had filed a petition for liquidation by arrangement, it appeared by the statement of affairs that the debts were upwards of 11,000*l.*, of which 127*l.* was owing to preferential creditors, and the assets 75*l.*, and a resolution was

passed for the acceptance of a composition of 1*s.* in the pound, payable within a month, but no security was proposed to be given. The resolution was confirmed at the second meeting, but its registration being opposed by a dissentient creditor, one of the Registrars, sitting as Chief Judge, being of opinion that it was not passed *bona fide* for the benefit of the creditors, declined to register it, but gave leave to summon a fresh first meeting, and, upon appeal, this decision was upheld upon both points. *In re Terrell*; *ex parte Terrell*; and *In re Terrell*; *ex parte The Sheffield and Rotherham Joint-Stock Banking Company (Lim.)* (App.), 46 Law J. Rep. Bankr. 47; Law Rep. 4 Ch. D. 293.

Where the resolutions passed at a first meeting of creditors are invalid the Court has power to order a fresh first meeting to be called. *Secus*, where the resolutions passed are valid, or where the creditors have come to a determination to pass no resolution. *Ibid.*

5.—Service by post of notice of a motion to make an *interim* injunction absolute is sufficient. *Ex parte Maithner*; *in re Lewis*, 45 Law J. Rep. Bankr. 125; Law Rep. 3 Ch. D. 113.

A creditor obtained a judgment, but before he delivered the writ of execution to the sheriff he had notice that the debtor had filed his petition, and obtained an *interim* injunction restraining further proceedings in the action. A composition was afterwards resolved upon, and the injunction was made absolute:—Held, that the order making the injunction absolute was right, and that the creditor was bound by the composition. *Ibid.*

6.—A debtor being unable to carry out the terms of a composition which had been duly resolved upon, summoned a fresh general meeting of his creditors, at which it was resolved to accept a composition at a much reduced rate. The Registrar, however, refused to register the second resolution on the ground of irregularity, and two days afterwards the debtor was adjudicated a bankrupt:—Held (affirming the decision of the Chief Judge), that the proceedings for reducing the composition were not pending at the date of the bankruptcy, and the costs of such proceedings were not therefore payable out of the bankrupt's estate under rule 292. *In re Elliott*; *ex parte Hopper* (App.), 47 Law J. Rep. Bankr. 41; Law Rep. 8 Ch. D. 53.

7.—32 & 33 Vict. c. 71. s. 12, and rule 289 do not apply to composition proceedings. *Pashler v. Vincent* (App.), Law Rep. 8 Ch. D. 825.

After registration of composition resolutions a debtor may be attached in respect of trust moneys wrongfully retained by him before the presentation of his petition, if the *cestui que trust* has not assented to the composition. Decision of Bacon, V.C., reversed. *Ibid.*

After registration of composition resolutions composition proceedings are no longer pending. *Ibid.*

*Order requiring bankruptcy: resolutions destroyed in toto.* [See C 14 supra.]

(b) *Voting: proxies.*

8.—A proxy paper was signed by a creditor with the name of the person who was to use the proxy in blank:—Held (reversing the Chief Judge, 46 Law J. Rep. Bankr. 55; *nom. Ex parte Bailey*; in *re Lancaster*), that the proxy was sufficiently signed by the person who was to use it filling in his name at the creditors' meeting. *Ex parte Lancaster*; in *re Lancaster* (App.), 46 Law J. Rep. Bankr. 90; Law Rep. 5 Ch. D. 911.

At a first meeting of creditors resolutions for composition were moved; the votes were ascertained, showing the resolutions were not carried. The debtor's solicitor then put in a proof for another debt, and voted as proxy in respect of it. This vote was admitted, and by means of it the requisite majority was created and the resolutions were declared to be carried:—Held (reversing the Chief Judge), that the whole matter was in *feri*, and that the vote was properly admitted. *Ibid*.

An objection to the above-mentioned proof was written upon it, and signed by the chairman, but no notice of the registration of the resolutions was given to the objecting creditor, or his solicitor, and he was therefore unable to appear and oppose:—Held (affirming the Chief Judge), that some notice of the registration ought to have been given to the objecting creditor, and that the objection ought to have been judicially dealt with; but that, in the present case, evidence in support of the objection might have been given before the County Court Judge, and as that had not been done it was too late to raise the question now. *Ibid*.

The practice of the London Bankruptcy Court, and the County Courts, as to sending out notice of registration of resolutions to objecting creditors discussed. *Ibid*.

9.—A creditor who votes at a meeting in favour of composition as an unsecured creditor cannot afterwards be allowed to rely on his security. *Ex parte Balbirnie* (App.), 45 Law J. Rep. Bankr. 156; Law Rep. 3 Ch. D. 488.

(c) *Statement of affairs.*

10.—A creditor who has attended the meetings of creditors summoned under section 126 of the Bankruptcy Act, 1869, and who has voted at the resolutions then passed, is bound by such resolutions, although his debt is omitted by the debtor from the statement of debts. *Campbell v. Im Thurn*, 45 Law J. Rep. C.P. 482; Law Rep. 1 C.P. D. 167.

Where money has, within the proper time, been paid to the trustee duly appointed by the creditors under a composition sufficient to pay all creditors bound by such composition, the debtor is absolved and cannot be sued for the original debt by any creditor so bound, notwithstanding the trustee has refused to pay over the composition. *Ibid*.

11.—A. filed a liquidation petition and inserted B.'s name in his statement of affairs as a creditor in respect of a judgment debt, but

did not include the costs. Composition was resolved on, and B. attended the first meeting and proved for his debt and costs. Subsequently he withdrew his proof and issued execution:—Held, that he was not bound by the composition proceedings. *Ex parte Lang*; in *re Lang* (App.), Law Rep. 5 Ch. D. 971.

*Campbell v. Im Thurn* (see last case) distinguished. *Ibid*.

12.—The plaintiff entered into a bail-bond jointly with another on behalf of the defendant, who thereupon became conditionally liable to indemnify them. The defendant having become insolvent, resolutions were passed by which his creditors accepted a composition. The plaintiff, who was a creditor of the defendant for debts not connected with the bail-bond, proved for and received a composition on those debts, but his contingent liability on the bail-bond was not inserted in the debtor's statement, and no dividend was received on it. The plaintiff afterwards became liable under the bail-bond, and he sued the defendant in order to recover what he was thus compelled to pay:—Held (by the Common Pleas Division), that he could not recover, as the defendant was discharged from all liability by the acceptance by the plaintiff of the composition. But held (by the Court of Appeal, reversing this judgment—Brett, L.J., *dissentiente*), that the plaintiff was not bound by the composition proceedings in respect of the contingent debt, and that he could recover what he had paid under the bail-bond. *Wilson v. Breslau* (App.), 46 Law J. Rep. C.P. 593; Law Rep. 2 C.P. D. 314; affirmed (H.L.), 47 Law J. Rep. C.P. 729; Law Rep. 3 App. Cas. 672 (*nom. Brown v. Breslau*).

13.—At a meeting of the defendants' creditors held pursuant to section 126 of the Bankruptcy Act, 1869, which resulted in a resolution by the creditors to accept a composition in satisfaction of their debts, the defendants produced their statement of affairs, in which the plaintiffs' names and addresses were inserted in the list of persons claiming to be creditors, but in which, instead of the amount of a debt admitted to be due, there was put opposite to their names a large sum as the amount of their claim, with a note thereunder in these words: "Acting under legal advice this claim was resisted, and became the subject of an action, and reference to J. H. L., which reference is now pending":—Held (reversing the judgment of the Common Pleas Division, 46 Law J. Rep. C.P. 349), that this was not a statement shewing the amount of the debt due to the plaintiffs within the meaning of section 126 of the Bankruptcy Act, 1869, so as to make the provisions of the composition binding on the plaintiffs, though they were non-assenting creditors. In order to be binding, the statement must shew a debt of definite amount, admitted to be due. *Melhado v. Watson* (App.), 46 Law J. Rep. C.P. 502; Law Rep. 2 C.P. D. 281.

14.—The plaintiff entered into a composition with his creditors under section 126 of the



Bankruptcy Act, 1869. The defendants, who were *del credere* agents of the plaintiff, claimed to rank as creditors for a sum of 1,100*l.*, which was the aggregate amount of the plaintiff's debts to three merchants for goods sold to the plaintiff through the defendants, the purchase price of which the defendants, as such agents, had become bound to pay. In his statement of affairs, presented at the meeting of creditors, the plaintiff had set down this debt of 1,100*l.* as due to the three merchants. The plaintiff had also set down the defendants as creditors for a separate debt, which was of a smaller amount. The defendants attended a meeting of creditors, tendered proof of their debt of 1,100*l.*, which was admitted, took part in the discussion which ensued at the first meeting of creditors, resisted the resolution for a composition, which was duly carried, and did not accept the composition:—Held, that the plaintiff had not complied with the provisions of the Bankruptcy Act, 1869, s. 126, relating to composition, in respect of the debt of 1,100*l.*, and that, upon the authority of *Ex parte Lang* (No. 11 *supra*), there had been no waiver of the provisions of section 126 by the defendants, and therefore that the defendants were not bound by the resolution of composition as to such debt. *Oppenheim v. Jackson*, 48 Law J. Rep. C.P. 441; affirmed on appeal, 49 Law J. Rep. C.P. 216.

15.—The defendants being indebted to the plaintiff for goods sold to the amount of 143*l.* 12*s.* 9*d.*, gave him bills for the sum, less discount, but adding interest, so that the amount of the bills was 142*l.* 7*s.* 3*d.*. These bills were dishonoured. The defendants compounded with their creditors under section 126 of the Bankruptcy Act, 1869, and, in the statement of debts, entered the amount of the debt due to the plaintiff, a non-assenting creditor, as 142*l.* 7*s.* 3*d.*, namely, the amount of the bills. The plaintiff sued for 143*l.* 12*s.* 9*d.*, the original debt. The defendants pleaded the composition:—Held (by Lopes, J.), that the original cause of action was suspended but not satisfied by the bills, and revived when they were dishonoured; that, therefore, at the date of the composition, the amount of the debt due to the plaintiff was 143*l.* 12*s.* 9*d.*, and as it was not correctly shewn in the statement, the composition was no bar to his action. *Burliner v. Royle*, Law Rep. 5 C.P. D. 354.

(d) Alteration of place of first meeting.

16.—Where the first general meeting, at which an extraordinary resolution for composition had been passed, was held at the place specified in a notice duly issued and gazetted by the Registrar under rules 256 and 257, but not being the place mentioned in the debtor's affidavit filed with the petition,—Held, that the act of the Registrar in issuing the notice did not amount to an order of the Court changing the place of meeting under rule 254, and that

the resolution could not be registered. *In re Mayer*; *ex parte Lewis*, 46 Law J. Rep. Bankr. 33; Law Rep. 4 Ch. D. 519.

(e) Effect of composition.

(1) As regards creditors.

17.—The debtors in their statement of affairs inserted H. and W. as fully secured creditors. A composition was resolved upon and duly paid to all the other creditors, but no payment was made to H. and W., neither did they ask for any. Two years after the first petition the debtors filed a second petition. After that H. and W. realised their security, and there was a considerable deficiency. On Special Case to decide whether H. and W. were entitled as creditors under the first composition to payment of that composition on the amount of the deficiency,—Held (reversing the decision of the County Court Judge), that they were so entitled. *Ex parte Hodgkinson*; *in re Bestwick*, 45 Law J. Rep. Bankr. 78; Law Rep. 1 Ch. D. 702; affirmed on appeal, *In re Bestwick*; *ex parte Bestwick*, 45 Law J. Rep. Bankr. 148; Law Rep. 2 Ch. D. 485.

18.—Where a writ was delivered to the sheriff before the petition was filed, but there was no seizure until after resolutions for composition had been confirmed and registered,—Held, that the creditor was not a creditor holding a security. *Ex parte Balbirnie*; *in re Balbirnie* (App.), 45 Law J. Rep. Bankr. 156; Law Rep. 3 Ch. D. 488 (nom. *Ex parte Balbirnie*; *in re Jameson*).

A creditor who votes at a meeting in favour of composition as an unsecured creditor cannot afterwards be allowed to rely on his security. *Ibid.*

19.—A composition scheme under section 28 of the Act of 1869 provided for the annulment of the bankruptcy and the assignment by the debtor of all his personal property to the trustee to secure the composition. The scheme having been approved and the bankruptcy annulled and the property assigned accordingly, a question arose whether the rights of an execution creditor under an execution that was void in the bankruptcy revived upon the annulment:—Held, that the Court had jurisdiction to determine the question; and that the execution creditor's rights were not revived. *Ex parte Lennard*; *in re Chidley* (App.), 45 Law J. Rep. Bankr. 49; Law Rep. 1 Ch. D. 177.

20.—A sheriff seized goods under a *fi. fa.* delivered to him indorsed to levy a sum for the debt and interest, besides fees, poundage and other incidental expenses. Before sale he had notice of a composition in bankruptcy proceedings, accepted by the execution creditor from the debtor. Thereupon he was requested to withdraw by the execution debtor, but refused, except upon payment of his fees and possession-money. The execution creditor took no further steps in the matter, neither directing him to sell nor countermanding the execution of the

writ. The sheriff sold goods to levy the sum required to meet his fees, possession-money and expenses of levy. The execution debtor brought trover and trespass against him:—Held (per Grove, J., and Field, J.), that the debt being barred by the acceptance of the composition, the execution creditor had lost his right to levy in respect of the debt, and that the right of the sheriff to levy for his fees, possession-money and expenses fell with the right to levy the debt, and therefore that the action was maintainable. (Per Cleasby, B.), that the sheriff was entitled to obey the directions indorsed on the writ to levy in respect of the fees, possession-money and expenses, in the absence of any countermand of the authority by the execution creditor, notwithstanding that the debt was barred by the composition, and therefore the action was not maintainable. *Sneary v. Abby* (App.), 45 Law J. Rep. Exch. 803; Law Rep. 1 Ex. D. 299.

21.—W. was adjudicated bankrupt, and afterwards a scheme for composition under section 28 of the Act of 1869 was adopted, three of the creditors agreeing not to take the composition, and not to enforce their debts for three years. Four years after W. filed a petition for liquidation:—Held, that R., one of the three postponed creditors, was entitled to prove in the liquidation for the whole amount of his debt. *Ex parte Russell; in re Winn*, 45 Law J. Rep. Bankr. 85; Law Rep. 2 Ch. D. 425.

*Annulment of adjudication and composition in lieu thereof: property restored to bankrupt: right of unsatisfied creditor who had seized before adjudication.* [See C 12 supra.]

## (2) As regards debtor.

22.—Where a debtor has filed a petition for liquidation, and resolutions accepting a composition are afterwards passed, as provided by the Act, the debtor remains absolute master of his property until the creditors take action under section 126 of the Bankruptcy Act, 1869, and a purchaser from him is not entitled to any evidence whether or not the instalments under the composition have been duly paid. *In re Kearley & Clayton's Contract*, 47 Law J. Rep. Chanc. 474; Law Rep. 7 Ch. D. 615.

23.—At a meeting of creditors held under a petition for liquidation it was resolved to accept a composition payable by three instalments, the first two of which were to be secured by the acceptances of the debtor, and the third by the acceptances of a surety. The surety required as the condition of giving his acceptances that the debtor should deposit goods to the amount thereof, but this was not known to the creditors. The debtor failed to pay the second instalment, and filed a second petition for liquidation, and the trustee appointed under the second petition applied for an order upon the surety for delivery up of the goods deposited:—Held (affirming the decision of the Chief Judge, and reversing that of one of the

County Court Judges), that the creditors by accepting the composition had left the debtor absolute owner of the assets, and there was nothing to prevent his depositing them as he had done. *In re Robinson; ex parte Burrell* (App.), 45 Law J. Rep. Bankr. 68; Law Rep. 1 Ch. D. 537.

## (f) Proof.

24.—An objection by a dissentient creditor to the proof of a creditor voting in favour of composition resolutions is in time if it is taken at the second meeting of the creditors. *Ex parte Wail; in re Mentrop* (App.), 46 Law J. Rep. Bankr. 84; Law Rep. 5 Ch. D. 345.

## (g) Default in payment of composition.

### (1) Revival of original debt.

25.—Where there is a resolution for a composition, and that the creditors shall accept the security of a surety for the composition, the mere acceptance of the security (e.g. a promissory note by the debtor and the surety) does not suspend the creditors' remedies, and if default is made in payment their original rights revive. It is the payment itself and not the mere resolution to accept a composition which suspends the creditors' remedies. *Edwards v. Hancher*, Law Rep. 1 C.P. D. 111.

### (2) Adjudication of debtor a bankrupt.

26.—By resolutions for composition creditors agreed to accept 5s. in the pound, payable in two instalments of 4s. and 1s., at six months' and two years' date respectively. The debtor, who continued trading, was unable to meet the second instalment. Thereupon a creditor, to whom 13s. was due under the second instalment, applied that the debtor might be adjudicated a bankrupt under section 126:—Held, that it was not a proper case in which to make the adjudication. *Ex parte Charlton* (see next case) distinguished. *In re Shiers; ex parte Shiers*, 47 Law J. Rep. Bankr. 31; Law Rep. 7 Ch. D. 416.

27.—The 6th section of the Bankruptcy Act, 1869, only limits the time between the act of bankruptcy and the presentation of the petition for adjudication where the acts of bankruptcy are such as are mentioned in that section, and there is no limited time within which a compounding debtor may be adjudged bankrupt by the Court under the last clauses of section 126. *In re Charlton; ex parte Charlton* (App.), 46 Law J. Rep. Bankr. 110; Law Rep. 6 Ch. D. 45.

### (3) Power of court over surety.

28.—Where a surety has covenanted with a trustee for payment of a composition, the Court of Bankruptcy has jurisdiction, on the application of a creditor, to compel the trustee to take proceedings against the surety to enforce payment. The trustee, however, must be indemnified.

fied against the payment of all costs. *Ex parte Monkhouse*; *in re Dale*, 45 Law J. Rep. Bankr. 71; Law Rep. 1 Ch. D. 237.

#### (4) *Liability of surety.*

29.—A general meeting of creditors held under section 126 of the Bankruptcy Act, 1869, duly resolved to accept in full satisfaction of the debts due to them a composition, payable in instalments, the last of which was to be guaranteed by the defendant. The debtor was, until payment, to carry on his business under inspection, and an inspectorship deed between the debtor and the creditors was made, which empowered the inspectors, if it should appear to them from the state or position of the debtor's affairs or otherwise that the instalments would not be duly met, to apply to the Court to adjudge the debtor bankrupt, or to require him to assign his property to them. The defendant's guarantee was in terms absolute, but the inspectorship deed contained a proviso that he should be released "in the event of the debtor being adjudicated a bankrupt, or from assignment of his property being made under the provisions of the deed." Before payment of the last instalment a creditor, who was no party to the above-mentioned resolution or deed, and was not bound by them, made the debtor a bankrupt, and the last instalment was not paid. The plaintiff, to whom, on behalf of the creditors, parties to the resolution, the guarantee had been given, then sued upon it:—Held (affirming the decision of the Court below, 46 Law J. Rep. Q.B. 7), that the bankruptcy of the debtor subsequently to the composition did not of itself, as an incident of the ordinary law of bankruptcy, supersede the deed, and release the guarantor; and that on the construction of the deed, an adjudication of bankruptcy other than one effected on the application of the inspectors did not discharge the defendant from liability on the guarantee. *Glegg v. Gilbey* (App.), 46 Law J. Rep. Q.B. 325; Law Rep. 2 Q.B. D. 6.

30.—The words "notice of any act of bankruptcy available for adjudication" in sections 31, 94 and 95 of the Bankruptcy Act, 1869, bear the same meaning, namely, notice of an act of bankruptcy available for the making of the adjudication under which the proof is tendered. *In re Bedell*; *ex parte Gilbey* (App.), 47 Law J. Rep. Bankr. 49; Law Rep. 8 Ch. D. 248.

Where default is made in payment of a composition, and bankruptcy supervenes, the fact that one of the instalments of the composition was guaranteed and paid by a surety in no way affects the right of the creditors to prove under the bankruptcy for the whole amount of their original debts, after giving credit for the instalments they have received. In such a case the surety must be taken to have entered into the contract subject to the known law that the creditors are remitted to their original rights on default in payment of any instalment. He can-

not, therefore, recover back from the creditors the instalment he has paid to them. His proper remedy is to prove under the bankruptcy for the instalment he has paid. *Ibid*.

*Composition: amount of composition paid to debtor's solicitor: solicitor's lien for costs.*  
[See SOLICITOR, 37.]

*Costs of, to be taxed on higher scale.* [See P 5 *infra*.]

#### (M) PRACTICE.

##### (a) *Appeals and rehearings.*

##### (1) *When appeal lies: "person aggrieved."*

1.—Where a liquidation has been resolved upon, the Registrar on the application to register the resolution has no jurisdiction to entertain any question as to the accuracy of the debtor's statement of affairs. *Ex parte Walter*; *in re Webb* (App.), 45 Law J. Rep. Bankr. 105; Law Rep. 2 Ch. D. 326.

Creditors who have not been heard before the Registrar on an application to register have nevertheless a *locus standi* to appeal against an order cancelling the registration. *Ibid*.

2.—The Court refused to entertain an appeal from an order giving leave to disclaim a lease where the trustee had *bona fide* disclaimed before notice of appeal, and nearly three weeks after the order. *Ex parte Ditton*; *in re Woods* (App.), 45 Law J. Rep. Bankr. 141; Law Rep. 3 Ch. D. 459.

3.—Explanation of the principles upon which the Court acts in refusing or granting leave to appeal to the House of Lords. *Ex parte Attwater*; *in re Turner* (App.), Law Rep. 5 Ch. D. 27.

4.—Where a debtor was adjudicated bankrupt and the act of bankruptcy alleged was a bill of sale, which was void against creditors as an assignment of the whole of the debtor's property to secure a past debt, it was held that the bill of sale holder was a "person aggrieved" by the adjudication, and had therefore a right to appeal. *Ex parte Thoday*; *in re Ellis*, 45 Law J. Rep. Bankr. 64; Law Rep. 2 Ch. D. 229; affirmed on appeal, *In re Ellis*; *ex parte Ellis*, 45 Law J. Rep. Bankr. 159; Law Rep. 2 Ch. D. 797.

5.—A third person whose title to property is affected by the order of adjudication is a "person aggrieved" within section 71 of the Act of 1869, and may appeal against the order. *Ex parte Learoyd*; *in re Foulds* (App.), 48 Law J. Rep. Bankr. 17; Law Rep. 10 Ch. D. 3.

Quære, Whether the limit of twenty-one days for appealing fixed by rule 143 of the Bankruptcy Rules, 1870, applies to the case of such third persons. *Ibid*.

6.—A. issued a writ against B., claiming 49*l.* 11*s.* 7*d.* debt and 3*l.* costs. On the same day B. executed a deed assigning all his property to trustees for the benefit of his creditors. A. afterwards signed judgment for 49*l.* debt, and costs which were taxed at 8*l.* 9*s.* 6*d.*, making 58*l.* 1*s.* 1*d.* in all, and then presented a bank-

ruptcy petition against B., alleging as the act of bankruptcy the execution of the creditors' deed. The County Court Judge having adjudicated B. bankrupt, the trustees of the creditors' deed appealed:—Held, that the trustees had a right to appeal as "persons aggrieved" under section 71. Held also, that there was no good petitioner's debt at the date of the act of bankruptcy, and that the adjudication must be annulled. *In re Whelan*; *ex parte Sadler*, 48 Law J. Rep. Bankr. 43.

7.—Where the Comptroller in Bankruptcy has made a report to the Court, pursuant to the 57th section of the Bankruptcy Act, 1869, and the 251st of the Bankruptcy Rules, in reference to the conduct of the trustee, neither the bankrupt nor any of his creditors has any *locus standi* as a "person aggrieved" to appeal from a refusal of the Court to make an order on that report. The comptroller alone can appeal. But if the trustee has been guilty of any misfeasance, the bankrupt or any of his creditors may apply to the Court under section 20; and, if dissatisfied with the order made by the Court, may then appeal against it. *Ex parte Ditton*; *in re Woods* (Law Rep. 11 Ch. D. 56) explained. *Ex parte Sidebotham*; *in re Sidebotham* (App.), 49 Law J. Rep. Bankr. 41; Law Rep. 14 Ch. D. 458.

8.—Where two bankruptcy petitions are presented against the same debtor, and the debtor colludes with the second petitioning creditor, so that an adjudication is made on the second petition behind the back of the first petitioning creditor, the Court will, on the application of the first petitioning creditor, give him the conduct of the proceedings consequent on the adjudication. In such a case the first petitioning creditor is not a "person aggrieved" within section 71 of the Bankruptcy Act, 1869, and has no *locus standi* to appeal against the adjudication. *In re White*; *ex parte Mason* (App.), 49 Law J. Rep. Bankr. 56; Law Rep. 14 Ch. D. 71.

9.—The Court of Appeal in Bankruptcy will correct accidental slips, mistakes or omissions made in drawing up its orders. It has also jurisdiction, under section 71 of the Bankruptcy Act, 1869, to rehear upon fresh evidence, and to alter, vary or rescind its orders; but it will not rehear an order under appeal to the House of Lords, merely to insert in the order, for the purposes of such appeal, evidence that was not before it. *In re Hooper*; *ex parte Banco de Portugal* (App.), 49 Law J. Rep. Bankr. 21; Law Rep. 14 Ch. D. 49.

Semble, a rehearing upon fresh evidence may be granted, notwithstanding a pending appeal to the House of Lords, but only under special circumstances. *Ibid.*

#### (2) Time for appealing.

10.—By Order LVII. rule 2, Sundays, Christmas Days and Good Fridays are only excluded from the computation of limited time for doing any act where such time is less than six days

or expires on one of the excluded days. *In re Gilbert*; *ex parte Viney* (App.), 46 Law J. Rep. Bankr. 80; Law Rep. 4 Ch. D. 794.

11.—The 3rd rule of Order LVII. only extends the time for doing any act or taking any proceeding in those cases in which, by reason of the offices being closed on the day when the time expires, such act or proceeding cannot be done or taken on that day; consequently, where the time for serving notice of appeal expired on a day when the offices were closed, service on the day when they next opened was held to be too late. *In re Lambert*; *ex parte Saffery* (App.), 46 Law J. Rep. Bankr. 89; Law Rep. 5 Ch. D. 365.

12.—An appellant entered an appeal from an order of a County Court Judge within twenty-one days from the date of the order, but did not send a copy of the appeal notice to the Registrar of the County Court till more than two months had elapsed:—Held, that under the Bankruptcy Rules, 1870, rule 144, the appeal was too late. *In re Sillence*; *ex parte Sillence*, 47 Law J. Rep. Bankr. 87; Law Rep. 7 Ch. D. 238.

13.—The County Court Judge has no power to enlarge the time for appealing to the Chief Judge. *In re Albezette*; *ex parte Smith*, 48 Law J. Rep. Bankr. 13; Law Rep. 8 Ch. D. 599.

14.—The twenty-one days within which an appeal from the decision of a County Court Judge is to be entered are to be reckoned from the date when the decision or order is settled, signed and dated. *Ex parte Hinton* (44 Law J. Rep. Bankr. 36; Law Rep. 19 Eq. 266) explained. *In re Sendall*; *ex parte Cochrane*, 48 Law J. Rep. Bankr. 31; Law Rep. 9 Ch. D. 698.

15.—The twenty-one days within which an appeal from the decision of a County Court Judge is to be entered are to be reckoned from the date when the order is pronounced, and not from the date when it is settled and signed. *In re Groves*; *ex parte Whitton*, 49 Law J. Rep. Bankr. 31; Law Rep. 13 Ch. D. 881.

16.—When an application is made for a rehearing after the time for appealing has expired, and, in the opinion of the Court, it is made to get an order from which an appeal may be brought within the twenty-one days, the application is too late in point of time. *Ex parte Simmons*; *in re Lister*, 45 Law J. Rep. Bankr. 113; Law Rep. 2 Ch. D. 749.

Where a trustee has misconducted himself, and the matter is brought before the Court by the Comptroller in Bankruptcy, the Court is justified in disallowing the trustee his remuneration, although it has been previously sanctioned by the committee of inspection. *Ibid.*

17.—Where an order has been made, the twenty-one days allowed for appealing run from the signing of the order, and not from the day when it was pronounced. *In re Lemer*; *ex parte Garrard* (App.), 46 Law J. Rep. Bankr. 70; Law Rep. 5 Ch. D. 794.

18.—A person aggrieved by an order of ad-

judication will be allowed to appeal against it, although more than twenty-one days have elapsed since the date of it, if he did not know, until his rights were attacked, of the act of bankruptcy which affected his rights, and if, when attacked, he comes promptly to the Court for relief. *In re Tucker*; *ex parte Tucker* (App.), 48 Law J. Rep. Bankr. 118; Law Rep. 12 Ch. D. 308.

19.—The limit of twenty-one days fixed by rule 143 as the time within which appeals must be entered, applies not only as against persons who are, but also as against those who are not, parties to the order from which the appeal is brought. *Ex parte Learoyd*; *in re Foulds* (No. 5 supra), considered and followed. *Ex parte Wiggs*; *in re Johnson*, 48 Law J. Rep. Bankr. 119; Law Rep. 12 Ch. D. 905.

### (3) *Leave to appeal.*

[See Nos. 2, 3, 9, supra.]

### (4) *Non-appearance of appellant.*

20.—When no one appears for an appellant the appeal will, upon the application of the respondents, be dismissed with costs; and there is no necessity that the respondents should prove that they have been served with a notice of appeal. *Ex parte Lows*; *in re Lows*, 47 Law J. Rep. Bankr. 24; Law Rep. 7 Ch. D. 160.

### (5) *Security for costs: amount of deposit.*

21.—The 145th rule of the Bankruptcy Rules, 1870, is not expressly or otherwise varied by Order LVIII. rule 15 of the Rules of Court, 1875; but both rules govern the practice in Bankruptcy—the former as to applications to the Chief Judge, and the latter as to applications to the Court of Appeal, to increase the amount of deposit on the appeal. Where, therefore, after an appeal from the Chief Judge had been entered, the respondent applied to the Court of Appeal under Order LVIII. rule 15, that the appellant should give security to the amount of 100*l.*—Held, that the application was not too late; that the Court had power to entertain it; and that, under the circumstances, the deposit must be increased to 70*l.* *In re Baum*; *ex parte Isaacs* (App.), 47 Law J. Rep. Bankr. 111; Law Rep. 9 Ch. D. 271; 10 *ibid.* 1.

### (6) *Parties to be served.*

22.—Notice of an appeal from a refusal to annul an adjudication in bankruptcy must be served on the trustee in the bankruptcy as well as the petitioning creditor; and if notice of the appeal is served on the petitioning creditor in time, but is not served on the trustee in time, the appeal must be dismissed. In such a case the time for appealing will not be extended. *Ex parte Ward*; *in re Ward* (App.), Law Rep. 15 Chanc. 292.

### (b) *Contempt of court.*

23.—The three days' notice, which under rule 179 of the Bankruptcy Rules, 1870, is to be given of the hearing of an application to commit for contempt of Court, cannot be abridged. *In re Bryant*, Law Rep. 3 Ch. D. 810.

*Forcible removal of goods by grantee of bill of sale.* [See F 13 supra.]

### (c) *Debtor summons.*

#### (1) *Debt contracted abroad.*

24.—A debtor's summons may be served in this country in respect of a debt contracted abroad by a foreigner with a foreigner. *Ex parte Pascal*; *in re Myer* (App.), 48 Law J. Rep. Bankr. 81; Law Rep. 1 Ch. D. 509.

There was some question whether the debtor was "residing" in England:—Held, that this was immaterial, the provisions of rule 17 for the issue of the summons by the Court of the district where the debtor resides or carries on business being merely directory, and not intended to determine any question of jurisdiction. *Ibid.*

The dictum in *Ex parte O'Loughlen* (40 Law J. Rep. Bankr. 28) questioned. *Ibid.*

#### (2) *Debt disputed.*

25.—Where a debt is *bona fide* disputed, or the alleged debtor is solvent, a proceeding by way of debtor's summons is improper. *In re Sewell*; *ex parte Sewell* (App.), 49 Law J. Rep. Bankr. 15; Law Rep. 13 Ch. D. 266.

Where a debt is not disputed, the proper way to proceed is by specially indorsed writ, under Order III. rule 6, and Order XIV. rules 1 and 4 of the Rules of Court, 1875. *Ibid.*

Proceedings by way of debtor's summons ought to be taken only under such circumstances as must necessarily lead to bankruptcy proceedings. *Ibid.*

#### (3) *By receiver in Chancery.*

26.—A receiver in Chancery has a right, without any authority or direction from the Court of Chancery, to issue a debtor's summons to compel payment of a debt due to him in his character of receiver. *Ex parte Harris*; *in re Lewis*, 45 Law J. Rep. Bankr. 71; Law Rep. 2 Ch. D. 423.

#### (4) *By or against infant, lunatic, married woman, &c.*

27.—An infant issued a writ in his own name, and then obtained an order to continue the action by a next friend, and recovered judgment. The debt not being paid, the infant issued a debtor's summons in his own name, and the summons not having been complied with, a petition in bankruptcy was presented by the infant by his next friend, and the debtor was on this petition adjudicated bankrupt. An objection was taken that the debtor's summons, having been issued by the infant without a next friend, was irregular, because there was no one who could have

given the debtor a discharge if he had paid the money:—Held, that both in the action and in the petition the debtor had had full opportunity of paying the money, and, if necessary, might have paid it to the Registrar. The adjudication was therefore rightly made. *Ex parte Brocklebank; in re Brocklebank* (App.), 46 Law J. Rep. Bankr. 113; Law Rep. 6 Ch. D. 358.

28.—The next friend of a person of unsound mind not so found cannot sign a liquidation petition on his behalf. *Ex parte Cahen; in re Cahen* (App.), Law Rep. 10 Ch. D. 183.

Whether the Lords Justices might not direct such a petition to be signed on behalf of a lunatic, so found, *quere*. *Ibid*.

29.—A married woman carried on business in her maiden name. Her husband gave the trade creditors notice that the business was not his, and that he would not be liable for the trade debts. A creditor supplied goods to the wife and drew bills on her in her maiden name, which she accepted in her maiden name. The bills were dishonoured and she absconded. On debtor's summons by the creditor against the husband and wife to enforce payment by the husband of the amount due on the bills,—Held, that the summons was vexatious and oppressive and must be dismissed, for that, if the creditor could make out any case against the husband, his proper course was to bring an action. *In re Shepherd; ex parte Shepherd* (App.), 48 Law J. Rep. Bankr. 85; Law Rep. 10 Ch. D. 573.

#### (5) *By several creditors.*

30.—Two creditors whose debts are each less than 50*l.*, but together more than 50*l.*, can join in a debtor's summons, and, in such a case, tender of the amount of his debt to one of the creditors may be refused, and the two may proceed to petition for an adjudication notwithstanding such tender. *Ex parte Andrew; in re Andrew* (App.), 45 Law J. Rep. Bankr. 57; Law Rep. 1 Ch. D. 358.

#### (6) *Evidence in support.*

31.—A petition for adjudication having been filed by a creditor, with the usual affidavit verifying the statements of the petition, the debtor gave notice of his intention to dispute the statements in the petition, but did not tender any evidence at the hearing, and the Registrar made an order of adjudication upon the evidence of the creditor's affidavit:—Held, that the statements in the petition ought to have been proved afresh, and that the adjudication must be annulled. *Ex parte Dodd; in re Ormston* (App.), Law Rep. 3 Ch. D. 452.

32.—A debtor's summons, and a bankruptcy petition founded upon non-compliance with it, are entirely distinct proceedings, and the evidence taken upon the one cannot be used upon the other unless previous notice has been given of the intention to use it. Accordingly, upon the hearing of a bankruptcy petition founded upon the debtor's non-compliance with a debtor's sum-

mons the service of the summons must be strictly proved, even though the debtor has, in an affidavit previously made by him upon an application to dismiss the summons, admitted that the summons has been served upon him. Nor can such an affidavit be used upon the hearing of the petition unless previous notice has been given of the intention to use it. *Ex parte Rogers; in re Rogers* (App.), Law Rep. 15 Ch. D. 207.

#### (7) *Security: dismissal.*

33.—On an application to dismiss a debtor's summons for a sum in respect of which an action had been dismissed for want of prosecution the debtor made an affidavit that the sum was not due, but was not examined. The creditor, who was examined and cross-examined, stated how the debt was contracted, and said that he had made repeated applications for payment, and been put off with excuses for several years:—Held, that the debtor must give security for the alleged debt and costs. *Ex parte Marshall; in re Marshall* (App.), Law Rep. 5 Ch. D. 873.

Regard must be had in such a case to the debtor's solvency. *Ibid*.

The discretion of the Judge in such a case will not be interfered with unless improperly exercised. *Ibid*.

34.—When a petition for adjudication, grounded on non-compliance with a debtor's summons, is presented, and the petition is adjourned to abide the result of an action, on the debtor, under an order of the Court, paying into Court a sum of money sufficient to cover the debt and costs, the creditor, on establishing his title, is entitled to the fund in Court, notwithstanding that the debtor may, in the meantime, be adjudicated bankrupt on another petition, grounded on a subsequent act of bankruptcy. *In re Moojen; ex parte Bouchard* (App.), 48 Law J. Rep. Bankr. 105; Law Rep. 12 Ch. D. 26.

*Non-trader: passing of act: section 71.* [See C1 supra.]

#### (8) *Examination of trustee.*

35.—Where a trustee declines to examine the debtor or other persons under section 96 of the Bankruptcy Act, and a creditor applies for leave so to do, the latter must make out a *prima facie* case, or satisfy the Court that there is reasonable probability that the examination will result in some benefit to the estate. *In re Wilson; ex parte Nicholson*, 49 Law J. Rep. Bankr. 68; Law Rep. 14 Ch. D. 243.

#### (9) *New trial.*

36.—In the Court of Bankruptcy, as in the old Court of Chancery, the verdict of a jury on a question of fact will not be set aside merely on the ground that it was against the weight of the evidence. In such a case a new trial should be ordered. The verdict may, however, be disregarded if there was no evidence to be left to the jury, or if the finding has become immaterial to the decision of the case by reason

of some principle of law or of some new facts. *Ex parte Morgan*; *in re Simpson* (App.), 45 Law J. Rep. Bankr. 86; Law Rep. 2 Ch. D. 72.

Under section 72 of the Bankruptcy Act, 1869, one party cannot demand a jury as a matter of right. The Judge is bound to exercise a judicial discretion whether the case ought to be tried by a jury. But if an irregular order for trial by jury is made, the irregularity is one which may be waived by the parties, and appearance at the trial without objection will amount to a waiver. *Ibid*.

The operation of recitals in a deed by way of estoppel discussed. *Ibid*.

(f) *Petition.*

(1) *Demurrable: amendment.*

37.—Bankruptcy petition against a trader alleging that he had departed from his dwelling-house or otherwise absented himself, but omitting to allege that he did so with intent to defeat and delay his creditors.—Held, demurrable, and that the omission being substantial and not formal could not be cured by amendment. *Ex parte Coates*; *in re Shelton* (App.), Law Rep. 5 Ch. D. 979.

(2) *Use of, for inequitable purpose.*

38.—The Court will refuse to adjudicate a man a bankrupt when a debt has been bought up for an inequitable purpose, as, for instance, to compel the debtor to abandon legal proceedings instituted by him, or when the debt has been purchased in order to take proceedings in bankruptcy. *Ex parte Griffin*; *in re Adams* (App.), 48 Law J. Rep. Bankr. 107; Law Rep. 12 Ch. D. 480.

(3) *Adjournment of, in consideration of bonus.*

39.—A petitioning creditor adjourned his petition in consideration of a bonus paid by the debtor for the delay:—Held, that such an arrangement was an abuse of the practice of the Court, and a sufficient ground for dismissing the petition. *Ex parte King*; *in re Davies* (App.), 45 Law J. Rep. Bankr. 159; Law Rep. 3 Ch. D. 461.

(g) *Service.*

40.—A County Court has no jurisdiction to order substituted service of a debtor's summons, when at the date at which the summons was granted the debtor was not residing within the district of such County Court. *In re Holdsworth*; *ex parte The North Kent Bank*, 47 Law J. Rep. Bankr. 119; Law Rep. 9 Ch. D. 333.

41.—Service of a debtor's summons by the clerk of the country agent of a London solicitor, the latter being the creditor's solicitor and the solicitor on the record, is good. *Ex parte Wildsmith*; *in re Lancaster*, 45 Law J. Rep. Bankr. 147; Law Rep. 3 Ch. D. 498.

42.—Notice of an application to continue an *interim* injunction may be properly served by

post under the Bankruptcy Rules, 1870, rule 14. *In re Lewis*; *ex parte Mauthner*, Law Rep. 3 Ch. D. 113.

*Of notice of appeal.* [See No. 22 supra.]

(h) *Staying proceedings.*

43.—The defendants to an action on a bill of exchange were allowed to defend without giving security, and pleaded want of consideration. The plaintiff then issued a debtor's summons founded on the same bill. Proceedings on the summons were stayed, pending the action, without security. *In re Latham*; *ex parte Latham*, Law Rep. 4 Ch. D. 105.

44.—The last case distinguished, and held that when an order is made staying proceedings on a debtor's summons, the circumstance that in a pending action by a creditor for the same debt, with a specially indorsed writ, the plaintiff has not attempted to obtain security under Order XIV. rules 1 and 6 of the Rules of Court, 1875, is not a conclusive reason for staying the proceedings without security. *Ex parte Horsford*; *in re Smith* (App.), Law Rep. 6 Ch. D. 215. *Suspension of bankruptcy under section 110.* [See F 30 supra.]

(i) *Witness.*

45.—The ordinary common-law right which a witness has to decline answering a question, on the ground that his answer will tend to criminate himself, is not taken away by the 96th section of the Bankruptcy Act, 1869. *In re Firth*; *ex parte Schofield* (App.), 46 Law J. Rep. Bankr. 112; Law Rep. 6 Ch. D. 230.

46.—Where a matter is referred to arbitration, a County Court Judge has jurisdiction to make an order, and issue a subpoena, to compel the attendance of a witness before the arbitrator. *Ex parte Bolland*; *in re Achary*, 45 Law J. Rep. Bankr. 133; Law Rep. 3 Ch. D. 125. *Examination of creditor.* [See D 41 supra.]

(N) INJUNCTION.

(a) *Jurisdiction to grant.*

1.—Goods were sold and delivered on credit to C. & Co., who became bankrupts before the time for payment arrived, and the goods passed into the possession of the trustee in the bankruptcy. Afterwards the vendors commenced an action against S. & Co., for the price of the goods, alleging that C. & Co. had been authorised by S. & Co. to order them either on the joint account of C. & Co. and S. & Co., or on account of S. & Co. as undisclosed principals. S. & Co. then, under Order XVI. rule 18, served notice upon the trustee of the action, and that they claimed to be indemnified by him as trustee against all liability. Upon the application of the trustee one of the Registrars sitting as Chief Judge granted an injunction restraining S. & Co. from taking further proceedings, under Order XVI.; but upon appeal the order for an

injunction was discharged, on the ground that the Court of Bankruptcy could not, as between the plaintiffs and S. & Co., try the question of the latter's liability. *In re Collie; ex parte Smith* (App.), 45 Law J. Rep. Bankr. 116; Law Rep. 6 Ch. D. 51.

2.—The Court of Bankruptcy will not restrain an action in the Chancery Division by an equitable second mortgagee against the trustee of a liquidating mortgagor and his first mortgagee for redemption or foreclosure. *Ex parte Hirst; in re Wherly*, Law Rep. 11 Ch. D. 278.

3.—Where at the time of the filing of a liquidation petition the grantee of a bill of sale given by the debtor is in actual uncontrolled possession of the property comprised in the deed, the Court ought not to interfere by injunction with the exercise of the grantee's legal rights upon the mere suggestion that, if an injunction is granted, it is possible that the trustee in the liquidation, when appointed, may be able to raise a case for impeaching the validity of the deed. To justify such an interference the applicant for the injunction must at least swear to his belief of some facts which, if established, would render the deed invalid as against the trustee in the liquidation. *Ex parte Bayly; in re Hart* (App.), Law Rep. 15 Ch. D. 223.

[And see A 15, 16, supra.]

(b) *Action against compounding debtor.*

4.—Although the Court of Bankruptcy has jurisdiction to restrain an action in the High Court against a compounding debtor it will not do so where there is a substantial question to be tried in the action, such as whether or not the terms of the composition have been complied with. *In re Lopez; ex parte Lopez* (App.), 46 Law J. Rep. Bankr. 95; Law Rep. 5 Ch. D. 65.

5.—Where an objection by a creditor to a composition is one which applies only as between the debtor and that particular creditor, an action at law by the creditor to try the question will not be restrained. *Ex parte Watson; in re Watson* (App.), Law Rep. 2 Ch. D. 68.

(c) *Service of notice of.*

6.—Notice by telegram of an order of the Court may, under certain circumstances, be sufficient to render a person disobeying the order liable to committal for contempt; but as the liberty of the subject is to be affected, those who allege that notice in fact has been received must prove it beyond doubt. *Ex parte Smith; ex parte Langley; in re Bishop* (App.), 49 Law J. Rep. Bankr. 1; Law Rep. 13 Ch. D. 110.

A sheriff's officer receiving notice by telegram of bankruptcy proceedings, and *a fortiori* of an order founded upon them, if he has any doubt as to its authenticity, should communicate either with the Bankruptcy Court or the sheriff's agent in London, to find whether the telegram was correct. *Ibid.*

The auctioneer should, under similar circumstances, communicate with the person under whose instructions he sells. *Ibid.*

The doctrine of notice through the medium of an agent cannot apply to the case of a sheriff's officer who has no actual notice of an order, and consequently a sheriff's officer cannot be committed for contempt when he has not received notice of the order of the Court, although such notice has been received and the order disobeyed by his subordinate. *Ibid.*

A London solicitor who obtains an order of Court restraining a sale should not telegraph direct to the auctioneer or sheriff's officer, but should telegraph to a solicitor at the place as agent for him, and instruct him to go and give notice of the order. The person affected by the order would, if such a course were adopted, have the benefit of the personal responsibility of an officer of the Court. *Ibid.*

(O) *RECEIVER.*

1.—The "nominee of the creditors" referred to in the last clause of rule 262 of the Orders of 1870 is the nominee of the creditors who have proved their debts, and a receiver appointed by the Court under rule 260 will not be displaced in favour of a receiver appointed merely by the persons named as creditors in the debtor's statement of affairs. *In re Chesters; ex parte Rylands* (App.), 46 Law J. Rep. Bankr. 120; Law Rep. 8 Ch. D. 57.

2.—Where one receiver had been nominated by a majority of the creditors and another had been appointed by the Court, the former receiver appealed to obtain possession of the debtor's effects:—Held, that the receiver had no right to appeal, as his only interest in the matter was his percentage. It might have been otherwise had a creditor appealed. *Ex parte Cooper; in re Joseph* (App.), 46 Law J. Rep. Bankr. 123; Law Rep. 6 Ch. D. 255.

3.—Subsequently to the presentation of a bankruptcy petition and the appointment of a receiver, but before the appointment of a trustee, an order was made that the receiver should deliver up to the applicants some bills of exchange which had come into his hands, on the ground that they did not form part of the debtor's estate. Notice of the application had been addressed to the receiver, the debtors and the petitioning creditor. Notice of appeal was given in the name of the receiver alone:—Held, that the notice must be amended by naming the debtors and the petitioning creditor also as appellants. This having been done the order was affirmed on the merits. *Ex parte Chalmers; in re Savers* (App.), Law Rep. 11 Ch. D. 911.

(P) *COSTS.*

(a) *Adjudication: omission to give notice of intention to dispute.*

1.—A debtor intended to dispute a petition for adjudication, but by inadvertence his so-



licitor neglected to give the three days' notice of such intention required by rule 36. His solicitor appeared on the hearing to dispute the debt, but the Registrar refused to hear him, and made the order for adjudication. The Chief Judge annulled the adjudication, but directed the appellant to pay the cost occasioned by the inadvertence. *Ex parte Dale*; *in re Dale*, 45 Law J. Rep. Bankr. 129; Law Rep. 3 Ch. D. 332.

(b) *Appeal, of.*

2.—The Court of Bankruptcy will follow the new rule laid down by the Court of Appeal, and in general a successful appellant will, in bankruptcy, be entitled to his costs of appeal. *Ex parte Masters*; *in re Winsor*, 45 Law J. Rep. Bankr. 18; Law Rep. 1 Ch. D. 113.

3.—The costs of taking notes of the evidence by a shorthand writer, and of the transcript thereof, are in the discretion of the Court, and may be ordered to be paid by a party, though the appointment was not made at his instance. *In re Albezette*; *ex parte Smith*, 48 Law J. Rep. Bankr. 13; Law Rep. 8 Ch. D. 599.

4.—A country solicitor personally attending an appeal to the Chief Judge, instead of employing his London agent, will be allowed his costs of such attendance. *In re Foster*; *ex parte Dickens*, 48 Law J. Rep. Bankr. 32; Law Rep. 8 Ch. D. 598.

(c) *Composition, of.*

5.—Costs under a composition are not governed by rule 8 of the Bankruptcy Rules, 1871, and must, therefore, in all cases be taxed on the ordinary, that is the higher, scale. *Ex parte Castle*; *in re Meikle*, 45 Law J. Rep. Bankr. 13; Law Rep. 1 Ch. D. 111.

6.—The Court of Bankruptcy has jurisdiction to order the taxation of the debtor's solicitor's costs under a composition. *Ex parte Shepherd*; *in re Dixon*, 45 Law J. Rep. Bankr. 103; Law Rep. 2 Ch. D. 430.

Where the debtor's solicitor brought an action against the debtor for costs incurred in composition proceedings, the Court restrained the action upon the terms of the trustee in the composition paying a sum into Court and undertaking to pay the balance of the costs when taxed. *Ibid.*

(d) *Petitioning creditor, of.*

7.—On non-compliance with a debtor's summons a bankruptcy petition was presented. Before it came on for hearing the debtor presented a petition for liquidation. After several adjournments liquidation was resolved upon, and the bankruptcy petition dismissed:—Held, that the petitioning creditor was entitled to the costs of and connected with the debtor's summons, and of the several adjournments. *Ex parte Jeavons*; *in re Burnett*, 45 Law J. Rep. Bankr. 128; Law Rep. 3 Ch. D. 320.

(e) *Petitioning debtor's solicitor's.*

8.—One of two partners filed a petition for liquidation by arrangement which was duly resolved on and a trustee appointed. At the time of filing the petition the stock-in-trade and effects of the firm had been seized under a writ of *fi. fa.*, and were about to be sold. There was no separate estate, and an order was afterwards made with the consent of the solicitor of the other partner, who was an infant, for administering the joint assets, and for payment amongst other things of the costs and expenses of the trustee:—Held (affirming the decision of the Court below), that the costs of the solicitor of the petitioning debtor down to the appointment of the trustee ought to be paid out of the joint assets. *In re Mew*; *ex parte Pearce* (App.), 45 Law J. Rep. Bankr. 144; Law Rep. 2 Ch. D. 330.

(f) *Set-off of other costs.*

9.—The Court of Bankruptcy will not allow costs incurred in any division of the High Court to be set off against costs in bankruptcy, although such costs be incurred in proceedings between substantially the same parties as are litigating in bankruptcy. *In re Adams*; *ex parte Griffin* (App.), 49 Law J. Rep. Bankr. 28; Law Rep. 14 Ch. D. 37.

(g) *Shorthand writer's notes.*

10.—Where a County Court Judge ordered shorthand notes of the proceedings before him to be taken, and a transcript of the notes was used on appeal without objection, the cost of taking the transcript of these notes was allowed in taxation. *Ex parte Sanyer*; *in re Bowden*, 45 Law J. Rep. Bankr. 56; Law Rep. 1 Ch. D. 698.

[And see No. 3 supra.]

(h) *Taxation of: "party interested."*

11.—A bankrupt, after he had paid his creditors in full and received his discharge, and after the bankruptcy had been closed, applied by summons under the Solicitors Act, 1843, for an order upon the solicitors of the mortgagees of part of his property for delivery and taxation of their bill of costs which had been incurred in relation to a sale of the property by the trustee in bankruptcy, and had been delivered to and paid by the trustee in the course of the bankruptcy proceedings:—Held, that the applicant was not a "party interested" in the property out of which the bill had been paid within the meaning of the statute, and application accordingly refused. *In re Leadbitter*, 48 Law J. Rep. Chanc. 39; affirmed on appeal, 48 Law J. Rep. Chanc. 242; Law Rep. 10 Ch. D. 388.

Although the title "assignee" has been changed to "trustee" by the Bankruptcy Act, 1869, there is no change in substance, and the nature of the office and the relative position of assignee and trustee to the bankrupt remain the same. *Ibid.*

"Party interested" under section 39 held to mean a party interested under a trust created by deed, will or under an intestacy. *Ibid.*

As the words "trustee, executor or administrator" could not have been held to include an assignee in bankruptcy under the old Bankruptcy Acts, so they do not include a trustee in bankruptcy under the Act of 1869, who is a trustee for the creditors and not for the bankrupt. *Ibid.*

Property in the hands of the trustee reverting to a bankrupt after his discharge reverts to him as a successor to the trustee. *Ibid.*

A probability of a surplus, after payment of all debts in full, does not entitle a bankrupt to bring an action against the trustee, or to exercise the rights of a *cestui que trust*. *Ibid.*

#### (i) *Trustee, of.*

12.—Where the creditors of a liquidating debtor, having resolved on a liquidation by arrangement, appointed a trustee and a committee of inspection, and resolved that the remuneration of the trustee should be such as the committee of inspection should from time to time determine, and afterwards the creditors authorised the trustee to accept an offer made by the debtor, under section 28 of the Bankruptcy Act, 1869, to pay a composition, he also paying the costs, charges and expenses of the solicitors, receiver and trustee in relation to the settlement of his affairs and of the scheme of arrangement, and this arrangement was approved by the Court:—Held, that after the confirmation of this scheme the Court had jurisdiction to tax the trustee's charges, notwithstanding that his account had been audited and approved by the committee of inspection subsequently to the confirmation of the composition arrangement. *Ex parte Ranby; in re Ranby* (App.), Law Rep. 14 Ch. D. 467.

#### BANNS.

*Scotch marriage.* [See SCOTCH LAW, 14.]

*Undue publication: nullity.* [See MARRIAGE, 3.]

#### BARE TRUSTEE.

[See TRUSTEE, D 20, 21.]

#### BARGES.

"*Working or navigating,*" on river Thames. [See THAMES, 2.]

#### BARON AND FEME.

[See HUSBAND AND WIFE.]

#### BASTARDY.

[Certain orders in bastardy rendered valid. 43 & 44 Vict. c. 32.]

*Single woman: marriage of mother after birth of child.*

1.—To entitle a woman to apply, under section 3 of 35 & 36 Vict. c. 65, for a summons to

be served on the man alleged by her to be the father of her child, she must at the date of such application be either unmarried or separated from her husband. *Stacey v. Lintell*, 48 Law J. Rep. M.C. 108; Law Rep. 4 Q.B. D. 291.

Where, therefore, a woman who, while single, had been delivered of a bastard child, subsequently married, and while living with her husband applied for an affiliation summons against the putative father,—Held that the Justices had no jurisdiction to hear the information. *Ibid.*

2.—Under 35 & 36 Vict. c. 65. ss. 3 and 4, Justices have no jurisdiction to make a bastardy order where the mother has married since the birth of the child and is living with her husband, even though the summons may have been taken out before the marriage. *Tozor v. Lake*, Law Rep. 4 C.P. D. 322.

#### *Application of statute to children born "after passing of Act."*

3.—Where an Act comes into operation on a given day, it becomes law as soon as the day commences. *Tomkinson v. Bullock*, 48 Law J. Rep. M.C. 95; Law Rep. 4 Q.B. D. 290.

By the Bastardy Laws Amendment Act, 1872, any single woman who may be delivered of a bastard child "after the passing of the Act" may apply to a Justice for a summons to be served on the man alleged to be the father of the child, &c. A child was born on the 10th of August, 1872, being the day on which the Act received the royal assent:—Held, that such child was born "after the passing of the Act," which in contemplation of law took place as soon as the clock began to strike twelve on the previous night. *Ibid.*

#### *Evidence in corroboration.*

4.—On the hearing of an affiliation summons, evidence was given of acts of familiarity on the part of the alleged father towards the mother having occurred several months before the child could have been begotten, and that in consequence he had been forbidden the house by her parents. It was also proved that the woman was a person of weak intellect. No corroborative evidence in direct relation to the actual begetting of the child was given:—Held, that the evidence given was in point of law admissible as corroborating the woman's statement. The effect of it on the question of paternity was for the consideration of the Justices, who were entitled to act upon it if they thought it did materially corroborate her. *Cole v. Manning*, 46 Law J. Rep. M.C. 175; Law Rep. 2 Q.B. D. 611.

#### *Order of affiliation: omission of words "maintenance and education."*

5.—By the Bastardy Amendment Act, 1872, s. 4, the Justices who adjudge a man to be the father of a bastard child may make an order upon him for the payment to the mother of a sum of money weekly for the "maintenance

and education" of the child:—Held, that an order purporting to be under section 4 for the payment of a weekly sum to the mother absolutely, and which contained no direction for the application of any part thereof for the "maintenance and education" of the child, was bad, and could not be amended by the Court under 12 & 13 Vict. c. 46. s. 7. *Reg. v. Padbury*, 49 Law J. Rep. M.C. 55; Law Rep. 5 Q.B. D. 126.

*Appeal: absence of appellant: quashing order.*

6.—Upon an appeal coming on for hearing at the sessions against an order adjudicating the appellant to be the putative father of a bastard child, it appeared that the respondent, the mother of the child, and the witnesses on her behalf, were not in attendance, owing to some mistake. The Court refused to adjourn the appeal, and quashed the order:—Held, that as the order had been quashed in the absence of all evidence, there had been no decision by the sessions on the merits so as to be final, and that a fresh order could be applied for to the Justices at petty sessions by the respondent against the appellant. *Reg. v. Glynn* (41 Law J. Rep. M.C. 58) distinguished. *Reg. v. The Justices of Essex*, 49 Law J. Rep. M.C. 67; Law Rep. 5 Q.B. D. 582 (*nom. Reg. v. May*).

#### BATHS AND WASHHOUSES.

[Provision for establishment of public baths and washhouses and open bathing places in boroughs and parishes. 41 & 42 Vict. c. 61.]

#### BEERSHOP.

[See ALBHOUSE.]

#### BENEFICE.

[See CHURCH AND CLERGY.]

#### BENEFIT BUILDING SOCIETY.

[See FRIENDLY SOCIETY.]

#### BEQUEST.

[See LEGACY.]

#### BETTING.

[See GAMING.]

#### BICYCLE.

[See HIGHWAY, 24.]

#### BIGAMY.

Where a marriage was solemnised in a building in a parish situate a few yards from the church, at a time when the church was disused in consequence of undergoing repairs, and divine

service had been several times performed in the building, in the absence of any proof that it was licensed by the bishop it was presumed in favour of the marriage to have been duly licensed. *Reg. v. Cresswell* (C.C.R.), 45 Law J. Rep. M.C. 77; Law Rep. 1 Q.B. D. 446.

#### BILL OF EXCHANGE AND PROMISSORY NOTE.

##### (A) FORM AND OPERATION.

(a) *Alteration of date.*

(b) *Crossed cheque: negotiability: payment on forged indorsement.*

##### (B) STAMP.

##### (C) CONSIDERATION.

##### (D) INDORSEMENT: PROTECTION TO BANKERS.

##### (E) ACCEPTANCE.

(a) *What is sufficient.*

(b) *Stolen bill: liability of acceptor.*

(c) *Power of partner to bind firm.*

(d) *Claim by drawer against acceptor: re-exchange.*

##### (F) NOTICE OF DISHONOUR.

(a) *When necessary.*

(b) *Sufficiency of.*

##### (G) RE-EXCHANGE: RIGHT TO.

##### (H) SPECIFIC APPROPRIATION OF REMITTANCES TO COVER BILLS.

##### (I) CANCELLATION.

##### (K) ACTIONS AND PROCEEDINGS.

##### (L) PROOF AGAINST ACCEPTOR'S ESTATE IN BANKRUPTCY.

[Signature of the drawer of a bill of exchange rendered a sufficient acceptance. 41 Vict. c. 15.]

##### (A) FORM AND OPERATION.

(a) *Alteration of date.*

1.—A cheque, dated the 2nd of March, was altered without authority by the holder, who inserted the figure 6, so as to change the date to the 26th of March:—Held, that this was a material alteration which invalidated the cheque. *Vance v. Lowther*, 45 Law J. Rep. Exch. 200; Law Rep. 1 Ex. D. 176.

(b) *Crossed cheques: negotiability: payment on forged indorsement.*

2.—The payee of a cheque drawn on the Union Bank of London payable to him or his order, indorsed his name on it and crossed it with two lines, and the name of his bankers, the London and County Bank. The cheque was stolen, and ultimately came into the hands of a *bona fide* holder for value, who paid it into his bankers, the London and Westminster Bank. They presented it to the Union Bank, who, notwithstanding the crossing, paid the amount. In an action by the payee to recover the amount from the Union Bank,—Held (affirming the decision of the Court below), that he was not entitled to recover for the breach of the duty imposed upon the defendants by 21 & 22 Vict.

c. 79. s. 2, that provision not being directly for the protection of payees; nor for conversion of the cheque, since the statutes had not affected the negotiability of crossed cheques, and that both the property and possession had therefore passed to the *bona fide* holder for value. *Smith v. The Union Bank of London* (App.), 45 Law J. Rep. Q.B. 149; Law Rep. 1 Q.B. D. 31.

3.—A cheque payable to order and specially crossed was paid by the drawee upon a forged indorsement, and through another banker than that named in the crossing to a holder without title:—Held, that the drawer could recover the amount from the holder. *Bobbett v. Pinkett*, 45 Law J. Rep. Exch. 555; Law Rep. 1 Ex. D. 368.

4.—By section 12 of the Crossed Cheques Act, 1876 (39 & 40 Vict. c. 81), it is enacted, "A person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable,' shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. But a banker, who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment":—Held, that the cheque mentioned in the latter part of that section is not limited to the cheque described in the former part as one bearing upon it the words "not negotiable," and that, therefore, a banker, who in good faith and without negligence in due course of collection receives payment for a customer of a cheque crossed generally, but having a forged indorsement, is protected by such 12th section from liability to the true owner of the cheque for having placed the amount of such payment to the credit of his customer, notwithstanding such cheque has not the words "not negotiable" upon it. *Matthiessen and Another v. The London and County Banking Company*, 41 Law J. Rep. C.P. 529; Law Rep. 5 C.P. 7.

5.—To a statement of claim alleging that a cheque payable to the order of the plaintiffs was stolen from them, and the indorsement of their name forged upon it, and that it subsequently came into the possession of the defendant, who converted it to his own use, the defendant pleaded that the plaintiffs knowingly employed as clerk a man who had been convicted of embezzlement, and was a notorious thief; that the clerk was allowed access to the rooms where the plaintiffs' letters and cheques were kept, and was empowered and permitted to receive and open the said letters and cheques, and to witness the mode in which the plaintiffs indorsed their cheques; that the clerk was frequently paid his wages by the duly indorsed cheques of the plaintiffs, and sometimes employed by the plaintiffs to indorse cheques payable to their order; that the cheque in question was taken or stolen by the clerk, who thereupon

forged the indorsement, and then procured one E., who had no notice of the forgery and theft, to cash the cheque; that the defendant received the same, with other cheques, from E., without notice of the forgery and theft, and in the ordinary course of business gave full value therefor; that, by their carelessness and wilful neglect in dealing with their letters and cheques, the plaintiffs did not discover the forgery and theft for a considerable time; and after such discovery did not take any steps to prevent the negotiation of the cheque, and by such carelessness and neglect caused the defendant to become a *bona fide* holder for value of the cheque without notice of the forgery and theft:—Held, on demurrer, that the plea was bad. Judgment of Grove, J., reversed. *The Patent Safety Gun Cotton Company v. Wilson* (App.), 49 Law J. Rep. C.P. 713.

6.—The defendant accepted a bill of exchange in blank. Drawing and drawer's indorsement were afterwards forged by the person to whom the defendant gave the bill. The plaintiffs took the bill for value without notice:—Held, that the forgery of the drawing and indorsement did not prevent the defendant from being liable to the plaintiffs. *London and South Western Bank (Lim.) v. Wentworth*, 49 Law J. Rep. Exch. 657; Law Rep. 5 Ex. D. 96.

#### (B) STAMP.

7.—M. being in Spain, by his agent in London purchased bills of L., a London merchant. The purchase was made on the 11th of February, 1873, and the bills were to be paid for on the 14th of February, which was the next foreign post day after the sale. On the 13th of February, L.'s bankers having pressed him to reduce his balance, L. handed to them a document directing them to pay to the bankers, or bearer, the price of the bills. Such document was dated the day after that on which it was delivered, and was stamped with a penny stamp. On the 14th of February M.'s agent drew a cheque on M.'s bankers for the price of the bills, payable to L. or bearer, and handed it to L.'s bankers, and received in exchange the document of the 14th of February. L. subsequently failed, and the bills were dishonoured. In an action by L.'s bankers against M. on the cheque,—Held, that the document of the 13th of February was a valid document, and was not void under the Stamp Act (33 & 34 Vict. c. 97), as being a bill of exchange payable at a future date, and wanting a sufficient stamp. Also, that the surrender of such document was a good consideration for the cheque, and that the bankers were entitled to recover. And (per Lord Hatherley) that the banker's lien on the cheque would in itself have entitled them to maintain the action. *Misa v. Currie* (H.L.), 45 Law J. Rep. Exch. 852; Law Rep. 1 App. Cas. 554.

8.—A cheque payable to bearer on demand, and having the stamp proper for such an instrument affixed, is admissible in evidence in an

action by the holder upon it after it has become due, although it was post-dated to his knowledge at the time he received it. *Gatty v. Fry*, 46 Law J. Rep. Exch. 605; Law Rep. 2 Ex. D. 268.

*Promissory note by husband and wife married since Married Woman's Property Act, 1870: liability of wife's separate estate.* [See HUSBAND AND WIFE, 52.]

#### (C) CONSIDERATION.

[See No. 7 supra.]

#### (D) INDORSEMENT: PROTECTION TO BANKERS.

9.—An indorsement forged by "procuration" or "as agent," or such indorsement unauthorised by the payer of a cheque payable to order, is within section 19 of 16 & 17 Vict. c. 59, affording protection to bankers. *Charles v. Blackwell* (App.), 46 Law J. Rep. C.P. 368; Law Rep. 2 C.P. D. 151.

The plaintiffs, trading under the name of Smith & Co., employed as their agent K., who was authorised to receive payment on their behalf, and through K. they supplied goods to the defendants. The defendants paid for the goods by two cheques drawn on the C. Bank, payable to Smith & Co., or order, and delivered the cheques to K. The cheques were presented to the C. Bank, indorsed "Smith & Co., per K., agent," and were cashed at the C. Bank. The cheques never reached the hands of the plaintiffs, and part of the proceeds were misappropriated by K. :—Held, that inasmuch as K. was the agent of the plaintiffs authorised to receive money, there was an absolute and good payment between the defendants and the plaintiffs, who therefore could not sue for the price of the goods. Held also, that the bankers were justified in paying the cheques, and were protected in doing so by 16 and 17 Vict. c. 59, and the cheques having been properly paid and returned to the drawer, no action on the cheque or in trover for the cheque would lie. *Ibid.*

Decision of the Common Pleas Division (45 Law J. Rep. C.P. 542; Law Rep. 1 C.P. D. 548) affirmed. *Ibid.*

[See Nos. 2-6 supra.]

#### (E) ACCEPTANCE.

##### (a) What is sufficient.

10.—A bill of exchange is not sufficiently accepted to satisfy the 19 & 20 Vict. c. 97. s. 6, which requires the acceptance to "be in writing on such bill and signed by the acceptor," if the person on whom it is drawn merely writes his name across the face of it, and there are no words amounting to a statement that the bill is accepted. [See, however, 41 Vict. c. 13. s. 1.] *Hindhaugh v. Blakey*, 47 Law J. Rep. C.P. 345; Law Rep. 3 C.P. D. 136, *nom. Hindhaugh v. Blakey*.

11.—By the Mercantile Law Amendment (Scotland) Act, 1856, s. 11, corresponding with section 6 of the English Act, it is enacted that "no acceptance of any bill of exchange . . . shall be sufficient to bind or charge any person unless the same be in writing on such bill . . . and signed by the acceptor or some person duly authorised by him." In *Hindhaugh v. Blakey* (47 Law J. Rep. C.P. 345; Law Rep. 3 C.P. D. 136) it was held that an acceptance by the drawee was null in respect that there was no writing except the signature. Subsequently to that decision the Bills of Exchange Act (41 Vict. c. 13) was passed. This Act, after reciting the above section of the Mercantile Law Amendment Act, and that "it is expedient that the meaning of the said enactment should be further declared," provided "that an acceptance of a bill of exchange is not, and shall not be deemed to be insufficient under the provisions of the said statutes by reason only that such acceptance consists merely of the signature of the drawee written on such bill." A. procured an advance of 1,000*l.* from B. on a bill of exchange at twelve months for C. and D., the two sons of A. B. having signed the bill as drawer, and addressed it to C. and D., handed it to A., who forwarded it to C. and D. C. and D. signed it as acceptors, and sent it back to A., who wrote his own name across the back, and gave it to B. B. then forwarded the amount to C. and D. C. and D. afterwards became bankrupt, and were unable to pay the amount of the bill. A. and B. being both dead, there was no exact evidence why A. put his name on the bill. C. and D. had previous to the date of the bill obtained money from B. on their own security. The trustees of B. claimed from A.'s representative the amount of the bill on the ground that A. indorsed the bill as "joint obligant" with C. and D., "and as co-acceptor with them for payment of its contents":—Held, that A. was not an acceptor within 19 & 20 Vict. c. 60. s. 11, or otherwise; and that his liability, as insisted upon by B.'s trustees, could only be established by proof of a special contract to be answerable to the drawer for the acceptors, which contract, being different from that which the law merchant would infer from his mere signature as it appeared on the back of the bill, could only be proved by a writing properly signed under the 6th section of 19 & 20 Vict. c. 60, in Scotland, and the 29 Car. 2, c. 3. s. 4, in England, which writing was here absent:—Held also, that the Act of 1878 was in effect a declaration by the Legislature that the decision in the case of *Hindhaugh v. Blakey* was erroneous; and that that declaration, although in terms confined to an acceptance by the drawee of a bill, necessarily displaced the whole construction of the English statute on which that decision was founded. The doctrine that in Scotland a signature as an acceptor by a person not a drawee "imports a joint undertaking as acceptor of the bill or maker of the note" not approved of.

*Matthews v. Blossome*, 1864 (33 Law J. Rep. Q.B. 209) doubted; *Maddonald v. Union Bank of Scotland* (Court Sess. Cas. 3rd ser. vol. ii. p. 963) approved. *Steele v. McKinlay* (H.L.) (Sc.) Law Rep. 5 App. Cas. 754.

(b) *Stolen bill: liability of acceptor.*

12.—A bill of exchange, with a blank for the drawer's name, and the defendant's name written across it as acceptor was placed by the defendant in a drawer in his chambers, from which it was stolen. A drawer's name was forged, and subsequently the bill came into the hands of the plaintiff as *bona fide* holder for value. In an action on the bill,—Held, that the defendant was not liable. By Bramwell, L.J., because the negligence of the defendant (if any) was not the proximate or effective cause of the loss, and therefore did not estop the defendant from denying the validity of the bill. By Brett, L.J., because the bill was drawn without the authority of the defendant, and the defendant had been guilty of no negligence. *Young v. Grote* (4 Bing. 253), *Ingham v. Primrose* (28 Law J. Rep. C.P. 294) and *Coles v. The Bank of England* (10 Ad. & E. 437) questioned. *Bazendale v. Bennett* (App.), 47 Law J. Rep. Q.B. 624; Law Rep. 3 Q.B. D. 525.

(c) *Power of partner to bind firm.*

13.—A partner has no implied authority to bind his firm by issuing acceptances in blank. *Hogarth v. Latham & Company* (App.), 47 Law J. Rep. Q.B. 339; Law Rep. 3 Q.B. D. 643.

F., of the firm of L. & Co., gave an acceptance purporting to be made by the firm, with a blank for the name of the drawer. C. gave it to H. for value. H. filled up the bill, putting the name of his firm, H. & C., as drawers, and indorsed it to himself, knowing when he did so that F. had no authority to accept the bill:—Held, that L. & Co. were not liable on the bill at the suit of H. *Ibid.*

Semble, that a *bona fide* holder for value to whom the bill had come in a perfect state would have been entitled to sue. *Ibid.*

*Partnership carried on in name of an individual member: dormant member not liable on bill signed by such individual member.* [See PARTNERSHIP, 16.]

(d) *Claim by drawer against acceptor: re-exchange.*

14.—When a bill of exchange is dishonoured at maturity, the drawer of the bill is entitled to recover, as against the acceptor, not only the amount of the bill, and interest and notarial and telegraphic charges, but also the re-exchange. *Woolsey v. Crawford* (2 Campb. 445) and *Napier v. Schneider* (12 East. 420) treated as overruled. *In re The General South American Company (Lim.)*, 47 Law J. Rep. Chanc. 67; Law Rep. 7 Ch. D. 637.

(F) NOTICE OF DISHONOUR.

(a) *When necessary.*

15.—Every indorser of a bill of exchange for accommodation is entitled to notice of dishonour before he can be sued in an action on the bill, except where he has no remedy over against any other party to the transaction. *Turner v. Samson* (App), 46 Law J. Rep. Q.B. 167; Law Rep. 1 Q.B. D. 23.

16.—In an action by an indorsee against an indorser of a bill of exchange, the defence being that the defendant had not had due notice of the dishonour of the bill, the plaintiff replied that neither at the time when the bill was drawn, nor afterwards, had the acceptor, or the drawer, or any indorser prior to the defendant, any effects of the defendant in his hands; and that the said bill was drawn by the drawer and accepted by the acceptor, and indorsed by the defendant and by the prior indorsers, for the purpose of raising money for the defendant, the drawer, the acceptor and the said persons who indorsed before the defendant, jointly; and that the defendant was in no way damaged, even if there was no notice of dishonour:—Held, on demurrer, a bad reply for not shewing clearly that the defendant was not damaged by the want of notice, it being consistent with what was stated in the reply that if the defendant had paid the bill, he would have been entitled to contribution from the other parties, for whose benefit, jointly with himself, it had been so drawn, accepted and indorsed. *Foster v. Parker*, 46 Law J. Rep. C.P. 77; Law Rep. 2 C.P. D. 18.

(b) *Sufficiency of.*

17.—A bill of exchange was dishonoured after the drawer had been adjudicated a bankrupt, and a trustee had been appointed. The holder, being aware of the bankruptcy, but not knowing of the appointment of the trustee, gave notice of dishonour to the bankrupt, and not to the trustee:—Held, that the notice was sufficient, and that the holder was entitled to prove in the bankruptcy in respect of the bill. *Ex parte Baker; in re Bellman* (App.), 46 Law J. Rep. Bankr. 60; Law Rep. 4 Ch. D. 795.

18.—A bill of exchange drawn in England and payable in Spain (by the law of which country notice of dishonour by non-acceptance is unnecessary) was indorsed in England by R. to H., who indorsed it to M., resident in Spain. Acceptance was refused, and after a delay of twelve days, M. wrote to inform H. of the dishonour. H., on receipt from M. of the notice of dishonour, gave immediate notice to R.:—Held, that H. was entitled to recover. *Horne v. Ronquette* (App.), Law Rep. 3 Q.B. D. 514.

*Revival of debt where payment of cheque stopped.*  
[See ATTACHMENT, 4.]

## (G) RE-EXCHANGE: RIGHT TO.

19.—Re-exchange is the measure of damage sustained by the holder of a dishonoured bill of exchange drawn in one country on a person in another country, and is payable in addition to the amount of the bill. *Willans v. Ayers*, 47 Law J. Rep. P.C. 1; Law Rep. 3 App. Cas. 133.

L. & Co. carried on business both in London and Australia. The firm in London drew bills on the firm in Australia, and delivered them to creditors of the firm in London. L. & Co. became insolvent under a deed providing for liquidation in Australia:—Held, that such creditors were not, under the circumstances, entitled to prove in respect of "re-exchange." *Ibid*.

## (H) SPECIFIC APPROPRIATION OF REMITTANCES TO COVER BILLS.

20.—The rule in *Ex parte Waring* only applies to cases of double bankruptcy or insolvency, in which the estates of both parties are subject to an obligatory administration, and are under the control of the Court. It has no application, therefore, to a case where one of the parties residing abroad had entered into a composition with his creditors which did not operate to bring him or his estate within the jurisdiction of the Court. *Ex parte General South American Company*; *in re Iglesias & Company*, 45 Law J. Rep. Bankr. 54; Law Rep. 10 Chanc. 735.

21.—A firm in Para, in South America, acted as agents for a firm in Liverpool for the purchase and shipment of goods. The course of dealing was as follows: The Para firm raised money by the sale of bills of exchange, which they drew on the Liverpool firm, advising them in batches. They then shipped the goods and advised the Liverpool firm of the shipment, forwarding the bills of lading, which made the goods deliverable to the order of the Liverpool firm, direct to them, and sent them an account debiting the invoice price of the goods and crediting the amount of some of the bills of exchange and parts of others, so that, interest being charged on both sides to the date of the account, the account exactly balanced. The Liverpool firm became insolvent, and at the time when they stopped payment large quantities of goods were on their way to them from the Para firm. Of the bills credited against the goods some were accepted but not paid, and others had not been accepted. The Para firm having also become insolvent, the trustees in whom their property was vested under the law of Para claimed the goods from the trustee in the Liverpool firm's liquidation, who had taken possession of the goods upon their arrival:—Held (reversing the decisions of the County Court Judge of Liverpool and the Chief Judge), that the relation of the consignors and consignees being that of agent and principal, the property in the goods passed to the Liverpool firm as soon as the goods were shipped and the bills of lading posted to the Liverpool firm, and that it so passed abso-

lutely and not conditionally on the payment or acceptance of the bills of exchange, and that there was no reservation of any lien or charge upon the goods in favour of the consignors, and that therefore the trustee in the liquidation was entitled to the goods. *Ex parte Banner*; *in re Tappenbeck* (App.), 45 Law J. Rep. Bankr. 73; Law Rep. 2 Ch. D. 278.

22.—L., by agreement, drew bills on the plaintiff, and purchased and shipped goods with the proceeds, the bill of lading being hypothecated to the plaintiff. L. having become bankrupt, the bill of lading of goods so shipped was not forwarded to the plaintiff:—Held, that as the plaintiff had a right to specific performance of the agreement, he could sue the defendants, third parties, for detention of the bill of lading. *Lutscher v. Le Comptoir d'Escompte de Paris*, Law Rep. 1 Q.B. D. 709.

23.—Where a purchaser of goods accepts bills for the invoice price drawn by the vendor and shipper, and the bills of lading are thereupon handed to him, there is not, in the absence of special agreement to that effect, any specific appropriation of the goods to meet the bills available in the bankruptcy of the purchaser. *Frith v. Forbes* (4 De Gex, F. & J. 407) explained. *Ex parte Arbuthnot*; *in re Entwistle* (App.), Law Rep. 3 Ch. D. 477.

24.—Y., a merchant at Costa Rica, consigned goods to M., L. & Co., of London, and at the same time drew bills on M., L. & Co., intending that the goods should be a provision for the bills. Two of the bills came into the hands of the plaintiffs, who presented them to M., L. & Co. for acceptance, but they declined to accept them. Y., on being informed of this, wrote to S., in London, requesting him to take charge of the consignment, and to realise it, honouring all his drafts which on account of it he had drawn upon M., L. & Co., and to telegraph if the proceeds were insufficient to cover the drafts. Upon these instructions S. wrote to the plaintiffs, referring to the bills, and informing them that he expected delivery of the goods sent by the drawer against them, and would then write again. Shortly afterwards S. obtained the delivery warrants from M., L. & Co., and wrote to the plaintiffs, saying that he would dispose of the same as instructed by the sender:—Held (reversing the decision of Hall, V.C.), that the plaintiffs and other holders of the bills had a specific charge upon the proceeds of sale. *Ranken v. Alfaro* (App.), 46 Law J. Rep. Chanc. 832; Law Rep. 5 Ch. D. 786.

25.—C. obtained an advance of 2,000*l.* from his bankers, and gave them ten promissory notes for the amount, a surety undertaking in the event of the notes not being paid at the due dates to secure the amount due. When the first two notes fell due there was a balance in C.'s favour to meet them. When the other notes fell due C.'s account was overdrawn, but he made subsequent payments which, if he had not been afterwards allowed to overdraw, would have met all the notes. The bankers debited

the first five notes to C.'s general account, but kept the last five notes out of the general account. In an action by the bankers to enforce the security against the surety,—Held, that the subsequent payments by C. must be considered to have been appropriated to the discharge of the amount due on the notes, and that the surety was discharged. *Kinnaird v. Webster*, 48 Law J. Rep. Chanc. 348; Law Rep. 10 Ch. D. 139.

26.—Bankers at Lima established a credit agency with the G. Company in London, and agreed to send remittances within ninety days to cover the drafts. The G. Company obtained an advance from the P. Bank to be repaid out of expected remittances from the Lima Bank to cover bills then current, and the P. Bank employed, as agents to receive and select from the expected securities, the managing director of the G. Company and their own managing director, who had been, two years previously, the manager of the G. Company, and was a party to the arrangement. Upon the arrival of the securities they were selected and handed over to the P. Bank, and the next day the G. Company stopped payment:—Held, that the Lima Bank could not recover the securities from the P. Bank. *Banco de Lima v. The Anglo-Peruvian Bank*, Law Rep. 8 Ch. D. 160.

#### (I) CANCELLATION.

27.—The defendants advanced to the plaintiff 15,000*l.* on the security of goods consigned to S. at Monte Video, and of six bills accepted by S. Two of the bills having been dishonoured, the plaintiff gave the defendants a cheque for 2,500*l.* to prevent their selling the goods. Afterwards the remaining bills were dishonoured, and the defendants, without the plaintiff's knowledge, took proceedings against S. at Monte Video, which resulted in the bills being handed over to S. cancelled and the goods being sold. The sale of the goods with the 2,500*l.* did not realise the amount of all the bills. In an action to recover the 2,500*l.*,—Held (affirming the judgment of the Common Pleas Division, Law Rep. 3 C.P.D. 60), that the plaintiff was the principal debtor, and that as the bills had been dishonoured, and there was a deficiency after realising the goods, it was immaterial that S. had been discharged from liability by the cancellation of the bills, and that the defendants were not bound to refund the 2,500*l.* *Yglesias v. The Mercantile Bank of the River Plate* (App.), Law Rep. 3 C.P.D. 330.

#### (K) ACTIONS AND PROCEEDINGS.

28.—In an action brought under the Summary Procedure on Bills of Exchange Act the plaintiff in order to enter final judgment must, by the effect of Order II. rule 6 of the Judicature Act, 1875, and section 1 of the Bills of Exchange Act, file an affidavit of personal service, or an order for leave to proceed under the Common Law Procedure Act, 1852, and service on a

partnership under Order IX. rule 6 is insufficient, nor can another form of service be substituted under Order IX. rule 2. *Pollock v. Campbell*, 45 Law J. Rep. Exch. 199; Law Rep. 1 Ex. D. 50.

29.—The plaintiffs having sued on a bill of exchange of which the defendant was acceptor, the defendant stated by way of defence that the bill was accepted by him on behalf of the N. Company in part payment of a ship which was afterwards transferred to the N. Company; that the defendant was induced to accept the said bill by the fraud of the plaintiffs in misrepresenting the seaworthiness of the ship, and that the defendant and the N. Company had a counter-claim over against the plaintiffs for the said fraud and misrepresentation. On an application by the defendant under Order XVI. rule 13, to add the N. Company as defendants, the Court refused the application, holding that on the above facts the N. Company ought not, on the application of the defendant, to be joined as co-defendants under Order XVI. rule 13. *Norris v. Beazley*, 46 Law J. Rep. C.P. 169; Law Rep. 2 C.P.D. 80.

30.—Costs may be allowed on the higher scale in an action on a bill of exchange properly brought in the Chancery Division. *Poolley v. Driver*, Law Rep. 5 Ch. D. 458.

31.—A writ issued under the Bills of Exchange Act is subject to the rules of the Judicature Act, though subject first to the conditions of the Bills of Exchange Act. Therefore a writ under the Bills of Exchange Act may be issued from a district registry, and the defendant, although neither residing nor carrying on business within such district, must apply at such district registry for leave to appear, unless under Order XXXV. rule 1, Judicature Act, 1875, he applies to the Court or Judge, and obtains leave to apply for an order to appear in London. *Oger v. Bradnum*, 45 Law J. Rep. C.P. 273; Law Rep. 1 C.P.D. 334.

#### (L) PROOF AGAINST ACCEPTOR'S ESTATE IN BANKRUPTCY.

32.—F. & H. drew bills on F., W. & Co. which the latter accepted, and which the drawers indorsed and discounted with S. & Co., bill brokers. S. & Co. rediscounted the bills with the London and Westminster Bank, with which bank they were in the habit of rediscounting bills. According to a general well-recognised custom, S. & Co. did not on each occasion of discounting bills with the bank indorse the bills, but had given the bank a general guarantee, under which, in consideration of the bank discounting for them bills from time to time, they guaranteed due payment of the bills when they respectively became due. Before the bills became due the drawers went into liquidation, and in consequence S. & Co., the next day, suspended payment. Under a composition in the liquidation of S. & Co. the bank received dividends in respect of the bills held by them. The bank afterwards, under a deed of arrangement, received further sums



towards discharge of the balance remaining unpaid on the bills from the estate of the drawers, and also from F., W. & Co., the acceptors. On F., W. & Co. going into liquidation the trustee of S. & Co. claimed to prove in the liquidation against the estate of F., W. & Co. for the amount of the dividend paid out of S. & Co.'s estate to the bank, and for interest at five per cent. on that amount of dividend:—Held (affirming Bacon, C.J.), that the proof in respect of the amount of dividend must be admitted, and (reversing Bacon, C.J.) that the proof must also be admitted in respect of the interest. *Ex parte Bishop; in re Fox, Walker & Company* (App.), 50 Law J. Rep. Chanc. 18; Law Rep. 15 Ch. D. 400.

The practice of giving such a guarantee is well known, and there is no principle or authority on which the liability on such guarantee differs from the liability on an indorsement. *Ibid.*

*By married woman having separate estate: re-settlement of estate: form of order.* [See HUSBAND AND WIFE, 39.]

*Donatio mortis causa: cheque.* [See DONATIO MORTIS CAUSA, 1.]

#### BILL OF LADING.

[See SHIPPING LAW (B).]

#### BILL OF REVIEW.

[See PRACTICE, U 9.]

#### BILL OF SALE.

##### (A) REGISTRATION.

###### (a) *When necessary.*

- (1) "*Personal chattels*": growing crops.
- (2) Receipt, or assignment requiring registration.
- (3) Assignment of fixtures.
- (4) Inventory of goods sold.
- (5) Agreement for sale of furniture on hire system.
- (6) Transfer of bill of sale.

###### (b) *Re-registration.*

###### (c) *Priority.*

###### (d) *Certificate of registration.*

##### (B) FORMALITIES ATTENDING REGISTRATION.

###### (a) *Description of assignor and attesting witness.*

- (b) *Affidavit as to date of execution.*
- (c) *Affidavit sworn before solicitor to parties.*
- (d) *Non-attestation of affidavit.*

##### (C) SETTING FORTH CONSIDERATION.

##### (D) CONSTRUCTION AND EFFECT OF.

###### (a) *Implied licence to grantor to carry on business.*

###### (b) *Bankruptcy: title of trustee.*

##### (E) POSSESSION OR APPARENT POSSESSION.

##### (F) AFTER-ACQUIRED PROPERTY.

##### (G) MORTGAGE: CONSOLIDATION.

##### (H) DEFAULT IN PAYMENT: GIVING TIME.

##### (I) ILLEGAL CONSIDERATION: COMPOUNDING FELONY.

[Bills of Sale Act, 1878. Act to come into operation January 1st, 1879 (sec. 2). Trade machinery to be deemed personal chattels for purposes of the Act (sec. 5). Certain instruments giving powers of distress to be deemed bills of sale (sec. 6). Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument (sec. 7). Bills of sale not registered within seven days of the making thereof to be void as against certain persons (sec. 8). Duplicate bills of sale to be void in certain cases (sec. 9). Bills of sale to be registered according to Act. When two or more bills of sale are given in respect of the same chattels priority to be in the order of the date of registration. Transfers or assignments of registered bills need not be registered (sec. 10). Registration to be renewed every five years (sec. 11). Chattels comprised in a registered bill of sale not to be deemed in "possession, order or disposition" of the grantor (sec. 20). The Bills of Sale Acts of 1854 and 1866 repealed (sec. 23). 41 & 42 Vict. c. 31.]

[Amendment of the law relating to Bills of Sale in Ireland. 42 & 43 Vict. c. 50.]

##### (A) REGISTRATION.

###### (a) *When necessary.*

###### (1) "*Personal chattels*": growing crops.

1.—Growing crops are not "personal chattels" within the meaning of the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36). *Brantom v. Griffiths* (App.), 46 Law J. Rep. C.P. 408; Law Rep. 2 C.P. D. 212; affirming the decision of the Court below, 45 Law J. Rep. C.P. 588; Law Rep. 1 C.P. D. 349.

The tenant of a farm sold certain growing crops, giving to the purchaser a document which was signed by both of them, and by which it was stated that the purchaser thereby agreed to take the crops which were there described for the amount of 6l. per acre, and the tenant thereby agreed to assign the same to him:—Held, that the document was a bill of sale within the meaning of the Bills of Sale Act, 1854. *Ibid.*

###### (2) *Receipt, or assignment requiring registration.*

2.—Being pressed to pay rent in arrear, a tenant and his partner sold their furniture to the landlord under an arrangement, by which the purchase-money was to be applied in payment of the rent due, and the following document was drawn up: "Bought of Messrs. D. & J. W. [certain goods at specified prices]. Memorandum.—We acknowledge that we have this day sold and delivered to Mr. W. M. the above articles and effects for the price above-named 163l. 13s., and that payment therefor has been made to us, of that amount in account between us, and under the agreement arranged to be made with respect to the amount owing by us

to him for rent, interest and expenses." The sale was subsequently advertised. The goods were delivered to the landlord, and then let by him to the tenant, who remained in possession of them until the 30th of October, when they were seized by the sheriff under a *fi. fa.* issued by an execution creditor of J. W.:—Held, that the document was a mere receipt, and, notwithstanding the memorandum, did not need registration as a transfer under the Bills of Sale Act (17 & 18 Vict. c. 36). *Graham v. Wilcockson*, 46 Law J. Rep. Exch. 55.

3.—The sheriff's officer, under an execution which had been levied on the goods of A. in an action by B. against the said A., sold such goods to C., the father-in-law of the said A., and the sheriff's officer gave a receipt for the purchase-money, in which it was expressed that the money had been received for the goods which had been seized in the said action and sold to the said C. A list of such goods was given at the foot of the receipt. The goods were not removed, but were at once let to the said A., in whose possession they were allowed to continue until seized in execution by a subsequent creditor:—Held, that the receipt was not a bill of sale, and was not as such required to be registered under the Bills of Sale Act, 1854. *Woodgate v. Godfrey*, 48 Law J. Rep. Exch. 271; Law Rep. 4 Ex. D. 59.

4.—On the 18th of July, 1877, C. advanced to A., a trader, 150*l.* to pay out an execution then on his premises. A. signed a receipt, annexed to an inventory of certain articles of furniture belonging to him, and handed it to C. On the same day C. and A. executed an agreement by which C. agreed to let, and A. to hire, the furniture for two months for 170*l.*, with power to sell upon default of payment, and in case of such sale any balance remaining after payment of the 170*l.* to be handed over to A., and any deficiency to be made good by him, and on payment of the whole sum due, the goods to belong to A. Neither of these documents was registered. A. made default in paying the 170*l.*, and C. sent in W., an auctioneer, to take possession. W. paid C. the money owing to him, for which C. gave a receipt indorsed on the agreement of the 18th of July, 1877, as follows: "Received of W. 120*l.* for the absolute sale to him of the whole of the goods herein specified." On the same day (22nd of September, 1877) W. entered into an agreement with A. to let him the furniture for three months for 145*l.*, to be paid by three instalments. The agreement contained terms identical with those in the agreement of the 18th of July. This document was not registered. A. made default in paying the instalments, and W. sold the furniture. A. remained in apparent possession of the goods until the happening of the act of bankruptcy on which he was adjudicated bankrupt. Upon a motion by A.'s trustee in bankruptcy against W., for payment to him of the proceeds of sale,—Held, on appeal (reversing the decision of the Registrar, sitting as Chief Judge), that the two

documents of the 18th of July, together constituted a conditional sale of the mortgage of the chattels, and consequently required registration, and not having been so registered were void as against the trustee in bankruptcy; and that the transaction of the 22nd of September was a transfer of C.'s rights as a mortgagee and gave W. no better title than C. himself had, and that the trustee was entitled to the proceeds of sale. *Thompson v. Barrett* (1 Law Times, N.S. 268), *Allsop v. Day* (31 Law J. Rep. Exch. 105) and *Byerley v. Prevost* (Law Rep. 6 C.P. 144), commented on and distinguished. *Ex parte Odell; in re Walden* (App.), 48 Law J. Rep. Bankr. 1; Law Rep. 10 Ch. D. 76.

5.—The goods of the defendant had been seized in execution and sold by the sheriff to one Oliver, to whom the sheriff gave an inventory and receipt attached. This document, which was given subsequent to the passing of the Bills of Sale Act, 1878, was not registered; possession of the goods was never taken by Oliver, and they remained in the possession of the defendant. Four days after, Oliver conveyed the goods by deed in trust for the defendant's wife, with a power to the trustee to sell upon her direction. This document was not registered. The defendant's wife subsequently sold the goods to the claimant Watson, and an inventory and receipt signed by her and the defendant were given to him; this document was duly registered, but the trustee was not a party to it. Watson allowed the goods to remain in the possession of the defendant:—Held, that the assignment to Watson was invalid and void as against an execution creditor of the defendant, because not a proper compliance with the Bills of Sale Act and also contrary to the direction of the settlement. (Per Grove, J.—Lopes, J., *dissentiente*), that the assignment to Oliver being invalid, because not registered under the Bills of Sale Act, 1878, he could confer no better title than he himself possessed, and that the subsequent assignments were therefore void as against the execution creditor. *Chapman v. Knight; Watson* (claimant), 49 Law J. Rep. C.P. 425; Law Rep. 5 C.P. D. 308.

The Court will uphold the decision of the County Court Judge, where it can be supported on points other than those on which he decided, though such other points were not taken in the Court below. *Ibid.*

6.—A sheriff's officer seized goods of the judgment debtor at his house under a *fi. fa.*, and sold them to the debtor's father-in-law, to whom he gave a receipt for the purchase-money, with an inventory of the goods written under it. On the same day the purchaser let the goods to the debtor, who kept possession of them until they were again seized in execution:—Held (affirming the judgment of a Divisional Court—Cockburn, C.J., and Pollock, B.), that the receipt did not require registration as a bill of sale within sections 1 and 7 of the Bills of Sale Act, 1854, because the sale by the sheriff's officer was a transaction complete and effectual in itself,

and the receipt was not the medium of transfer of the goods. *Woodgate v. Godfrey* (App.), 49 Law J. Rep. Exch. 1; Law Rep. 5 Ex. D. 24.

### (3) Assignment of fixtures.

7.—Assignment by way of mortgage of a parcel of ground held by underlease, together with the steam saw mills and buildings thereon, and the steam-engines, boilers, fixed and movable machinery, plant, implements and utensils, then or thereafter fixed to or placed upon, or used in or about the premises; to hold the said hereditaments, and such of the machinery, plant, utensils and premises as were in the nature of landlord's fixtures, and could not lawfully be removed by the lessee, unto the mortgagee, his executors, administrators and assigns, for the residue of the term; and as to such of the machinery and premises as were in the nature of tenant or trade fixtures, and could lawfully be removed by the lessee thereof, unto the mortgagee, his executors, administrators and assigns absolutely. There was power to the mortgagee to sell the premises thereby assigned, or any part or parts thereof, either together or in parcels:—Held, that the mortgage not being registered as a bill of sale was void against a trustee in bankruptcy as to the trade fixtures. *In re Eslick; ex parte Alexander*, 46 Law J. Rep. Bankr. 30; Law Rep. 4 Ch. D. 503.

8.—A mortgage by mortgagors in possession of premises used for the purposes of trade, contained a provision that the mortgage should continue for five years if the interest should be regularly paid, and the mortgagors should not become bankrupt, or take proceedings for liquidation or composition, and also an attornment clause whereby the mortgagors attorned tenants to the mortgagee at a rent far exceeding the interest on the mortgage or the annual value of the property. The mortgagors having gone into liquidation, the mortgagee claimed under the attornment to distrain for a year's rent:—Held (affirming the decision of one of the Registrars), that the attornment clause was a mere device for making the chattels subject to the mortgage without a bill of sale, and, being a fraud upon the bankruptcy laws, an injunction must be granted to restrain him from proceeding with his distress. *In re Thompson; ex parte Williams* (App.), 47 Law J. Rep. Bankr. 26; Law Rep. 7 Ch. D. 138.

9.—By an indenture, dated the 3rd of October, 1865, a shipbuilding yard and works held under a lease for 999 years were assigned to the debtor, to hold as to the leasehold premises for the residue of the term, and as to the machinery and tenant's fixtures absolutely. The recitals stated the purchase-money to be 2,000*l.* for the leasehold premises and 500*l.* for the tenant's fixtures. The debtor borrowed the purchase-money from his bankers, and deposited with them as security the indentures of lease and assignment, without any memorandum. He afterwards erected considerable new machinery,

and carried on business on the premises till 1876, when he became bankrupt, having incurred a further debt to his bankers:—Held, first, that the equitable security created by the deposit did not comprise tenant's fixtures; secondly, that tenant's fixtures could not be assigned by the leaseholder so as to defeat the claim of the trustee, except by compliance with the Bills of Sale Act; thirdly, that the equitable mortgage was a security for the bankers' subsequent advances by virtue of their general lien upon the deeds. *Ex parte Treedy; in re Trethowan*, 46 Law J. Rep. Bankr. 43; Law Rep. 5 Ch. D. 559.

When leasehold property is equitably mortgaged by simple deposit of deeds, the application as to trade fixtures of the Bills of Sale Act is not excluded. *Ibid.*

10.—In 1864 R. & C., partners in trade, by deed assigned and demised by way of mortgage to B. certain leasehold premises, the goodwill of their business, and their fixtures, plant and trade effects, to have and to hold the leasehold premises for the residue of the terms, and to have and to hold the goodwill absolutely. There was no *habendum* as to the fixtures and chattels. The deed contained a proviso for redemption, and a power to sell in default "the premises assigned and demised respectively, or any part or parts thereof, either together or in parcels." This deed was not registered as a bill of sale. In 1876 R. & C. dissolved partnership, and R., without the knowledge of B., assigned to C. his moiety of the mortgaged property subject to the mortgage. In 1878 C. became bankrupt, and at the time of his bankruptcy was in sole possession of the mortgaged property, and his trustee claimed the whole of it:—Held, that the mortgage was a bill of sale of the fixtures and ought to have been registered as such. Held also, that B. and the trustee in bankruptcy of C. were entitled to the mortgaged property in equal moieties. *Semble*, if B. had known of the change of the interest in the property, the trustee would have been also entitled to R.'s moiety. *In re Reed; ex parte Brown* (App.), 48 Law J. Rep. Bankr. 10; Law Rep. 9 Ch. D. 389.

11.—Section 7 of the Bills of Sale Act, 1878, is retrospective to the extent of giving a fixed legislative construction to the term "separately assigned or charged" as regards all deeds, whether executed since or before the commencement of that Act, but is not so for the purpose of extending to deeds executed before the commencement of the Act the wider meaning given to the term "chattels" by sections 4 and 5. *In re Armytage; ex parte Moore and Robinson's Nottinghamshire Banking Company*, 49 Law J. Rep. Bankr. 60; Law Rep. 14 Ch. D. 379.

### (4) Inventory of goods sold.

12.—An inventory of goods sold, with a receipt for the purchase-money attached thereto, is an "assurance of personal chattels" within section

7 of the Bills of Sale Act, 1854, and requires registration. *Allsopp v. Day* (7 Hurl. & N. 457; s.o. 31 Law J. Rep. Exch. 105) and *Byerley v. Prevost* (Law Rep. 6 C.P. 144) questioned. *In re Baum*; *ex parte Cooper* (App.), 48 Law J. Rep. Bankr. 40; Law Rep. 10 Ch. D. 313.

(5) *Agreement for sale of furniture on hire system.*

13.—By a written agreement R. hired furniture of the value of 63*l.* from L. & Co. R. was to pay for it by monthly instalments. In the event of non-payment of any instalment, L. & Co. might seize and remove the furniture and retake possession of it. On payment of all the instalments, the furniture was to become R.'s property, but until such payment it was to remain the sole property of L. & Co. This agreement was not registered as a bill of sale. The furniture comprised in the agreement was in the possession of R. at the commencement of his bankruptcy:—Held, that the property in the furniture did not pass to R. until all the instalments had been paid; that neither the agreement nor the licence to seize the furniture amounted to a bill of sale by R., and therefore that registration was unnecessary. *In re Robertson*; *ex parte Lewin & Company* (App.), 47 Law J. Rep. Bankr. 94; Law Rep. 9 Ch. D. 419 (*nom. ex parte Crammour*).

(6) *Transfer of bill of sale.*

14.—A transfer, made subsequently to 1854, by a mortgagee alone, without the concurrence of the mortgagor, of a bill of sale made before the passing of the Bills of Sale Act, 1854, does not require registration under that Act or under the Amendment Act of 1866 as against the trustee under the bankruptcy of the original mortgagor. *In re Shaw*; *ex parte Shaw*, 46 Law J. Rep. Bankr. 114.

*Agreement giving lien on bills of lading not a bill of sale within 17 & 18 Vict. c. 36.* [See SALE OF GOODS, 27.]

(b) *Re-registration.*

15.—The Bills of Sale Act, 1866 (29 & 30 Vict. c. 96), s. 4, requires the registration of a bill of sale to be renewed once in every five years, otherwise such registration shall cease to be of any effect. Under the principal Act (17 & 18 Vict. c. 36) s. 1, bills of sale not registered are void. The goods under a bill of sale, originally duly registered, were within five years assigned *bona fide*, but the assignment was not registered, nor was any re-registration of the bill of sale effected:—Held, that after the expiration of the five years the bill of sale became absolutely void, and the goods being in the possession of the grantor, were not protected against his creditors. *Karet v. The Kosher Meat Supply Association (Lim.)*, 46 Law J. Rep. Q.B. 548; Law Rep. 2 Q.B. D. 361.

*Successive bills: bankruptcy: protected transaction.* [See No. 37 *infra*.]

(c) *Priority.*

16.—A debtor, by an unregistered bill of sale, assigned all his property to Collins. By a subsequent registered bill of sale he assigned the same property to Cochrane. He filed his petition for liquidation, and a trustee was appointed. Cochrane then claimed the goods under his registered bill of sale from the trustee, but the County Court Judge held that as between Collins and Cochrane all the property in the goods passed to Collins by his prior security, and as nothing passed to Cochrane under his bill of sale, and as Collins's bill of sale was void against the trustee, the trustee was entitled:—Held, on appeal (discharging the order of the Court below, Law Rep. 3 Ch. D. 524), that after the petition Collins's security was gone, and that Cochrane having a good bill of sale was entitled against the trustee. *Ex parte Cochrane*; *in re Barnard* (App.), 45 Law J. Rep. Bankr. 122; Law Rep. 4 Ch. D. 23.

17.—The holder of a registered bill of sale is not deprived of his priority over the trustee in a subsequent liquidation by the existence of a prior unregistered bill of sale of the same property. *In re Barnard*; *ex parte Leman* (App.), 46 Law J. Rep. Bankr. 38; Law Rep. 4 Ch. D. 23.

18.—An equitable assignment of chattels was not registered under the Bills of Sale Act. The chattels were taken in execution by a creditor of the mortgagor, before the mortgagee had more than a merely formal possession of them. The execution creditor had, before his debt was contracted, actual notice of the bill of sale:—Held, that the execution creditor could not be deprived of his right to priority over the mortgagee. *Le Neve v. Le Neve* (Amb. 436) distinguished. *Edwards v. Edwards* (App.), 45 Law J. Rep. Chanc. 391; Law Rep. 2 Ch. D. 291.

A merely equitable assignment of chattels is within the Bills of Sale Act. *Ibid*.

When a receiver is appointed "upon giving security" his appointment does not take effect until the Chief Clerk has certified that the security is perfected. Till this has been done the receiver has no right to take possession, and an interference with his possession is not a contempt of Court. Decision of Malins, V.C. (Law Rep. 1 Ch. D. 455) reversed. *Ibid*.

(d) *Certificate of registration.*

19.—It is incumbent on a claimant, under a bill of sale, to shew that the document filed is a true copy of the original instrument. A certificate of the registration of a bill of sale, without production of an authenticated or office copy of the bill of sale certified to have been registered, is not sufficient. *Halkett v. Emmott*, 47 Law J. Rep. Q.B. 436.

20.—The certificate of the filing of an affidavit and copy of bill of sale does not relieve the party who relies on the bill of sale from the necessity of producing the copy filed. *Em-*

*mott v. Marchant*, Law Rep. 3 Q.B. D. 555. [But see now 41 & 42 Vict. c. 31, s. 16.]

21.—The certificate of registration of a bill of sale at the Queen's Bench office is no evidence that the affidavit of execution has been filed, as required by the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), s. 1. *Mason v. Wood*, 45 Law J. Rep. C.P. 76; Law Rep. 1 C.P. D. 63.

#### (B) FORMALITIES ATTENDING REGISTRATION.

##### (a) Description of assignor and of attesting witness.

22.—The registration of a bill of sale, the execution of which has been attested by two witnesses, will be invalid unless the affidavit filed with the copy of the bill of sale contains a description of both witnesses. *Pickard v. Marriage*, 45 Law J. Rep. Exch. 594; Law Rep. 1 Ex. D. 364.

23.—Joseph Wood, who was commonly known, and transacted business, under the name of Joseph Albert Wood, executed a bill of sale, in which, and in the affidavit filed therewith, he was described as "Joseph Wood, of Lache Hall Farm, in the county of Chester." The name "Joseph Albert" had been assumed for domestic reasons, and the greater part of the farm was in the county of the city of Chester:—Held, that the description of the name and residence of the grantor was sufficient. *In re Wood; ex parte M'Hattie* (App.), 48 Law J. Rep. Bankr. 26; Law Rep. 10 Ch. D. 398.

Where there is an error in the name of the grantor of a bill of sale, the test is, is the misdescription one that is calculated to deceive, and has deceived creditors? *Ibid*.

24.—The "description of the residence and occupation of the person making or giving" a bill of sale required by 17 & 18 Vict. c. 36 (Bills of Sale Act, 1854), s. 1, to be filed with the bill of sale, is the description of such residence and occupation at the date of the affidavit, and not at the time of the making or giving of the bill of sale. *Button v. O'Neill* (App.), 48 Law J. Rep. C.P. 368; Law Rep. 4 C.P. D. 354.

25.—In the attestation clause to a bill of sale, the attesting witness was described as "E. C., solicitor, Bloomfield Street, London." In the affidavit filed with the bill, the attesting witness described himself as "of Bloomfield Street, in the city of London, solicitor," and the affidavit concluded, "I reside at Grove House, Acton, in the city of London":—Held (affirming the Court below, 47 Law J. Rep. Q.B. 596), that the description in the affidavit of the attesting witness's residence, though inaccurate, was sufficient, as it was not calculated to mislead persons of ordinary knowledge and intelligence. *Blount v. Harris* (App.), 48 Law J. Rep. Q.B. 159; Law Rep. 4 Q.B. D. 603.

26.—The attesting witness to a bill of sale was described therein and in the affidavit of execution as a "gentleman." He had been a proctor's clerk, but had ceased to be so for six years; he had collected debts, written letters

and drawn bills of sale; he lived chiefly on an allowance by his mother:—Held, that, as the witness did not follow any regular employment, the description "gentleman" was sufficient within the Bills of Sale Act, 1854. *Smith v. Cheese*, 45 Law J. Rep. C.P. 156; Law Rep. 1 C.P. D. 60.

##### (c) Affidavit as to date of execution.

27.—In the affidavit filed with a bill of sale, pursuant to 17 & 18 Vict. c. 36, s. 1, the occupation of the grantor was described thus: "Was until lately a commercial town traveller or agent":—Held, an insufficient description. *Castle v. Downton; Bradley* (claimant), 49 Law J. Rep. C.P. 6; Law Rep. 5 C.P. D. 65.

28.—The affidavit filed with a bill of sale, under the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), s. 1, stated that the bill of sale was executed "on the day of which the same bears date," and, in another part, stated the day with a clerical error, in substituting 1806 for 1876:—Held, a sufficient affidavit of the time of execution. *Lamb v. Bruce, Duggan v. Bruce and Cooper v. Bruce*, 45 Law J. Rep. Exch. 538.

The affidavit, filed as above, described an attesting witness to the bill of sale, who was a clerk in a bank, as a "clerk":—Held, a sufficient description of his occupation. *Ibid*.

##### (c) Affidavit sworn before solicitor to parties.

29.—An affidavit filed with a bill of sale is good, though sworn before a solicitor acting for grantor and grantee of the bill. Judgment of Lord Coleridge, C.J., reversed. *Vernon v. Cooke* (App.), 49 Law J. Rep. C.P. 767.

##### (d) Non-attestation of affidavit.

30.—The non-attestation of a bill of sale to which the Bills of Sale Act, 1878, applies, does not make it void as between the grantor and grantee thereof. So held by the Court of Appeal, reversing the judgment of the Common Pleas Division, reported 49 Law J. Rep. C.P. 101; Law Rep. 5 C.P. D. 20. *Davis v. Goodman* (App.), 49 Law J. Rep. C.P. 344; Law Rep. 5 C.P. D. 128.

#### (C) SETTING FORTH CONSIDERATION.

31.—A bill of sale which stated the amount of consideration correctly, but contained incorrect recitals as to the time of advances being made was held void under 41 & 42 Vict. c. 31, s. 8. *Ex parte Carter; in re Threapleton*, Law Rep. 12 Ch. D. 908.

32.—The business which is by the Bills of Sale Act required to be stated in the affidavit, is that by which the grantor of the bill of sale ordinarily seeks to make his livelihood, in respect of which he contracts debts and which is his substantial employment, as distinguished from any ancillary employments which he may carry on in addition for amusement or otherwise. The Act of 1878, s. 10, sub-s. 1, does not

require that in point of fact the effect of the bill of sale should be explained by the attesting solicitor to the grantor, but only that the solicitor should state that he had done so; and the neglect by the solicitor to perform his duty of giving the explanation does not avoid the bill of sale, either as against the grantor himself or any other person. The consideration which the Act requires to be stated in the deed is the real consideration as between the grantor and grantee—that which would have been properly stated in the deed independently of the Act; but the Act does not require every collateral bargain or stipulation connected with the advances to be set out. *Ex parte The National Mercantile Bank; in re Haynes* (App.), 49 Law J. Rep. Bankr. 62; Law Rep. 15 Ch. D. 42.

33.—A bill of sale recited that the grantor, having two executions on his premises, and being unable to carry on his business by reason thereof, had applied to the grantee to lend him 182l. 3s. to enable him to pay out such executions, and that the grantee had agreed to this; and it then stated that in pursuance of the said agreement, and in consideration of the said sum of 182l. 3s. then paid, the grantor assigned the goods therein mentioned to the grantee. The evidence was that the 182l. 3s. was in fact paid by the grantee, but that part of it only was given to pay off an execution; that part was given to an execution creditor, part to the grantor's solicitor for costs and money lent and the residue to the grantor himself; but that all these were so paid with the knowledge and sanction of the grantor:—Held, that the bill of sale truly set forth the consideration for which it was given so as to satisfy the requirements of section 8 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31). *Hamlyn v. Betteley*, 49 Law J. Rep. C.P. 465; Law Rep. 5 C.P. D. 327.

#### (D) CONSTRUCTION AND EFFECT OF.

##### (a) *Implied licence to grantor to carry on business.*

34.—In an action by the grantees of a bill of sale to recover certain goods comprised therein, the defendants pleaded that the goods in question were *bona fide* sold to them by the grantor in the ordinary course of his business, and without any notice that they did not belong to the grantor:—Held, on demurrer, that the defence was good, inasmuch as there was an implied licence given to the grantor of the bill of sale to carry on his trade, and consequently a *bona fide* purchaser was protected by a sale made in the ordinary course of business. *The National Mercantile Bank v. Hampson*, 49 Law J. Rep. Q.B. 480; Law Rep. 5 Q.B. D. 177.

35.—The grantor of a bill of sale, described in the instrument as an innkeeper and horse-dealer, in consideration of a loan of 100l. assigned to the plaintiff by the said bill all his personal property, including an "entire horse called Fireaway, a cob called Charley, a pony called Nelly." The bill of sale contained a

covenant that so long as the money should remain owing the grantor would not remove any of the said premises from the said message without the consent of the plaintiff, and provided that until default in payment the grantor should hold, make use of and possess the premises thereby assigned. Subsequently, and without the consent of the plaintiff, the grantor sold the three horses, Fireaway, Charley and Nelly, at a public auction, where one of them, the cob, was purchased by the defendant. In an action of detinue brought by the plaintiff to recover the cob or its value from the defendant,—Held, that the object of the bill of sale being to enable the grantor to carry on his business, the sale of the horses, which must be taken to have been sold in the ordinary course of his business, was not a breach of the covenant, and that the action was, therefore, not maintainable. *The National Mercantile Bank v. Hampson* (see last case) followed. *Walker v. Clay*, 49 Law J. Rep. C.P. 560.

36.—Where by a bill of sale a trader assigns his stock-in-trade as security for the money borrowed, and by its terms the grantor is to hold and use the goods without hindrance by the grantee until he makes default in repayment of the money, there is an implied licence given to the grantor until default to sell the goods which form such stock-in-trade, but he must do so in the ordinary course of his trade; and where, therefore, he sells fraudulently, and not in the ordinary course of his trade, the purchaser acquires no title to them as against the grantee of the bill of sale, though he purchases *bona fide* and without notice of the fraud. *Taylor v. McKeand*, 49 Law J. Rep. C.P. 563; Law Rep. 5 C.P. D. 368.

##### (b) *Bankruptcy: title of trustee.*

37.—A debtor gave a bill of sale of all his property to A. to secure a past debt, and on the following day he gave a similar bill of sale to B. to secure a past debt and further advance. B. had no notice of the bill to A., and neither bill was registered. B. took possession, and the debtor was afterwards adjudicated a bankrupt, the act of bankruptcy being the bill of sale to A.:—Held, that B. had acquired title against the trustee in the bankruptcy. *Ex parte Payne; in re Cross* (App.), Law Rep. 11 Ch. D. 539.

38.—A. gave fifteen successive bills of sale during nine months to secure the same loan. The last bill was registered the 11th of January, 1877, the others being all unregistered. Each bill recited the original loan as having been made on the date of such bill. In September, 1876, A. committed an act of bankruptcy, and a petition was filed by B. (a creditor) which stood over. A receiver was appointed on the 9th of December, 1876. On the 18th of January, 1877, A. filed a liquidation petition:—Held, that the bill of sale was void, and the title of the trustee related back to the act of bankruptcy. The fact that the billholder in February, 1877, took

an assignment of B.'s debt, did not affect the bankruptcy proceedings as against other creditors. *Ex parte Furber*; *in re Peller*, Law Rep. 5 Ch. D. 181.

[And see BANKRUPTCY, B 5, 16, 17.]

#### (E) POSSESSION OR APPARENT POSSESSION.

39.—Goods assigned by an unregistered bill of sale were left upon premises in the sole occupation of the grantor under an arrangement between the parties that he should carry on a trade there as servant of the grantee at a weekly salary and have the use of the goods. An execution creditor of the grantor having seized the goods,—Held, that they were in the apparent possession of the grantor and could not therefore be claimed by the grantee under the invalid bill of sale. *Pickard v. Marriage*, 45 Law J. Rep. Exch. 594; Law Rep. 1 Ex. D. 364.

40.—A power to take possession of chattels comprised in a bill of sale on certain specified events held not to be qualified by a subsequent proviso that the mortgagor might retain possession till default. *Ex parte National Guardian Assurance Company*; *in re Francis* (App.), Law Rep. 10 Ch. D. 408.

Friendly possession if real will exclude the operation of section 15 of the Bankruptcy Act; but an apparent as well as a real possession is necessary under the Bills of Sale Act. *Ibid*.

41.—Possession taken under an unregistered bill of sale more than twenty-one days old will not avail against the title of the trustee in liquidation under a subsequent petition, if the giver of the bill of sale has committed a prior act of bankruptcy, though such act of bankruptcy may have been unknown to the holder of the bill of sale at the time when he took possession. *In re Turner*; *ex parte Attrwater* (App.), 46 Law J. Rep. Bankr. 41; Law Rep. 5 Ch. D. 27.

42.—The grantor of a bill of sale of furniture was, by its terms, entitled to retain possession of the furniture till demand by the grantee of payment of a debt due, and upon non-payment within twenty-four hours after such demand the grantee was entitled to take possession of the furniture. The grantor, before demand of payment, caused the goods to be conveyed by B. to the house of H., where she (the grantor) intended to lodge. B., with the consent of H., placed the goods in four rooms, locked the rooms and took the key away. The grantee having, by demand and non-payment of the debt, become entitled to possession of the goods, gave notice of his title to H., and attempted to take possession of them, but was prevented by H. from doing so. While matters remained in this position the grantor of the bill of sale filed a petition for liquidation. The bill of sale was unregistered. On interpleader between the grantor and the trustee in liquidation,—Held, first, that the grantor was in occupation of the rooms, and so in possession of the furni-

ture; secondly, that if the effect of the deposit of the furniture at the house of H. had been to make H. the bailee of the goods for the grantor, they would still have been in possession of the grantor; possession of a bailee being, for the purposes of the Bills of Sale Act, possession of the bailor; thirdly (reversing the decision of the Court of Exchequer), that, whether the goods were in the possession of the grantor as occupant of the rooms, or as bailor of the goods to H., the demand of possession by the grantee (though the refusal to accede to it was wrongful) had not the effect of taking the goods out of the possession of the grantor, for the purposes of the Bills of Sale Act. *Ancona v. Rogers* (App.), 46 Law J. Rep. Exch. 121; Law Rep. 1 Ex. D. 285.

43.—If the grantee of an unregistered bill of sale given by way of mortgage attempts to take possession of the property comprised in it before he is authorised to do so by the terms of the deed, he is a mere trespasser, and his possession will not be extended by construction of law beyond the articles of which he has obtained actual physical possession, though in the case of a person who is entitled to take possession the possession of one article may be construed as the possession of all that is comprised in the deed. *Ex parte Fletcher*; *in re Henley* (App.), 46 Law Rep. Bankr. 93; Law Rep. 5 Ch. D. 809.

44.—Where a grantee under an unregistered bill of sale has, before the bankruptcy of the grantor, acquired possession of the goods so as to exclude the apparent possession of the grantor, it is immaterial whether the possession has been obtained by means of a transaction which, taken *per se*, would have amounted to a fraudulent preference. Decision of Bacon, C.J., reversed. (Per James, L.J.) Observations on *Darby v. Smith* (8 Term Rep. 82). *Ex parte Symmons*; *in re Jordan* (App.), Law Rep. 14 Ch. D. 693.

*Holder of, taking possession after expiration of grantor's tenancy a trespasser as against landlord.* [See INJUNCTION, 16.]

*Injunction against grantee in actual possession, when granted.* [See BANKRUPTCY, N 3.]

#### (F) AFTER-ACQUIRED PROPERTY.

45.—M. assigned to the plaintiff all the machinery, plant, &c., upon certain leasehold premises, comprising a sugar refinery, warehouse and other offices, as well as the machinery, plant, &c., "which shall hereafter be upon the said premises," for securing a sum of money and interest. The assignment was duly registered under the Bills of Sale Act. The interest due under the above-mentioned security being in arrear the plaintiff obtained judgment of recovery of the premises. Prior, however, to the writ of possession being delivered to the sheriff, the latter had seized a considerable amount of machinery and fixtures, used in connection with the sugar refinery, but acquired subsequently to

the deed, under a writ of *fi. fa.* issued by the defendants upon a judgment obtained against M., who was then in possession of the premises and of the property seized:—Held (on the authority of *Holroyd v. Marshall*, 23 Law J. Rep. Chanc. 193), that as the assignment to the plaintiff, though of after-acquired property, was absolute, and not a mere agreement to assign, and as the goods were sufficiently specific to make the assignment operative in equity, the plaintiff was entitled to the property seized as against the defendants. *Leatham v. Amor*, 47 Law J. Rep. Q.B. 581.

46.—A bill of sale purported to assign all the stock-in-trade in certain specified premises, and also "the stock-in-trade which should at any time during the continuance of the security be brought into the premises or be appropriated to the use thereof, either in addition to or in substitution for stock-in-trade now being therein":—Held, a valid assignment of stock-in-trade which had been subsequently brought into the premises in addition to or in substitution for the stock-in-trade originally therein. *Lazarus v. Andrade*, 49 Law J. Rep. C.P. 847; Law Rep. 5 C.P. D. 318.

#### (G) MORTGAGE: CONSOLIDATION.

47.—The rule that the mortgagee of two estates belonging to the same mortgagor may consolidate them, so that one cannot be redeemed without the other, will not be extended so as to enable the grantee of a bill of sale who has realised his security to appropriate any remaining surplus of the goods assigned, and so defeat the right of an execution creditor thereto, on the ground that the grantee is also mortgagee of land of the grantor, and has a right to consolidate the two securities. *Cheesworth v. Hunt. Harrison* (claimant), 49 Law J. Rep. C.P. 507; Law Rep. 5 C.P. D. 266.

#### (H) DEFAULT IN PAYMENT: GIVING TIME.

48.—By a bill of sale, dated the 9th of July, 1878, the plaintiff assigned to the defendant certain furniture and goods in his house, subject to the proviso that if the plaintiff should pay to the defendant a sum of 42*l.* by twenty-five consecutive weekly payments on every Monday before noon the assignment should be void. It was also agreed that the plaintiff might at any time after the execution of the bill of sale take possession of the property therein comprised and retain possession thereof until all the moneys payable should be fully paid; and further that if default should be made by the plaintiff in payment of any of the instalments on the days on which such should become due, the whole amount which at the time of such default should be unpaid should at once become due, and the defendant was empowered thereon to sell the property and to receive the moneys arising from such sale. The previous instalments having been paid by the plaintiff, he failed to pay the fourteenth instalment, due on

the 14th of October; he saw the defendant on the 16th of October, and asked for time. The defendant replied that he "would not look to a week." On the plaintiff's returning home on the 17th of October he found that the goods had been seized and sold. In an action for conversion and for an improper sale, the jury found for the plaintiff on the ground that the defendant had induced him to believe that he would not seize the goods:—Held (by the Court of Appeal, affirming the judgment of the Queen's Bench Division), that there must be a new trial, for that the defendant was entitled by the provisions of the bill of sale to seize on default, that there had been a default and that he had not in any way induced the plaintiff to alter his position. *Albert v. The Grosvenor Investment Company* (37 Law J. Rep. Q.B. 24) questioned. *Williams v. Stern* (App.), 49 Law J. Rep. C.P. 663; Law Rep. 5 C.P. D. 409.

#### (I) ILLEGAL CONSIDERATION: COMPOUNDING FELONY.

49.—M., being already indebted to B., wrote telling him he had forged his signature to a bill of exchange for 100*l.*, and entreating B. to take up the bill to save him from prosecution and ruin, and offering, if B. would do so, to give a bill of sale of all his property to secure the amount of the existing debt and the further advance. B. advanced the money and took the bill of sale. Shortly afterwards he took possession under it and sold the goods, and subsequently M. was adjudicated bankrupt, the execution of the assignment being the alleged act of bankruptcy. On an application by the trustee to recover the proceeds of the sale,—Held, that assuming the transaction between B. and M. was illegal, yet as B. had obtained possession of the property, M. being *in pari delicto*, could not, if he had remained solvent, have recovered it back, and that, there having been no offence against the bankruptcy laws, the trustee in bankruptcy stood in no better position. *Ex parte Butt*; in *re Mapleback* (App.), 46 Law J. Rep. Bankr. 14; Law Rep. 4 Ch. D. 150.

Seemle, that the transaction did not amount to compounding a felony, or to misprision of felony. *Ibid.*

#### BISHOP.

[Provision for establishment of bishoprics of Liverpool, Newcastle, Southwell and Wakefield. 41 & 42 Vict. c. 68.]

*Refusal to institute: duplex querela.* [See CHURCH AND CLERGY, 25, 32.]

#### BOARD OF HEALTH.

[See PUBLIC HEALTH ACT, 1-17.]

#### BOARD OF TRADE.

*Costs of: appeal from wreck commissioners.* [See MERCHANT SHIPPING ACTS, 5.]



*Jurisdiction and powers of, as to railways.* [See RAILWAY, 31, 34.]

*Salvage services, right to recover in respect of.* [See SHIPPING LAW, T 8.]

*Tramways Act, 1870, regulations of, under.* [See TRAMWAYS, 1.]

#### BOMBAY CIVIL SERVICE FUND.

By the original articles of the Bombay Civil Service Fund the widows of subscribers were entitled to pensions of 300*l.* a year, subject to a proviso for reduction in case they were possessed of private property exceeding the amount of 200*l.* a year. By subsequent resolutions it was provided that, on payment of a certain percentage by each subscriber, his widow should be entitled to an annuity of 300*l.* a year, irrespective of her private property. A subscriber quitted the service while the resolutions were in force, and died in a few years without ever having paid the percentage. His widow died many years afterwards. During her widowhood she had received an annuity under the original articles, but she had offered to pay the percentage, and had claimed an annuity under the resolutions:—Held, in a suit by her administratrix, that she was not entitled to such annuity, but that she was entitled to an annuity under the original articles. *Edwards v. Warden* (H.L.), 45 Law J. Rep. Chanc. 713; Law Rep. 1 App. Cas. 304.

The widow's pension under the original articles had from a certain date been annually reduced by an improper calculation of the amount of her private fortune:—Held, that her administratrix was entitled to have the difference made up to her from the time when the reduction commenced, and that there was an express trust for the widow to which the Statute of Limitations was no bar. *Ibid.*

Held also, that this was not a case in which interest could be claimed on the arrears. *Ibid.*

#### BOND.

1.—By a deed for declaring the trusts of remittances to be sent from time to time to this country from Peru for the purposes of a railway undertaking, after reciting that arrangements had been made for the issue of a public loan of 1,000,000*l.* in mortgage bonds, redeemable by half-yearly drawings in ten years, it was provided (clause 2) that the sums to be remitted from time to time should be applied on the next following 1st of December and 1st of June, as the case might be, in payment of the principal sums secured by such of the said mortgage bonds as should have been drawn on the preceding 1st of November and 1st of May, as the case might be, and of the half-yearly interest on such of the said mortgage bonds as should be outstanding and bearing interest, but no interest should be payable on any drawn bond after the day fixed for its redemption. Provided that the mortgagors might in any year redeem any larger

amount than ten per cent. of the bonds, and for that purpose might cause any larger number of bonds than before provided to be drawn for redemption in any year. Clause 3 provided for the advertisement of drawn bonds on the assumption that the funds for payment were duly remitted, and clause 8 charged all bonds on the undertaking; and by clause 15, after giving power to the trustees to take possession of the mortgaged property if default were made in payment of principal and interest, it was provided that the trustees should, out of any money which should come to their hands, after certain necessary payments, apply the residue of the said moneys in or towards payment of the principal moneys and interest secured by the said mortgage bonds in the following order—that is to say: first, in payment of all arrears of interest actually due on such of the said bonds as should be outstanding and bearing interest; secondly, in redemption of such an amount of the said mortgage bonds as ought to have been redeemed on any previous 1st of June or 1st of December, but might not have been redeemed in consequence of default in providing the necessary funds; and, lastly, in the payment of the future interest on the bonds and the redemption of the same in any future half-year. The bonds issued in pursuance of this deed were for payment to the bearer of each bond of the principal sum secured on the 1st of June or 1st of December, as the case might be, next following the day on which the bond should be drawn, and interest thereon at seven per cent., semi-annually on every 1st of June and 1st of December up to and including the day on which the principal sum should become payable; and to each bond were attached coupons for the half-yearly interest extending over ten years. Default having been made in the remittances, the trustees took possession of the property, and from time to time received various sums of money on account of the profits, but not enough to pay in full the half-yearly interest and also the principal due upon the bonds, which were from time to time drawn for repayment. In an action for determining the rights of the holders of the drawn and undrawn bonds respectively, it was held by the Master of the Rolls that, after the day fixed for redemption, interest on the principal sums secured by the drawn bonds was only recoverable as damages, and was not, upon the construction of the deed, payable out of the moneys in the hands of the trustees on drawn bonds after the day when they ought to have been paid. But upon appeal this decision was reversed, and it was held that interest at seven per cent. was payable *pari passu* upon the drawn bonds until actual payment. *Cordillo v. Weguelin* (App), 46 Law J. Rep. Chanc. 691; Law Rep. 5 Ch. D. 287 (*nom. Gordillo v. Weguelin*).

Held also (by James, L.J., and Amphlett, J.A., Brett, J.A., *dissentiente*), that as well the drawn bonds, in payment of which default had been made, as the undrawn bonds, were outstanding and bearing interest within the meaning of the

deed, and interest upon them was payable *pari passu* with the undrawn bonds. *Ibid.*

(*Per Brett, J.A.*), the undrawn bonds only were outstanding and bearing interest within the meaning of the deed, and interest upon those bonds was payable in priority to the others. *Ibid.*

2.—The Bolivian Government having granted a concession for a scheme for opening a communication between Bolivia and the Atlantic by the Amazon, which involved the making of a railway on Brazilian territory for which a concession was obtained from the Government of Brazil, the N. Company was formed in America for effectuating the general scheme, and the C. Company was formed in London for making the railway. In January, 1872, a prospectus was issued in England by the Bolivian Government and the two companies inviting subscriptions to a loan for which bonds were to be given, the payment of which was to be secured by the general liability of the Bolivian Government, and by the hypothecation of the customs duties on imports by the new route, and of the entire net profits of the company. This loan was taken up by the public to a large amount. The C. Company had contracted to make the line for 600,000*l.*, which amount was set apart out of the proceeds of the loan in pursuance of a provision in the prospectus, and remained in the hands of trustees. The rest of the money was paid partly to the Bolivian Government and partly to the N. Company, by whom it was expended. The C. Company commenced the works, but shortly afterwards repudiated the contract on the ground that they had been deceived, and the N. Company, in October, 1877, entered into another contract with other persons to make the railway, on terms which would make the cost greatly exceed 600,000*l.*, and which in some important particulars, as the Court of Appeal considered, were prejudicial to the rights of the bondholders. The Bolivian Government in the meantime revoked the concession. In March, 1878, a bondholder commenced an action on behalf of himself and all the bondholders except one, who was a defendant, the Bolivian Government being a co-plaintiff, to have the fund in the hands of the trustees divided among the bondholders, on the ground that the scheme had become abortive. It was admitted that the cost of making the railway would exceed the sum in the hands of the trustees, but it did not appear that there were any engineering difficulties making it impossible to construct the railway. The shares in the N. Company had for the most part been allotted as fully paid-up shares, and nothing could be obtained from calls. The shares in the railway company had, by arrangements between the two companies, become the property of the N. Company, and there were no shareholders in the railway company liable to calls:—Held (by Fry, J.), that as there were no insuperable engineering difficulties, the scheme could not be pronounced impracticable; that the revoca-

tion of the concession by the Bolivian Government was unjustifiable, and one to which the Court ought not to give effect, and that the action must be dismissed. Held (by the Court of Appeal), first, that as the funds in the hands of the trustees were admittedly insufficient to complete the railway, and the company had no means of raising further funds, it had become, in a business sense, impracticable to carry into effect the scheme, and to give the bondholders the security on the faith of which they advanced their money, and that they were entitled to have the fund, which was still *in medio*, in the hands of the trustees, returned to them; secondly, that assuming the revocation by the Bolivian Government of their concession to be unjustifiable (which in the opinion of the Court of Appeal it was not), still it was the act of a sovereign power with which the Court could not interfere, and made it impossible for the bondholders to have the security on the faith of which their money was advanced; thirdly, that the dissent of some of the bondholders did not take away the right of the others to have their shares of the money returned to them on the ground of the scheme having become abortive. *Wilson v. Church* (App.), Law Rep. 13 Ch. D. 1; affirmed on appeal by H.L., Law Rep. 5 App. Cas. 176 (*nom. National Bolivian Navigation Company v. Wilson*).

An agreement had been entered into with the C. Company, by which they were entitled to be paid out of the fund in question as the works proceeded. After they had incurred expenses in connection with the works, they repudiated the contract, on the ground that they had been induced to enter into it by misrepresentation:—Held, that they had no lien on the fund for the expenses incurred by them. *Ibid.*

3.—The plaintiffs having advanced 50*l.* to A. took the joint and several bond of A. and the defendant as security for the loan. The bond was conditioned for the repayment of the loan in five years, by quarterly instalments of 3*l.* 10*s.*, if A. should live so long. The instalments were calculated so as to cover principal, interest, expenses and premium for the insurance of A.'s life. In case of default in payment of any instalment the whole of the instalments up to the end of the five years were to become immediately due and payable. Default was made, and the plaintiffs sued for the whole:—Held (by Bowen, J., 49 Law J. Rep. Q.B. 247; Law Rep. 5 Q.B. D. 121), on further consideration (distinguishing *Thompson v. Hudson*, 38 Law J. Rep. Chanc. 431), that the provision being one which did not revive an old right, but which created a new one, was to be regarded as a penalty; and that equity would not allow the plaintiffs, by reason of the default in payment of an instalment, to claim and receive not merely their money back with interest and expenses, but also the unpaid premiums on a life insurance, which would no longer be kept up, and interest on a loan which would have ceased to be outstanding; and that the plaintiffs were therefore

only entitled to the one instalment and interest; but held on appeal (reversing the judgment of Bowen, J.), that the stipulation was not by way of penalty, and therefore that the plaintiffs were entitled to recover. *The Protector Endowment Society v. Grice* (App.), 49 Law J. Rep. Q.B. 812; Law Rep. 6 Q.B. D. 592.

4.—Debentures issued by a foreign company and charging its estate, property and effects,—Held to be mere bonds and not mortgages. *Norton v. The Florence Land and Works Company*, Law Rep. 7 Ch. D. 332.

*Administration bond.* [See PROBATE, 23–27.]

*Foreign, gift of.* [See WILL, CONSTRUCTION, D 13.]

*Lands Clauses Act, under.* [See LANDS CLAUSES CONSOLIDATION ACT, 41, 42.]

*Railway bonds: deposit of, as security.* [See MORTGAGE, 39.]

### BONUS.

*Insurance: whether to be added to capital.* [See TENANT FOR LIFE, 10.]

### BOOTY OF WAR.

Her Majesty by Royal warrant “granted” booty of war to the Secretary of State for India in Council “in trust” to distribute amongst the persons found entitled to share it by the decree of the Judge of the Court of Admiralty, to whom the matter had been referred for that purpose. An action having been brought against the Secretary of State for India in Council by K., on behalf of himself and all the other parties entitled to share, alleging that a portion only of the fund had been distributed, and claiming an account and the distribution of the residue,—Held (reversing the decision of Hall, V.C.), that the warrant did not operate as a transfer of property or create a trust; and that the defendant, being merely the agent of the Sovereign to distribute the fund, was not liable to account to the parties found entitled. *Kinloch v. The Secretary of State for India in Council* (App.), 49 Law J. Rep. Chanc. 571; Law Rep. 15 Ch. D. 1.

### BOROUGH.

[See MUNICIPAL CORPORATION: PARLIAMENT.]

### BOTTOMRY.

[See SHIPPING LAW, C.]

### BOUNDARIES.

A small piece of garden ground was let for 500 years at a nominal rent to an adjoining owner, subject to a restrictive covenant:—Held, that an action to ascertain boundaries could be brought by the landlord during the term. Instead of issuing a commission, the Judge di-

rected an enquiry as to the boundaries. *Spike v. Harding*, 47 Law J. Rep. Chanc. 323; Law Rep. 7 Ch. D. 871.

### BRANCH BANK.

[See BANKER, 4.]

### BREACH OF PROMISE OF MARRIAGE.

[See EVIDENCE, 24; INFANT, 18–20.]

### BREACH OF TRUST.

[See TRUST and TRUSTEE, C.]

### BREAD.

The 6 & 7 Will. 4. c. 37. s. 7 enacts that in case any baker or seller of bread, or his or her journeyman, servant, &c., employed by such baker, shall at any time carry out or deliver any bread without being provided with a correct beam and scales with proper weights or other sufficient balance, he shall for every such offence forfeit or pay any sum not exceeding 5*l*. A baker carrying on business at a shop, under a course of dealing with a customer which had continued for two years, supplied bread to such customer at her house, always entering in his book the amount of bread left from time to time. He carried out this bread in a cart without being provided with weights and scales:—Held, that he was liable to be convicted under the above section. *Robinson v. Cliff*, 45 Law J. Rep. M.C. 109; Law Rep. 1 Ex. D. 294.

### BRIBERY.

*At municipal election.* [See MUNICIPAL CORPORATION, 11.]

*At parliamentary election.* [See PARLIAMENT, 6.]

### BRIDGE.

*Negligence: railway bridge: trucks laden too high.* [See NEGLIGENCE, 23.]

### BROKER.

*Personal liability under contract.*

1.—The defendant, a broker, delivered to the plaintiffs a note in the following form: “Messrs. Southwell, I have this day sold, by your order and for your account to my principals, five tons of anthracene, payment in cash in fourteen days after delivery, less 2½ per cent. discount, and one per cent. brokerage. W. A. Bowditch”:—Held (reversing the decision of the Court below, 45 Law J. Rep. C.P. 374; Law Rep. 1 C.P. D. 100), that there was nothing in the language of the above contract to make the defendant personally liable, as buyer of the goods, to the plaintiffs. *Humphrey v. Dale* (27 Law J. Rep. Q.B. 390) and *Fleet v. Murton* (41

Law J. Rep. Q.B. 49) distinguished. *Southwell v. Bonditch* (App.), 45 Law J. Rep. C.P. 630; Law Rep. 1 C.P. D. 874.

2.—A stockbroker who is instructed to sell trust funds, and to re-invest the purchase-money, with actual notice of the trust, is a trustee of the proceeds of sale, and the customer employing him is entitled, as against his trustee in bankruptcy, to so much of the proceeds of sale as can be identified. *In re Strachan; ex parte Cooke* (App.), 46 Law J. Rep. Bankr. 52; Law Rep. 4 Ch. D. 123.

#### *Usage of market.*

3.—Where a person desiring to speculate has instructed a broker on the Stock Exchange to buy and sell stocks for him, with the intention that he should only receive or pay "differences," and has authorised the broker to pay any losses for him, the broker is entitled to recover any sums which he has so paid for the principal, even though he has not entered into separate contracts on his behalf, but has appropriated to him parts of larger amounts of stock which he (the broker) has bought as a principal with the view of dividing them among different clients for whom he has been instructed to buy. *Robinson v. Mollett* (44 Law J. Rep. C.P. 362; Law Rep. 7 E. & L. App. 802) distinguished. *Ex parte Rogers; in re Rogers* (App.), Law Rep. 15 Ch. D. 207.

#### *Signature to contract in broker's book.*

4.—Where a broker acting for the plaintiff made a contract for the sale of goods to the defendant, sending a note to each party, but signing only that which was sent to the seller, but entering the contract in his book, in which he signed both the bought and sold note, and the defendant kept the note sent to him without objection until called upon to accept the goods, and then repudiated the contract, on the ground that the note was not signed,—Held, first, that the defendant had, by his conduct, admitted the broker's authority to make the contract for him, and was therefore bound by his signature to the sold note; and, secondly, that the signed entry in the broker's book was a sufficient memorandum within the Statute of Frauds. *Thompson v. Gardiner*, Law Rep. 1 C.P. D. 777.

*Custom of London bill-brokers: guarantee of bill of exchange.* [See BILL OF EXCHANGE, 32.]

*Usage of dry goods market.* [See SALE, 24.]

### BUILDING.

*Re-investment in, under Lands Clauses Act.* [See LANDS CLAUSES CONSOLIDATION ACT, 22, 28.]

*Restrictive covenant: building.* [See INJUNCTION, 23.]

### BUILDING CONTRACT.

[See ACTION, 4; BANKRUPTCY, B 20; CONTRACT, 17, 33, 35, 38.]

*Architect appointed under building contract: liability for want of care and skill in certifying.* [See ARBITRATION, 13.]

### BUILDING SOCIETY.

[See FRIENDLY SOCIETY.]

### BURIAL.

(A) BURIAL WITHIN 100 YARDS OF A DWELLING-HOUSE.

(B) BURIAL GROUND.

(C) BURIAL FEES.

[Amendment of the Public Health Act, 1875, as to interments. 42 & 43 Vict. c. 31.]

[Notice may be given that burial will take place in a churchyard or graveyard without the rites of the Church of England (sec. 1). Burial may be with or without religious service (sec. 6). Burials to be conducted in a decent, orderly manner, and without obstruction (sec. 7). Act not to give right of burial where no previous right existed (sec. 9). Burials under the Act to be registered (sec. 10). Burial service of the Church of England may be used in unconsecrated ground (sec. 12). Church of England clergy relieved from penalties in certain cases (sec. 13). 43 & 44 Vict. c. 41.]

(A) BURIAL WITHIN 100 YARDS OF A DWELLING-HOUSE.

1.—18 & 19 Vict. c. 128. s. 9, only prohibits actual burial within 100 yards of a house, not the erection of a cemetery within that limit. *Lord Cowley v. Byas* (App.), Law Rep. 5 Ch. D. 944.

The defendant obtained permission from the Home Secretary to convert certain land into a cemetery, and commenced negotiations for that purpose, which fell through. On the plaintiff threatening to take proceedings to restrain the use of any portion within 100 yards of the plaintiff's house as a cemetery, the defendant replied that he had no intention of doing so, and if he changed his mind he would give the plaintiff two months' notice of his intention, and that he would not bury within 100 yards without the plaintiff's consent. *Bacon, V.C.*, having granted an injunction to restrain the defendant from using the ground in question, or any part thereof, for burial or for a cemetery,—Held, on appeal, that such injunction must be dissolved. *Ibid.*

(B) BURIAL GROUND.

2.—The parish of W. consisted of the township of W. and five other townships, each of these six townships having separate overseers and a separate poor-rate. The parish church-

yard of W. having become insufficient for the purposes of burial, a detached piece of land was in 1838 conveyed to the commissioners under the Church Building Acts as an addition to it. This piece of land, which was situate in the township of W., was used as the burial ground for the whole parish until 1854, when it was closed by Order in Council, and a burial board for the township of W. was formed:—Held, that, under 18 & 19 Vict. c. 128. s. 18, a burial ground which is closed by Order in Council, must, if it is a churchyard, be kept in order by the churchwardens, and if it be a cemetery formed by a burial board, by the burial board; and that therefore the ground in question, being a churchyard, was to be kept in order, not by the burial board, but by the churchwardens:—Held also, that the expenses of keeping the ground in order were to be repaid to the churchwardens out of the rate for the township of W., being a place having a separate poor-rate within which the ground was situate, and not out of the rates of all the townships composing the parish to which the burial ground had belonged. *Reg. v. The Burial Board of Bishop Wearmouth* (App.), Law Rep. 5 Q.B. D. 67.

3.—The Consistorial Court has no power to grant a faculty for the conversion of a churchyard into a public garden, but where a churchyard is closed the Court can grant a faculty to make paths, plant flowers and erect gates in it, and remove high walls. *In re St. George's-in-the-East*, Law Rep. 1 P. D. 311.

#### (C) BURIAL FEES.

4.—A cemetery was incorporated under a local Act not differing substantially from the Cemeteries Clauses Act, and containing a reservation of fees "to the incumbent for the time being of the church or chapel of the parish or other ecclesiastical district or division" thereof. Subsequently three new ecclesiastical districts were formed out of the parish. In an action by the rector of the old parish to recover from the incumbents of the new districts the fees for the burial of persons removed from the ecclesiastical districts,—Held (affirming the judgment of the Exchequer Division), that the defendants were entitled to the fees claimed by the plaintiff. *Vaughan v. The South Metropolitan Cemetery Company* (1 Jo. & H. 256; 30 Law J. Rep. Chanc. 265) followed. *Bowyer v. Stantial* (App.), Law Rep. 3 Ex. D. 315.

#### BY-LAWS.

[See MUNICIPAL CORPORATION, 14; PUBLIC HEALTH ACT, 6-8; RAILWAY, 14-20; SHIPPING LAW, E 26.]

#### CAB OWNER.

*Cab proprietor and driver, relation between.*  
[See MASTER AND SERVANT, 13.]

#### CALL.

*Liability of executor for: whether payable out of corpus or income.* [See TENANT FOR LIFE, 3.]

*Power to make calls.* [See COMPANY, G 4.]

#### CAMPBELL'S ACT.

A new trial may be granted for inadequacy of damages in an action for personal injuries where the Court is of opinion that from the circumstances of the case the damages are unreasonably small. *Phillips v. The London and South Western Railway Company*, 48 Law J. Rep. Q.B. 693; Law Rep. 4 Q.B. D. 406.

[And see ESTOPPEL, 1.]

#### CANADA.

[See COLONIAL LAW, 1-17.]

#### CANAL.

[Provisions for the registration and regulation of canal boats used as dwellings. 40 & 41 Vict. c. 60.]

*Overflow: extraordinary rain: negligence.* [See NEGLIGENCE, 10.]

*Railway and Canal Traffic Act.* [See CARRIER, 11, 12; RAILWAY, 22-26.]

*Rateability of canal.* [See RATES, 13.]

#### CANCELLATION.

*Of bills of exchange: collateral securities.* [See BILL OF EXCHANGE, 27.]

*Of shares in company.* [See COMPANY.]

#### CARGO.

[See MARINE INSURANCE; SHIPPING LAW, D, F.]

#### CARRIAGE.

When a coach-builder lets cabs at 30s. per week, payable weekly, the cabs to be the hirer's property if he pays 30s. for seventy-five weeks consecutively, and 5l. additional at the end of that time, subject to the coach-builder's right to resume possession on failure in the weekly payments, such coach-builder is not a "person keeping" cabs within 38 & 39 Vict. c. 23. s. 11, and not liable for keeping such cabs without a licence. *Barber v. Callow*, Law Rep. 2 C.P. D. 558.

#### CARRIER.

(A) CARRIERS OF GOODS OR PASSENGERS' LUGGAGE.

(a) *Act of God: liability of carrier for loss by.*

(b) *Warranty of seaworthiness of ship.*

(c) *Carriers Act.*(1) *Paintings.*(2) *Damage to goods carried beyond destination.*(3) *Felonious act of servant.*(d) *Carrier or warehouseman.*(e) *Passengers' luggage.*(1) *Liability of railway company as insurers.*(2) *Conditions limiting carriers' liability.*(3) *Breach of contract to deliver on particular day.*

## (B) CONVEYANCE OF PASSENGERS.

(a) *Implied contract by company conveying other company's passengers.*(b) *Evidence of negligence.*(1) *Question for jury.*(2) *Train overshooting platform.*(c) *Condition limiting carriers' liability.*

## (A) CARRIERS OF GOODS OR PASSENGERS' LUGGAGE.

(a) *Act of God: liability of carrier for loss by.*

1.—In order to come within the exception of loss by the act of God as applied to the liability of a common carrier, the loss need not have been caused directly and exclusively by such a direct and violent and sudden and irresistible act of nature as the carrier could not by any amount of ability foresee, or, if he could foresee it, could not by any amount of care and skill resist so as to prevent its effect. A loss is a loss by the act of God if it is occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and a common carrier is entitled to immunity in respect of loss so occasioned if he can shew that it could not have been prevented by any amount of foresight, pains and care reasonably to be required of him. If the loss is occasioned partly by the act of God as above defined, and partly by some other cause, which, if it had been the sole cause of the loss, would have furnished a defence, the carrier will be entitled to immunity in respect of such loss if he can shew that it could not have been prevented by any amount of foresight, pains and care reasonably to be required of him, and (per Cockburn, C.J.), in such cases a common carrier has done all that is reasonably to be required of him, if he has used all the means to which prudent and experienced carriers ordinarily have recourse to ensure the safety of goods entrusted to them under similar circumstances. *Nugent v. Smith* (App.), 45 Law J. Rep. C.P. 697; Law Rep. 1 C.P. D. 423.

There is no foundation for the doctrine that all owners of ships carrying goods for hire, whether they be common carriers or not, are subject to the same liability as that which attaches to the common carrier. *Ibid.*

Judgment of the Common Pleas Division (45 Law J. Rep. C.P. 19; Law Rep. 1 C.P. D. 423) reversed. *Ibid.*

(b) *Warranty of seaworthiness of ship.*

2.—A shipowner warrants the fitness of his ship when she starts, and not merely that he will honestly and *bona fide* endeavour to make her fit. This rule is not limited to cases in which the shipowner holds himself out as a common carrier. *Kopitoff v. Wilson*, 45 Law J. Rep. Q.B. 436; Law Rep. 1 Q.B. D. 377.

(c) *Carriers Act.*(1) *Paintings.*

3.—The word "paintings" in the Carriers Act means articles of artistic value as paintings. Models and working designs for carpets and rugs, painted by hand and skilfully designed, but of value in the carpet trade only, are not within the class designated. *Woodward v. The London and North Western Railway Company*, 47 Law J. Rep. Exch. 263; Law Rep. 3 Ex. D. 121.

(2) *Damage to goods carried beyond destination.*

4.—The provisions of the Carriers Act apply, notwithstanding that the goods have been unintentionally carried to a place beyond the place to which they have been consigned, and there injured. *Morriss v. The North Eastern Railway Company* (App.), 45 Law J. Rep. Q.B. 289; Law Rep. 1 Q.B. D. 302.

The plaintiff, a passenger by the defendants' railway, took with him, along with other luggage, two pictures which were duly labelled to D. The value of the pictures, which exceeded 10*l.*, was not declared, nor was any increased rate of charge paid. The pictures were accidentally carried beyond D. and considerably damaged:—Held (in the Court of Queen's Bench), that the defendants were not liable—(per Blackburn, J., and Field, J.), because they were protected by the provisions of the Carriers Act; (per Quain, J.), because they were bailees, and there was no evidence of negligence such as would make them liable. And on appeal the judgment was affirmed, on the ground that defendants were protected by the provisions of the Carriers Act. *Ibid.*

(3) *Felonious act of servant.*

5.—Certain pictures above the value of 10*l.* were delivered to the defendants to be carried, and were by them placed in a van in their yard preparatory to their transmission. A man, by representing himself to be one C. (who was a driver in the employ of M., the defendants' subcontractor), obtained from the defendants' delivery clerk a pass and other documents, which enabled him to take the van from the yard and so to steal the pictures. An action having been brought for their value, the material issue was whether they were lost through the felonious act of the defendants' servants. A case, embodying the above facts, with power to the Court to draw all necessary inferences, having been stated,—Held, that the defendants were

not estopped from denying that the thief was their servant, and that the Court would not infer that he was. *Way v. The Great Eastern Railway Company*, 45 Law J. Rep. Q.B. 874; Law Rep. 1 Q.B. D. 692.

(d) *Carrier or warehouseman.*

6.—Certain goods were consigned by the defendants' railway to W., addressed to the plaintiff, "to be left till called for." On their arrival at W. they were placed in the station warehouse to await their being called for. Two days afterwards, without default on the part of the defendants, the warehouse was burned down and the plaintiff's goods were consumed by fire:—Held, that the goods were not, at the time when they were destroyed by fire, in the custody of the defendants as carriers, but as warehousemen, and that, consequently, the defendants were not liable for a loss which had arisen through no default on their part. *Chapman v. The Great Western Railway Company; The Same v. The London and North Western Railway Company*, 49 Law J. Rep. Q.B. 420; Law Rep. 5 Q.B. D. 278.

(e) *Passengers' luggage.*

(1) *Liability of railway company as insurers.*

7.—Railway companies are not insurers of that portion of a passenger's luggage which is, at his request or with his consent, placed in the same carriage in which he travels or is about to travel; but they are liable for loss or injury to it caused by their negligence. *Borghelm v. The Great Eastern Railway Company* (App.), 47 Law J. Rep. C.P. 318; Law Rep. 3 C.P. D. 221.

(2) *Effect of conditions limiting carriers' liability.*

8.—If a cloak-room ticket has on the face of it a plain and unequivocal reference to the conditions printed on the back, the person taking such ticket is bound by the conditions, whether he has made himself acquainted with them or not. *Harris v. The Great Western Railway Company*, 45 Law J. Rep. Q.B. 729; Law Rep. 1 Q.B. D. 515.

Held (by Blackburn, J., and Mellor, J.; *dis-sentientio* Lush, J.), that the benefit and protection of the conditions were not lost, because the luggage was not actually warehoused in the cloak-room, but was stolen from the vestibule. *Ibid.*

*Henderson v. Stevenson* (Law Rep. 2 Sc. & D. App. 470) distinguished. *Ibid.*

9.—The plaintiff deposited his bag in the cloak-room of a station on the defendants' railway, and paid 2d. He received in return a printed ticket, bearing on the face of it a receipt for one article, and at the bottom the words, "See back." At the back of the ticket were the words, "The company will not be responsible for any package exceeding the value of 10l." The same conditions were also printed on a placard hung up in the cloak-room. In an action

against the company for the loss of the bag while thus in their cloak-room, the plaintiff claimed more than 10l. for the value of the bag and its contents. The defendants resisted the claim, on the ground that they were relieved from responsibility by the above conditions. The Judge at the trial left two questions to the jury: First, Did the plaintiff read, or was he aware of the special terms of the contract? and, secondly, If not, was he guilty of negligence in being unaware of them?—Held, by Mellish, L.J., and Baggallay, L.J. (reversing the decision of the Common Pleas Division, 45 Law J. Rep. C.P. 515; Law Rep. 1 C.P. D. 618), that there had been a misdirection, and that the proper question for the jury was, whether the defendants had done what was reasonably sufficient to give the plaintiff notice of the condition; and that, if that question were answered in the affirmative, judgment should be given for the defendants. By Bramwell, L.J., that, on the facts, the Judge should have directed a verdict for the defendants. *Parlier v. The South Eastern Railway Company and Gabell v. The South Eastern Railway Company* (App.), 46 Law J. Rep. C.P. 768; Law Rep. 2 C.P. D. 416.

10.—The plaintiff, an intending passenger by the defendants' railway, reached the departure station about half an hour too early, in consequence of a mistake as to the time. Her luggage was taken from the cab by a porter, who directed her to get a ticket while he labelled the luggage, telling her that the booking office would be open in a few minutes. After the plaintiff had waited two minutes the office was opened, and the plaintiff took her ticket; but when she got on to the platform she discovered that one of the articles taken from the cab by the porter was missing. The defendants posted notices in their stations to say that their servants are strictly forbidden to take charge of any articles; and that any article which a passenger wishes to leave at a station should be deposited in the cloak-room; and that they will not be responsible for any article left on their premises in any other manner:—Held, that such notice did not apply to this case, where the luggage was taken charge of by the porter at the commencement of the plaintiff's journey, and was not given to him to be left on the station for the convenience of the plaintiff; that the luggage was therefore received by the porter within the scope of his authority, and delivery to him was delivery to the defendants as carriers, and they were liable for the loss. *Lovell v. The London, Chatham and Dover Railway Company*, 45 Law J. Rep. Q.B. 476.

11.—The defendants charge two rates for the conveyance of certain articles—one the ordinary parliamentary rate, when they take the ordinary liability of the carrier; and the other a reduced rate, in which case they make it a condition of carriage that the sender relieves them of all liability for loss or damage, except upon proof that such loss or damage arose from wilful misconduct on the part of the company's ser-

vants:—Held, that under these circumstances, the condition relieving the company when goods are carried at the lower rate is "just and reasonable," within section 7 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31). *Lewis v. The Great Western Railway Company* (App.), 47 Law J. Rep. Q.B. 131; Law Rep. 3 Q.B. D. 195.

The plaintiff's agent sent cheeses, one of the articles conveyed at the lower rate, from London to Shrewsbury. The cheeses were improperly packed into the train by the company's servants in London, and in consequence arrived at Shrewsbury in a greatly damaged condition:—Held, that though there was clear evidence that the cheeses had been in fact improperly packed, yet, as there was none to shew either that the packers knew that they were packing them in a manner likely to damage them, or that it had been brought to their knowledge that that mode of packing might lead to such damage, and that they had then packed the cheeses in that mode, careless whether it would result in such damage or not, there was no evidence of wilful misconduct on their part, so as to render the defendants liable. *Ibid.*

12.—Passengers' luggage is within section 7 of the Railway and Canal Traffic Act (17 & 18 Vict. c. 31), and therefore railway companies are liable for loss or injury to such luggage in the receiving, forwarding or delivery thereof, occasioned by the neglect of such companies, or their servants, notwithstanding any notice or condition made and given by them in any wise limiting such liability. *Cohen v. The South Eastern Railway Company* (App.), 46 Law J. Rep. Exch. 417; Law Rep. 2 Ex. D. 253; affirming the decision of the Exchequer Division, 45 Law J. Rep. Exch. 298; Law Rep. 1 Ex. D. 217.

The provisions of that 7th section are by 31 & 32 Vict. c. 119. s. 16 extended to the conveyance by water of such luggage by railway companies using steam vessels for the purpose of carrying on a communication between any towns or ports. *Ibid.*

(3) *Breach of contract to deliver on particular day.*

13.—The plaintiff was a dealer in cattle spice, and was in the habit of going about to agricultural shows, exhibiting samples of his goods. He so exhibited them at B.; and desiring to exhibit them at N., he had them delivered to an agent of the defendants (a railway company), who had a special office on the show ground at B. for the purpose of forwarding goods that had been exhibited. The defendants' clerk supplied a blank consignment note. This the plaintiff's agent filled up, describing the goods as sundries, and the address as Newcastle Show Ground, and indorsing it, "Must be delivered Monday certain." A conversation also took place with reference to the vital importance of having the goods at N. on Monday. The goods not having been delivered at N. on Monday, nor in time for the Show, the plaintiff, who had

gone there to meet them, sued the defendants for the non-delivery, claiming damages for his expenses and loss of time or profit. The defendants paid 10% into Court to cover expenses, and a verdict was entered for 20% additional, in respect of loss of time or profit:—Held, that the verdict was right, the surrounding circumstances justifying the inference that the defendants' clerk knew the purpose for which the goods were wanted, and made that the basis of the contract, so as to render the defendants responsible for the damage naturally flowing from the non-delivery. Also, that in the case of a man whose business it was to attend agricultural shows and make profit thereby, the profit which would have been made at a particular show is not too speculative to form the subject of damages. *Simpson v. The London and North Western Railway Company*, 45 Law J. Rep. Q.B. 182; Law Rep. 1 Q.B. D. 274.

*Delivery to passenger.*

14.—Luggage labelled and placed in a railway luggage van is in the custody of the company until the passenger has an opportunity of claiming it and taking it away; and the taking of the luggage out of the van at its destination and placing it on the platform does not constitute delivery; the company remains liable until the passenger has been allowed a reasonable time. *Patscheider v. The Great Western Railway Company*, Law Rep. 3 Ex. D. 153.

(B) CONVEYANCE OF PASSENGERS.

(a) *Implied contract by company conveying passengers of other company.*

15.—The South Western Railway Company have a station at Richmond. Above the booking-office are the words "South Western and Metropolitan Booking-Office and District Railway." The defendants have a railway from Hammersmith to Shaftesbury Road, and running powers over the South Western line from Shaftesbury Road to Richmond. The plaintiff took from a servant of the South Western Railway Company at Richmond a return ticket to Hammersmith. The ticket was stamped "via Shaftesbury Road and District Railway." On his return journey he travelled by a train belonging to and managed by the defendants. The defendants' carriages, although suited to their own stations, were unsuited to the platform of the South Western station, and the plaintiff was hurt in alighting at Richmond. In an action for damages the jury found that the accident was caused by the negligence of the defendants:—Held (affirming the judgment of the Common Pleas Division, 48 Law J. Rep. C.P. 555; Law Rep. 4 C.P. D. 267), that, whether there was a contract made by the plaintiff with the defendants or not, they were liable for the injuries received by him while travelling in their train. *Foulkes v. The Metropolitan District Railway Company* (App.), 49 Law J. Rep. C.P. 361; Law Rep. 5 C.P. D. 157.



(b) *Evidence of negligence.*(1) *Question for jury.*

16.—While the respondent was travelling on the appellants' railway in a carriage, all the seats of which were occupied, three more persons got in and remained standing until the train arrived at the next station, where there was a crowd of persons, some of whom tried to enter the carriage just as the train was starting. The respondent rose from his seat, and tried to prevent any more passengers from getting in. After the train had started, the respondent fell forward, and put his hand on one of the hinges of the door to save himself. At the same moment a porter pushed away the persons who were trying to get in, and slammed the door, crushing the thumb of the respondent, who brought an action for the injury so caused:—Held (in the Court of Appeal), in an action for the injury so caused (by Cockburn, L.C.J., and Amphlett, J.A.), both on the authority of *Bridges v. The North London Railway Company* (43 Law J. Rep. Q.B. 151; Law Rep. 7 E. & I. App. 213) and independently of authority, that the above facts constituted evidence of negligence to go to the jury; (by Kelly, C.B., and Bramwell, J.A.), that no principle of law whatever was laid down in the case of *Bridges v. The North London Railway Company*, and that the above facts constituted no evidence of negligence. But held, on appeal to the House of Lords (reversing the decision of the Court of Appeal), that there was no evidence of negligence proper to be left to the jury. *The Metropolitan Railway Company v. Jackson* (H.L.), 47 Law J. Rep. C.P. 303; Law Rep. 3 App. Cas. 193; reported in the Court below (*nom. Jackson v. The Metropolitan Railway Company*), 46 Law J. Rep. C.P. 376; Law Rep. 2 C.P. D. 125.

In actions for negligence the rule is that from any given state of facts the Judge must say whether negligence can legitimately be inferred, and the jury must say whether it ought to be inferred. The case of *Bridges v. The North London Railway Company* lays down no new principle of law on the subject. *Ibid.*

17.—In all actions against railway companies for personal injuries, if any evidence whatever of negligence is offered, the question whether there was negligence on the part of the company or not is for the jury and not for the Court. So held, on the authority of *Bridges v. The North London Railway Company* (43 Law J. Rep. Q.B. 151; Law Rep. 7 E. & I. App. 213). *Robson v. The North Eastern Railway Company* (App.), 46 Law J. Rep. Q.B. 50; Law Rep. 2 Q.B. D. 85.

(2) *Train overshooting platform.*

18.—The train in which the plaintiff was carried as a passenger overshot the platform at the station at which the plaintiff intended to alight, drawing the carriage in which the plaintiff was seated beyond the platform. The porters called out, "Keep your seats!" but not so as to be heard by the plaintiff, and the train was not

put back. After waiting a reasonable time, the plaintiff got out, and in doing so sustained personal injuries. In an action against the company for damages,—Held (following *Bridges v. The North London Railway Company*, 43 Law J. Rep. Q.B. 151), that there was evidence of negligence to go to the jury. *Rose v. The North Eastern Railway Company* (App.), 46 Law J. Rep. Exch. 374; Law Rep. 2 Ex. D. 248.

19.—A railway train, consisting of six carriages, drew up at a small station with the last carriage beyond the platform. The platform was adapted for five carriages only, but on market days the train usually consisted of six carriages. The plaintiff, who frequently travelled by the train, was in the last carriage. The train was drawn up as far as possible, the engine being against a dead end, and the porters called out, "All change here!" The plaintiff's son got out and took her parcels across to a train waiting on the other side of the platform. The plaintiff knew the carriage was not at the platform; she, however, did not call for assistance, but proceeded to get out as quickly as she could. She put one foot on the iron step, and as she was about to put the other on the wooden step, the first slipped, and she fell:—Held, that the above circumstances did not constitute any evidence of negligence for the jury. *Owen v. The Great Western Railway Company*, 46 Law J. Rep. Q.B. 486.

(c) *Condition limiting carriers' liability.*

20.—The plaintiff took a return ticket issued to him by the defendants (an English railway company) for the journey from London to Paris and back. The ticket was in the form of a small book with a paper cover, on the outside of which were the words, "Cheap return ticket. London to Paris and back. Second class. Available by night service only." Inside, sewn up with the cover, were the coupons for the different stages of the journey, and a page containing, amongst notices relating to luggage, a notice that this company "incurs no responsibility of any kind beyond what arises in connection with its own trains and boats, in consequence of passengers being booked to travel over the railways of other companies, such through booking being for the convenience of the passenger." The plaintiff sustained an injury whilst being carried in France under this ticket on the railway of a French company. In an action against the defendants for such injury, the defendants relied on the said notice on the ticket relieving them from responsibility in the event which happened. The jury found that the plaintiff did not see or know of this notice, and further that the defendants had not done what was reasonably sufficient to bring it to the knowledge of the plaintiff:—Held, that notwithstanding such findings, the defendants were entitled to have judgment entered for them, as the whole of this ticket-book, and not merely what was on the outside, formed the contract under which

the defendants agreed to carry the plaintiff, and that, therefore, in the event which had happened, the defendants were, according to the terms of the contract, relieved from responsibility. The case of *Henderson v. Stevenson* (Law Rep. 2 Sc. App. 470) distinguished. *Burke v. The South Eastern Railway Company*, 49 Law J. Rep. C.P. 107; Law Rep. 5 C.P. D. 1.

#### CASE.

*Power of Justices to state.* [See JUSTICE OF THE PEACE, 7, 8.]

#### CATTLE.

[See CONTAGIOUS DISEASES ACT.]

If a man cause the death of a mare from internal injuries, not intending by his act to kill, maim or wound her, but knowing that the act would or might kill, maim or wound her, and acting recklessly and not caring whether she was injured or not, though without any ill-will or spite either towards the owner of the animal or the animal itself, and without any motive except the gratification of his own depraved tastes, he is guilty of maliciously killing the mare contrary to the 24 & 25 Vict. c. 97. s. 40. *Reg. v. Welch* (C.C.R.), 45 Law J. Rep. M.C. 17; Law Rep. 1 Q.B. D. 23.

#### CELLAR.

*Title to, by long possession.* [See LIMITATIONS, STATUTE OF, 2.]

#### CEMETERY.

*Fees for burials in, right to.* [See BURIAL, 4.]

#### CENSUS.

[Census to be taken in Ireland. 43 & 44 Vict. c. 28.]

[Provisions for taking the census in England. 43 & 44 Vict. c. 37.]

[Provisions for taking the census in Scotland. 43 & 44 Vict. c. 38.]

#### CENTRAL CRIMINAL COURT.

A German vessel, carrying the German flag, under the command and immediate direction of the prisoner, a German subject, collided with an English steamer navigating the English Channel at a point within two miles and a-half from Dover beach, and the collision caused the English ship to sink and the death by drowning of an English subject on board of her. The prisoner was tried and found guilty of manslaughter at the Central Criminal Court:—Held, by the majority of the Court (consisting of Cockburn, C.J., Kelly, C.B., Bramwell, J.A., Lush, J., Pollock, B., Field, J., and Sir B. Phillimore), that the Central Criminal Court had no jurisdiction to try the case. But

held by Lord Coleridge, C.J., Brett, J.A., Grove, J., Denman, J., Amphlett, J.A., and Lindley, J., that such Court had jurisdiction. *Reg. v. Keyn; The Franconia* (C.C.R.), 46 Law J. Rep. M.C. 17; Law Rep. 2 Ex. D. 63.

#### CERTIORARI.

A railway company, having power to take lands compulsorily, gave notice to treat, under the Lands Clauses Consolidation Act, 1845, for a portion of some leasehold land belonging to the claimant. Upon an inquisition to assess compensation before the under-sheriff and a jury, compensation was claimed for (amongst other things) loss to the claimant by reason of the portion of his land not taken by the railway company having been rendered, through the proximity of the railway, unfit for the carrying on of the claimant's business upon it. No objection to this claim, or the evidence in support of it, was raised by the company, and it was left by the under-sheriff to be considered by the jury. The inquisition and finding were signed on the 19th of February, and the claimant taxed his costs, and was paid them on the 19th of April, without any objection. Abstract of title was furnished and requisitions thereon answered, and the draft assignment prepared. The railway company having failed to pay the compensation assessed, the claimant issued his writ in an action for the amount, and on the 21st of July the company obtained a rule for a *certiorari* to bring up and quash the inquisition, on the ground that there had been an excess of jurisdiction in considering the damage caused to the claimant in respect of his use of land not taken by the company. The Queen's Bench Division (49 Law J. Rep. Q.B. 329) discharged the rule, on the ground that the application for a *certiorari* was too late, the Court stating that, as a rule, a *certiorari* to bring up, for the purpose of quashing it, an inquisition taken under the Lands Clauses Consolidation Act, 1845, should not be granted after the expiration of the time allowed for setting aside an award made under the same Act:—Held, on appeal, that the rule stated by the Queen's Bench Division was a good one, and that their discretion had been rightly exercised. *Reg. v. Sheward* (App.), 49 Law J. Rep. Q.B. 716; Law Rep. 5 Q.B. D. 179.

*Jurisdiction of Court of Appeal. Case stated at quarter sessions.* [See PUBLIC HEALTH ACT, 14, 37.]

*Order of magistrate for destruction of obscene books under 20 & 21 Vict. c. 81. s. 1.* [See OBSCENE PUBLICATION.]

#### CESTUI QUE VIE.

On an application for the production of a *cestui que vie*, under 6 Anne, c. 18, it is not necessary for the affidavit to shew actual concealment of the death by the party in possession; and where the applicant deposed to facts raising

a presumption of death, and to his having applied by letter to the party in possession, asking for production of the *cestui que vie*, without obtaining a response, the order was made. *In re Owen*, 48 Law J. Rep. Chanc. 248; Law Rep. 10 Ch. D. 166.

# CHAMBERS.

*Appeals from orders made at.* [See PRACTICE, B 9-11, 41-47.]

*Jurisdiction: transfer of action.* [See PRACTICE, GG 3.]

*Reference to, to settle lease.* [See LEASE, 6.]

*Vesting order in: jurisdiction.* [See TRUSTEE ACTS, 18.]

# CHAMPERTY.

1.—A solicitor, while acting as such in an ejectment action, bought the land which was the subject-matter of the action, and prosecuted an appeal in the action himself. The clients being unable to pay, an action was brought against the solicitor to recover the costs:—Held, that as there was no privity of contract between the plaintiffs and the solicitor they could not recover in the absence of malice. *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (P.C.) Law Rep. 2 App. Cas. 186.

The English laws of maintenance and champerty are not in force in India as specific laws. *Ibid.*

Consideration of the circumstances under which an agreement in the nature of champerty ought to be held invalid as contrary to public policy. *Ibid.*

*Cottrell v. Jones* (11 Com. B. Rep. 735; 21 Law J. Rep. C.P. 2) approved. *Ibid.*

2.—The sale of the right to proceed with a winding-up petition cannot be allowed. Where such a right had been assigned for value, and the petition had been amended by making the assignee co-petitioner, the petition was dismissed. *In re The Paris Skating Rink Company* (App.), Law Rep. 5 Ch. D. 959.

*Agreement by solicitor for remuneration by percentage: Taxing Master whether entitled to take opinion of Court.* [See SOLICITOR, 21.]

*Assignment of subject-matter of action by trustee in bankruptcy.* [See BANKRUPTCY, F 19.]

# CHARGE.

*Debts, of, on real estate.* [See ADMINISTRATION, 15, 16, 22, 25.]

*Legacies, of, on real estate.* [See ADMINISTRATION, 27, 28.]

# CHARGING ORDER.

C. transferred 1,000*l.* stock of the L. G. O. Company into the name of his son without any consideration, and merely to qualify him as a

director of that company, to be transferred to C. on request, which was ultimately done. C. received the dividends on the stock. The son was a contributory to the B. Company, to whom he owed 3,000*l.* The official liquidator of that company gave notice to the L. G. O. Company of his intention to move for an injunction to restrain the son, as owner of the stock, and that company from dealing with it. Thereupon the official liquidator of the B. Company was informed of the true facts as to the ownership of the stock. The official liquidator of the B. Company immediately afterwards obtained a charging order against the 1,000*l.* stock in the L. G. O. Company:—Held, that that order must be discharged, not only on the ground of the notice, but also because the stock was not standing in the name of the son of C. “in his own right.” *In re The Blakely Ordnance Company (Lim.)*. *Coates's Case*, 46 Law J. Rep. Chanc. 367.

[And see PRACTICE, D 1, 2, W 1; DISTRICT REGISTRY, 7.]

*On separate estate of married woman restrained from anticipation.* [See HUSBAND AND WIFE, 32.]

*Solicitors' lien.* [See SOLICITOR, 37-48.]

# CHARITY.

## (A) GIFT OR BEQUEST TO CHARITY.

(a) *Validity of: interest in land within Mortmain Act.*

- (1) *Unpaid premium on lease.*
- (2) *Money to be laid out in land.*
- (3) *Bequest to pay off charge on land.*
- (4) *Partnership property: real estate directed to be sold.*
- (5) *Debentures or bonds of company.*
- (6) *Metropolitan Board of Works stock.*
- (7) *Money charged on police rates.*

- (b) *Objects of gift in part illegal.*
- (c) *Cypres: failure of gift of residue.*
- (d) *Uncertainty: discretion of executors.*
- (e) *Gift for relief of poor kindred.*
- (f) *Gift to friendly society.*
- (g) *Secret trust.*
- (h) *Bequest whether specific or residuary.*
- (i) *Power to hold lands in mortmain.*

## (B) ADMINISTRATION OF CHARITY.

- (a) *Action by governors against schoolmaster.*
- (b) *Leases by or to charity: 13 Eliz. c. 10.*
- (c) *Schemes: construction of.*

- (1) *Qualification of scholar as “parish-ioner.”*
- (2) *Transfer of school to London School Board.*
- (3) *New trustees: Church of England or Nonconformist.*
- (4) *Immixing charity funds: increase of value.*

- (d) *Scheme: Charity Commissioners: diversion to educational purposes.*
- (e) *Payment of funds into Court by trustees.*

## (A) GIFT OR BEQUEST TO CHARITY.

(a) *Validity of: interest in land within Mortmain Act.*(1) *Unpaid premium on lease.*

1.—A lease is a sale *pro tanto*, and a premium reserved on a lease is in the nature of purchase-money, for which, if unpaid, there is a lien on the land; and, consequently, unpaid premium is an interest in land within 9 Geo. 2. c. 36. s. 3. *Shepherd v. Bootham*, 46 Law J. Rep. Chanc. 763; Law Rep. 6 Ch. D. 597.

A bequest to a hospital of "all other of any personal estate which I can by law bequeath to such an institution," held specific. *Ibid.*

Heir-at-law, though liable for debts, held not liable to pay probate duty, either directly or indirectly, which, in case of a deficiency of the impure personalty, after payment of debts and costs, was ordered to be borne by the specific bequest to the hospital. *Ibid.*

(2) *Money to be laid out in land.*

2.—A gift of money by will to a charity to be expended in building will be void unless it is distinctly provided that no part of it is to be expended in the purchase of land, or it is clearly expressed that the new building is to be on land already in mortmain. *Cox v. Davie*, 47 Law J. Rep. Chanc. 72; Law Rep. 7 Ch. D. 204.

3.—Bequest of money to be applied in supporting or founding free or ragged schools in a parish where there was already such a school, held good. A trust to support a school is not a trust to lay out money in land. *In re Hodgman. Morley v. Crozon*, Law Rep. 8 Ch. D. 156.

4.—Bequest of a fund (consisting of pure and impure personalty) upon trust to pay a legacy of 2,000*l.* to the vicar of M., to be by him applied or disposed of in his absolute discretion "in or about restoring, altering and enlarging and improving the church, parsonage house and schools" of M.:—Held, that an enquiry must be directed to ascertain which of the three objects specified were erected upon land already in mortmain, and what sums of money were required to be laid out on the objects already in mortmain, and that the legacy would prevail, as to the pure personalty, to the extent of the money ascertained to be so required, and fail as to the balance. Held, further, that under the provisions of 43 Geo. 3. c. 108, the legacy was payable out of the impure personalty to the extent of 500*l.*, in addition to the amount which, under the general law, would have been attributable to it out of the pure personalty. *Champney v. Davy*, 48 Law J. Rep. Chanc. 268; Law Rep. 11 Ch. D. 949.

(3) *Bequest to pay off charge on land.*

5.—Bequest "for or towards payment of all or any debt or debts, dues, demands, charges and claims whatsoever, which might be owing or chargeable upon or in any manner however claimable against" certain specified almshouses,

—Held, void, under the Mortmain Act (9 Geo. 2. c. 36), as being in substance a bequest for the payment of charges upon land in mortmain. *In re Lynall's Trusts*, 48 Law J. Rep. Chanc. 684; Law Rep. 12 Ch. D. 211.

(4) *Partnership property: real estate directed to be sold.*

6.—The proceeds of sale of real estate, forming part of the partnership property of a testator, and directed by him to be sold, are an interest in land, within the meaning of the Mortmain Act. *Ashworth v. Munn*, 47 Law J. Rep. Chanc. 747; Law Rep. 15 Ch. D. 363; affirmed on appeal, 50 Law J. Rep. Chanc. 107.

(5) *Debentures or bonds of company.*

7.—Debentures of a waterworks company are pure personalty, and may be bequeathed for charitable purposes. *Holdsworth v. Davenport*, 46 Law J. Rep. Chanc. 20; Law Rep. 3 Ch. D. 185.

8.—Debentures and mortgages given by a corporation, and charged upon their real estate, are interests relating to land, and cannot be devised to charities, unless, from the nature of the undertaking, and the form of the security, it is clear that the mortgage was not intended to have the undertaking itself as his security, but only the fruit of the going concern. *Chandler v. Howell*, 46 Law J. Rep. Chanc. 25; Law Rep. 4 Ch. D. 651.

9.—Railway debenture stock created under the provisions of the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), held not to be an interest in land within the 3rd section of the Charitable Uses Act (9 Geo. 2. c. 36). Decision of Hall, V.C. (47 Law J. Rep. Chanc. 157), reversed. *Attree v. Hanco* (App.), 47 Law J. Rep. Chanc. 863; Law Rep. 9 Ch. D. 337.

(6) *Metropolitan Board of Works stock.*

10.—Metropolitan Board of Works consolidated stock cannot be validly bequeathed to a charity. *Cluff v. Cluff*, 45 Law J. Rep. Chanc. 20; Law Rep. 2 Ch. D. 222.

(7) *Money charged on police-rates.*

11.—Bonds by which sums advanced are under the 3 & 4 Vict. c. 88 charged by Justices assembled in general or quarter sessions on the police-rates of a division of a county are pure personalty, and may be bequeathed to a charity. *In re Harris. Jackson v. The Governors of Queen Anne's Bounty*, 49 Law J. Rep. Chanc. 687; Law Rep. 15 Ch. D. 561.

(b) *Objects of gift in part illegal.*

12.—Where the surplus of a fund, after providing for an illegal purpose, is given for a legal purpose, the whole fund is treated as surplus, and is applicable for the legal purpose. *In re Williams*, 47 Law J. Rep. Chanc. 92; Law Rep. 5 Ch. D. 735.

A., by will, gave a fund upon trust to apply the income in keeping in repair certain tombs, and directed the surplus income to be accumulated till it amounted to 25*l.* and upwards, when such a sum of money as would reduce the accumulations to 20*l.* should be paid over in equal shares to the incumbents for the time being of two parishes for the benefit of three poor sick and infirm people:—Held, that the invalidity of the trust for the repair of the tombs did not defeat the gift to the incumbents, but that the whole fund must be treated as surplus applicable for the good charitable purpose, and must accordingly be given to the two incumbents. *Ibid.*

13.—Testatrix gave a sum of money upon trust to apply part of the income in repairing her father's grave, and to apply the remainder (if any) for a designated charitable purpose. The gift for repairing the grave being void under the Mortmain Act,—Held, that the whole income was to be applied to the charitable purpose. *In re Birckett's Trusts*, 47 Law J. Rep. Chanc. 846; Law Rep. 9 Ch. D. 576.

(c) *Cypres: failure of gift of residuo.*

14.—The jurisdiction of the Court to act on the *cypres* doctrine upon the failure of a specific charitable bequest arises, whatever the residue be given to, charity or not, unless upon the construction of the will a direction can be implied that the bequest, if it fails, should go to the residue. *The Mayor of Lyons v. The Advocate-General of Bengal*, 45 Law J. Rep. P.C. 17; Law Rep. 1 App. Cas. 91.

A testator born in France and resident in India directed a part of his personal estate to be employed in founding certain educational institutions in France and in India. He also directed a part of his estate to be employed in the relief of poor prisoners for debt in France or in India; and he directed that the residue of his estate should be applied to augment the funds of two charitable institutions so to be founded. The bequest in favour of poor persons in India failed:—Held, that the doctrine of *cypres* was applicable to such bequest, and that no inference could be drawn from the will that the testator intended such bequest on failure to fall into his residuary estate. *Ibid.*

(d) *Uncertainty: discretion of executors.*

15.—Testator, by a codicil to his will, after giving various charitable legacies to be paid out of a particular fund, directed the residue of the fund to be given by his executors to the charitable institutions to which he should by any future codicil give the same, and in default of any such gift then to be distributed by his executors at their discretion. Testator died without having made any other codicil:—Held (affirming the decision of Hall, V.C.), that the fund was well given for charitable purposes. *Pocock v. The Attorney-General* (App.), 46 Law J. Rep. Chanc. 496; Law Rep. 3 Ch. D. 842.

16.—A legacy to be applied to any charitable or benevolent purpose the executors might agree upon, is void for uncertainty, although actually destined by the executors for exclusively charitable purposes. *In re Jarman. Leavers v. Clayton*, 47 Law J. Rep. Chanc. 675; Law Rep. 8 Ch. D. 584.

Testator gave charitable legacies, to be paid out of pure personalty, and afterwards directed the duties on all legacies to be paid out of residue in exoneration of the legacies:—Held, that the charitable legacies were exonerated from duty only in the proportion to which the residue consisted of pure personalty. *Ibid.*

(e) *Gift for relief of poor kindred.*

17.—In order that a gift "for the relief and use of the poorest of my kindred" may be good as a charitable bequest, the word "poorest" must mean "poor" or "very poor," and not "the least wealthy of a number of wealthy persons." The *dictum* of Wickens, V.C., in *Gillham v. Taylor* (42 Law J. Rep. Chanc. 674; Law Rep. 16 Eq. 581), disapproved of. *The Attorney-General v. The Duke of Northumberland*, 47 Law J. Rep. Chanc. 569; Law Rep. 7 Ch. D. 745.

A testator gave for the use and relief of the poorest of his kindred, such as were not able to work for their living, namely, sick, aged and impotent persons, and such as could not maintain their own charge, the sum of 1,000*l.*, to be laid out in the purchase of lands of the value of 60*l.* per annum at the least, and the rents and profits to be paid yearly unto them by his executors; and he declared his meaning to be that in the bestowing and distributing of his estate and goods to the poor to charitable uses, it was according to his intent and desire that those of his kindred who were poor, aged, impotent or any other way unable to help themselves should be chiefly preferred and respected. The sum was invested in the purchase of an estate in London, and the income accruing from the investment, owing to building and other causes, increased to an enormous extent, while the number of the persons who claimed to be testator's kindred, and as such entitled to the fund, was very large, and in many cases the claimants were unfit objects of charity. Accordingly, in 1875, a scheme was directed, and in settling the scheme a question was raised, "whether any and what portion of the income of the trust estate could, and, if it could, whether it ought to, be appropriated to the benefit of any persons not being kindred of the founder":—Held, that the income was applicable primarily, and, so far as was required for the purpose, for the relief of the poor kindred of the testator, poor according to the definition in the will, and, subject thereto, was applicable for the benefit of charitable objects other than those persons who were the kindred of testator. *Ibid.*

(f) *Gift to friendly society.*

18.—A testator gave 500*l.* to trustees to apply the income in aid of the Ringwood Friendly

Society, a society whose funds were raised by the subscriptions of its members, and were applicable for their benefit in case of "sickness, lameness or old age." Some time after the testator's death the society was dissolved:—Held, that the society was not a charitable institution, and that the gift was invalid, as aiming to create a perpetuity, and was not, on the dissolution of the society, applicable *cyprès*. *In re Clarke's Trusts*, 45 Law J. Rep. Chanc. 194; Law Rep. 1 Ch. D. 497.

(g) *Secret trust.*

19.—Testatrix, by her will, bequeathed such part of her residuary personal estate as might be legally bequeathed for charity, to A. and B., upon trust for a certain charitable society, and devised and bequeathed to them the whole of her real estate, and such portion of her personal estate as could not legally be bequeathed in charity in equal shares, not in their character of trustees, but for their own respective personal use and benefit absolutely, without any trust, restriction or condition whatsoever, and on the same day as she executed her will she signed a declaration, stating she had made the bequest to enable them, if they thought fit, to benefit certain institutions in which they knew she took an interest, but declared that she had not imposed any secret trust or confidence upon them. B. was not aware of the bequest in his favour till after the death of testatrix, and knew nothing of her intentions. The evidence shewed that A., who was a solicitor, had, on accepting the trust, explained to the testatrix that her trustees would be bound by no promise, express or implied, but that they must have the absolute control and disposal of the residue, to put it, if they chose, into their own pockets:—Held (following *Tee v. Ferris*, 25 Law J. Rep. Chanc. 437), that B., not knowing of the bequest till after the death of the testatrix, and no communication having been made to him with respect to it, the action must be dismissed as against him, and that the plaintiffs having failed to shew that the trust had been expressly or tacitly accepted by A., the action must also be dismissed as against him, and that the property belonged absolutely to A. and B. as tenants in common to do as they liked with. *Robotham v. Dunnett*, 47 Law J. Rep. Chanc. 449; Law Rep. 8 Ch. D. 430.

(h) *Bequest: whether specific or residuary.*

20.—A testator, after making specific and other dispositions, gave to a charity all such portions of his estate as were by law applicable for charitable purposes, and which had not been already given by his will, and declared that the portions of his estate included in that gift should be exonerated from the payment of his debts, &c., and legacies, with the payment whereof he exclusively charged his residuary estate thereafter disposed of:—Held, that the charitable legacy was specific, and abatable for payment of debts, &c., rateably with the other

specific gifts according to their respective values at the testator's death. *Hales v. Rumsford*, 47 Law J. Rep. Chanc. 559.

The testator gave the residue of his real and personal estate in trust to pay debts, &c., including debts secured upon any of the devised estates and in exoneration of such estates. He died indebted to his bankers in a sum secured by mortgage of estates comprised in the will, and possessed of a similar amount to his credit upon his current account:—Held, that the balance on the current account was, for the purposes of the will, included in the charitable gift, notwithstanding any lien of the bankers. *Ibid.*

[And see No. 1 supra.]

(i) *Power to hold lands in mortmain.*

21.—Guardians of the poor incorporated by a special Act enabling them to receive gifts for the use of the poor are a charity, and are entitled to receive bequests as such. *Lucraft v. Pridham* (App.), 46 Law J. Rep. Chanc. 744; Law Rep. 6 Ch. D. 205.

Such guardians were expressly authorised by an Act of Parliament passed before the General Mortmain Act to receive by devise lands in mortmain:—Held, that the Mortmain Act applied to the corporation, and that they could not now receive lands in mortmain. *Ibid.*

Several subsequent Acts of Parliament had been passed giving enlarged powers to the corporation, but not touching upon the question of mortmain:—Held, that this made no difference, and did not revive the powers as to mortmain given by the first Act. *Ibid.*

(B) ADMINISTRATION OF.

(a) *Action by governors against schoolmaster.*

22.—Section 17 of the Charitable Trusts Act, 1853, is only intended to prevent strangers from taking proceedings concerning a charity or its property without the consent of the Charity Commissioners, and does not apply to an action by the governors of a charity school to restrain a dismissed schoolmaster from wrongfully remaining in possession. Decision of Jessel, M.R. (46 Law J. Rep. Chanc. 223) affirmed. *Holme v. Guy* (App.), 46 Law J. Rep. Chanc. 648; Law Rep. 5 Ch. D. 901.

(b) *Leases by or to charity: 13 *Etha. c. 10.**

23.—A tenant for life having power to grant leases in possession may bind himself by covenant to grant a lease in reversion expectant on the determination of a subsisting term; but a trustee having a similar power cannot, for he is bound to exercise the power for the benefit of the estate. *Moore v. Clench*, 45 Law J. Rep. Chanc. 80; Law Rep. 1 Ch. D. 447.

The governors of a charity, in consideration of a covenant to lay out 2,000*l.* in building, demised land for the term of forty-one and a-half

years, and the concurrent term of ninety-nine years, if three lives named in the lease should so long live; and they covenanted that during the first-mentioned term, when one of the said lives should die, they would put in another life for the fine of 5*l*. The lease being void by statute 13 Eliz. c. 10, as to the excess beyond twenty-one years or three lives,—Held, that the covenant for renewal was not binding on the governors of the charity. *Ibid*.

Observations on the duties of the Charity Commissioners under the Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 29. *Ibid*.

24.—A corporation created in 1783 to maintain a house for the reception of penitent prostitutes is a hospital within the meaning of 14 Eliz. c. 14, and therefore also of 13 Eliz. c. 10, notwithstanding that it has no head, and that its officers and members have no beneficial interest in the corporate property. Where the governors of a hospital within the Act 13 Eliz. c. 10 have no beneficial interest in the corporate property, a lease made by them not warranted by the Act is not merely voidable, but void *ab initio*. A hospital granted a void lease at a peppercorn rent, and the lessee entered, and paid no rent for more than twenty years. Upon an action by the hospital to recover the property comprised in the lease,—Held (affirming the decision of the Court of Appeal, 47 Law J. Rep. Chanc. 726; Law Rep. 8 Ch. D. 709, reversing the decision of the Master of the Rolls, 46 Law J. Rep. Chanc. 149; Law Rep. 5 Ch. D. 175), that no tenancy was created, and that the Statute of Limitations ran against the hospital from the entry, and barred the action. *The Governors of Magdalen Hospital v. Knotts and Others* (H.L.), 48 Law J. Rep. Chanc. 579; Law Rep. 4 App. Cas. 324.

25.—A building used as a dissenting chapel, though not so described, was demised by lease to six persons, described as trustees, for ninety-nine years, reserving a right to a pew, with a covenant for perpetual renewal at a rent of one shilling per annum. The lease was not enrolled. New trustees of the chapel had been appointed under the provisions of 13 & 14 Vict. c. 28. At the end of the term no rent had been paid for more than twenty years, but certain arrears were then paid and accepted by the reversioner. Shortly before the expiration of that term the trustees served notice for a renewal of the lease, but the reversioner refused to renew. In an action by him to recover possession of the building,—Held, that the lease was for charitable purposes, and void under the Mortmain Act (9 Geo. 2. c. 26). Held also, that although rent had not been paid for a period of twenty years, before the last payment, sections 8 and 34 of the Statute of Limitations (3 & 4 Will. 4. c. 27) were not a bar to the right of action. *Bunting v. Sargent*, 49 Law J. Rep. Chanc. 109; Law Rep. 13 Ch. D. 330.

Seemle, even if the lease had contained a power for the trustees to sell and to apply the

proceeds for other purposes, the lease would still have been a grant for charitable purposes within the meaning of the Mortmain Act. *Ibid*.

(c) *Scheme: construction of.*

(1) *Qualification of scholar as "parishioner."*

26.—A scheme provided (*inter alia*) that no child should be considered eligible for election to the benefits of a charity unless he or she should have been born in, or unless his or her parent, or one of them, should be or should have been parishioners or a parishioner of a certain parish. The father of a boy who was a candidate for election to the charity, in order to qualify his son took a house in the parish for three months, with an option of continuing it, at a rent of thirty shillings a month; but with the exception of sleeping in it once or twice and paying rates for it the day before the election, he did not reside in the parish. His son was elected. In a suit instituted for the purpose of declaring the election invalid for want of qualification,—Held (reversing the decision of one of the Vice-Chancellors, 44 Law J. Rep. Chanc. 637), that the father was a parishioner within the meaning of the scheme, and that the fact of his having hired the house for the mere purpose of acquiring the qualification did not make the qualification bad. *Etherington v. Wilson* (App.), 45 Law J. Rep. Chanc. 153; Law Rep. 1 Ch. D. 160.

The Vice-Chancellor having ordered the vicar and churchwardens in whom the right of election was vested to pay the plaintiff's costs of suit,—Per James, L.J.: If they had appealed for costs alone the Court would have entertained the appeal. *Ibid*.

Observations on the expressions "*bona fide*" and "*colourable*." *Ibid*.

(2) *Transfer of school to London School Board.*

27.—By a scheme approved in 1852 for appropriating the increased revenues of a charity estate founded for the benefit of the poor of the parish, the trustees were directed to pay 90*l*. a year in aid of the expenses of a school in Flint Street, Walworth, or of any other school which might be established in its stead, provided that no sum should be paid to a school becoming the property of any exclusive denomination or sect, or excluding, by its regulations, the children of any class or denomination of persons. If the school should not at any time fall within the description of school, or should "become materially altered in discipline, numbers or other circumstances," then the endowment was, in the discretion of the trustee, to be applied "for educational purposes amongst other schools of a similar character" in the parish. The managers transferred the school, and "so far as they lawfully could," the endowment to the School Board for London, the latter undertaking the management, and in consideration of the endowment agreeing to pay the

then master of the school a pension of 100*l.* a year:—Held, that the school had not by its transfer been “materially altered” within the meaning of the scheme, and that the School Board were entitled to the 90*l.* a year. *The School Board of London v. Faulconer*, 48 Law J. Rep. Chanc. 41; Law Rep. 8 Ch. D. 571.

(3) *New trustees: Church of England or Nonconformist.*

28.—The Hospital of St. John, with the chapel of St. Michael annexed, at Bath, is an eleemosynary and not an ecclesiastical foundation; and as the only religious duties which the trustees of it have to perform are, first, to appoint a clergyman of the Church of England, in priest's orders, to the incumbency of the chapel; and, secondly, to keep the chapel in repair, they need not be members of the Church of England. *The Attorney General v. St. John's Hospital at Bath*, 45 Law J. Rep. Chanc. 420; Law Rep. 2 Ch. D. 55.

(4) *Immixing charity funds: increase of value.*

29.—Where certain special charitable funds had become inextricably mixed with the general funds of a hospital, and a scheme was proposed for the administration of the two sets of funds separately,—Held, that the special charitable funds must be taken to have participated proportionately in the increased value of the hospital funds. *The Lord Provost of Edinburgh v. The Lord Advocate* (H.L. Sc.); Law Rep. 4 App. Cas. 823.

By the original gift of the founder of a charity in 1695, the provost and town council of Edinburgh and the ministers of the burgh were appointed patrons. The ministers never acted as such:—Held, nevertheless, in reference to a scheme for the administration of the charity, that the ministers should be joint administrators. *Ibid.*

(5) *Charity Commissioners: diversion to educational purposes.*

30.—Lord Campden, by his will in 1629, gave 200*l.* “to be yearly employed for the good and benefit of the poor of the town of K., in such manner as” certain specified persons “and the churchwardens of the parish of K. from time to time should think fit to establish, for ever.” Lady Campden, by her will in 1643, gave to nine specified parishioners of K. and the churchwardens for the time being 200*l.*, on trust to purchase land of the yearly value of 10*l.*, “one-half whereof should be applied from time to time for ever for and towards the better relief of the most poor and needy people of good life and conversation that should be inhabiting within the said parish of K., and the other half thereof should be applied yearly for ever to put forth one poor boy or more of the said parish to be apprenticed; the said 5*l.* due to the poor to be paid to them half-yearly for ever, at Lady-day and Michaelmas, in the church

or the porch thereof at K.” By a deed of feoffment in 1651, a piece of land known as “Cromwell's gift” was conveyed to certain parishioners of K., but no trust thereof was declared. The three charities were for many years administered by the same body of trustees, the income of Lord Campden's charity being applied in pensions to the deserving poor of the parish, the income of Lady Campden's charity half in pensions and half in apprenticing boys, and the income of Cromwell's gift three-quarters in pensions and one-quarter in apprenticeships. The income of the united charities now exceeded 3,500*l.*; but there was in the parish of K. no lack of deserving recipients of the charities as thus administered. Five new ecclesiastical districts having been formed out of the parish of K., an order was made in 1852 apportioning the charities between the several districts and the original parish, and directing that the trustees should apply the income as they had been accustomed, but in the proportions thereby specified. In 1879 the Charity Commissioners made an order confirming a new scheme for the administration of the charities, under which one moiety of the entire income was in effect devoted to the advancement of the education of children resident in K. attending public elementary schools. The scheme did not refer to the order of 1852. On petition by way of appeal against the order of the commissioners,—Held, first, that Cromwell's gift was to be treated as belonging in equal undivided shares to the other two charities; secondly, that the revenue of the property belonging to Lord Campden's charity might be applied as to part thereof for educational purposes; thirdly, that the revenue of Lady Campden's charity must be dealt with as applicable, as to one moiety, for the benefit of the poor, by their being recipients thereof in the form of pensions, or otherwise, and as to the other moiety, for apprenticing boys, with proper provisions for application of any surplus income; fourthly, that regard must be had to the distribution of income provided for by the order of 1852. Order remitted to the commissioners for reconsideration; the scheme to be reframed by them in accordance with directions to the above effect. *In re The Campden Charities*, 49 Law J. Rep. Chanc. 676.

(d) *Payment of funds into court by trustees.*

31.—Trustees of a charity may pay money into Court under the Trustee Relief Act, but if they do so they cease to be trustees, and the Attorney-General is the proper person to petition for administration of the fund. As a general rule in such cases the trustees should apply to the Charity Commissioners before taking proceedings. *In re The Poplar and Blackwall Free School*, Law Rep. 8 Ch. D. 542.

Semble, in settling a scheme for the administration of funds of a charity school the funds should not be applied for the general purposes



of the school (so as to aid local rates), but for advancement of learning in the school—*s.g.* exhibitions or scholarships. *Ibid.*

CHARITY COMMISSIONERS.

[See CHARITY, 22, 23, 30: ENDOWED SCHOOLS ACT.]

*Stamp on order of, appointing new trustees.* [See STAMP, 6.]

CHARTER.

*Entail: royal charter by progress.* [See SCOTCH LAW, 10.]

*Right to foreshore in Cornwall: charter of 11 Edw. 3.* [See CORNWALL, DUCHY OF.]

CHARTER-PARTY.

[See SHIPPING LAW, D.]

CHEQUE.

[See BILL OF EXCHANGE.]

CHILD.

[Employment of children under fourteen in dangerous public exhibition or performance prohibited. 42 & 43 Vict. c. 84.]

[See PARENT AND CHILD.]

*Education of.* [See ELEMENTARY EDUCATION ACT; INFANT.]

*Gifts and bequests to children.* [See ADVANCEMENT; WILL, CONSTRUCTION.]

CHOSE IN ACTION.

[See DEBT: EQUITABLE ASSIGNMENT.]

1.—One Gough contracted with the defendant to build him a ship, to be paid for by instalments. Gough being in difficulties, the defendant, in order that the ship might be finished, advanced him the whole contract price before it became due. Before the last 100*l.* was advanced, Gough borrowed a like sum from the plaintiff, and assigned to him the 100*l.* "to become due" from the defendant. The defendant had due notice of this, but notwithstanding advanced the remaining 100*l.* to Gough:—Held (by Bramwell, L.J., and Cotton, L.J., *dissentiente* Brett, L.J.), that he was liable to pay the 100*l.* to the plaintiff, the assignment being a good one under the Judicature Act, 1873, s. 25, sub-s. 6. *Brice v. Bannister* (App.), 47 Law J. Rep. Q.B. 722; Law Rep. 3 Q.B. D. 569.

2.—A person entitled to a reversionary share of a trust fund became bankrupt in 1866, but the trustees of the fund had no notice of the bankruptcy till 1878. The bankrupt in 1871 assigned

his reversionary share for value to a purchaser who had no notice of the bankruptcy, and who gave immediate notice of the assignment to the trustees of the fund. Upon the reversion falling into possession in 1878,—Held, that under the terms of the Bankruptcy Act, 1849, s. 141, the title of the assignee in bankruptcy must prevail against that of the particular assignee. *In re Coombe's Trusts* (1 Giff. 91) approved. *In re Bright's Settlement* (App.), Law Rep. 13 Ch. D. 418.

*Assignment of, by trustee in bankruptcy: champerty.* [See BANKRUPTCY, F 19.]

*Assignment of future rent: surrender after notice of assignment: Judicature Act.* [See LANDLORD AND TENANT, 15.]

CHRIST'S HOSPITAL.

[See CHARITY, 26.]

CHURCH AND CLERGY.

(A) ADVOWSON.

- (a) *Election of vicar by parishioners: mode of election.*
- (b) *Presentation to endowed chapelry.*
- (c) *Exchange of livings: effect of deed of resignation.*

(B) CHANCEL.

(C) ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

(D) CHURCHWARDENS.

(E) CHURCHYARDS.

- (a) *Facility for erection of mortuary.*
- (b) *Inscription on tombstone.*

(F) FACULTY.

- (a) *As to goods and ornaments.*
- (b) *In other cases.*

(G) PEW.

- (a) *Prescriptive right to.*
- (b) *Mortgage of pew rents.*

(H) OFFENCES.

- (a) *Vestments: ceremonies: ornaments.*
- (b) *Administration of holy communion.*
- (c) *Control of organ.*

(I) SEQUESTRATION.

(K) CHURCH DISCIPLINE ACT: OBLIGATION OF BISHOP TO ISSUE COMMISSION.

(L) PUBLIC WORSHIP REGULATION ACT.

- (a) *Disqualification of bishop as patron.*
- (b) *Jurisdiction of judge: place of hearing.*
- (c) *Transmission of representation: time for.*

(M) ECCLESIASTICAL COURTS: JURISDICTION, PLEADING AND PRACTICE.

(a) *Jurisdiction.*

- (1) *Criminal suit against layman.*
- (2) *Monition appended to definitive sentences.*

(b) *Appearance by proctor.*

(c) *Duplices querela: responsive allegation.*

(d) *Evidences: advertisements of Elizabeth.*

(e) *Disobedience to monition.*

(f) *Stay of proceedings pending appeal.*

## (A) ADVOWSON.

(a) *Election of vicar by parishioners: mode of election.*

1.—The right of electing the Vicar of C. was vested in the parishioners and inhabitants. Upon a vacancy occurring in 1875, the churchwardens called a meeting for the 28th of July, to consider the necessary steps to be taken. At this meeting it was resolved that the nomination should be held on the 30th of August, and the churchwardens were directed to make the necessary arrangements. In consequence of a requisition numerously signed by the parishioners, the churchwardens called a meeting for the 25th of August. At this meeting resolutions were passed in favour of the votes being taken by ballot, and with respect to the hours of polling and other matters. On the nomination day, the 30th of August, a poll having been demanded, it was moved that the election be held in the manner directed by the resolutions passed on the 25th of August. The chairman, who was one of the churchwardens, declined to put this motion and left the chair. Another chairman was appointed and the resolution was carried. Notwithstanding this, the churchwardens directed the election to be carried out as on former occasions, and not in accordance with the resolutions of the 25th of August. In the result R. was elected by a considerable majority. On a claim brought by one of the parishioners to set aside the election on the ground of irregularity,—Held, that the churchwardens had acted erroneously and illegally; but that as there was no evidence to shew that the parishioners and inhabitants had not had full opportunity of voting, or that the result would have been different if the election had been conducted in accordance with the resolutions, there was no ground for setting aside the election. The action was therefore dismissed, but without costs. *Shaw v. Thompson*, 45 Law J. Rep. Chanc. 827; Law Rep. 3 Ch. D. 233.

The judgments in the case of *Faulkner v. Elger* (4 B. & C. 449), to the effect that an election by ballot is illegal, being based on the ground that it does not afford an opportunity for a scrutiny, are not applicable at the present day, when Acts of Parliament have been passed regulating municipal and parliamentary elections, which free voting by ballot from these objections. *Ibid.*

(b) *Presentation to endowed chapelry.*

2.—The vicar of a parish has not, as vicar, the right of presentation to any consecrated public chapel in his parish, unless such chapel is a chapel of ease; but he has the right to forbid any person to officiate therein unless deprived of such right by some statute or some arrangement assented to and binding on the bishop of his diocese, the patron of the mother church and the incumbent thereof. The plaintiff, as vicar, claimed the right of presentation to an endowed chapel erected in the parish and

consecrated for the administration of sacraments and all other divine offices. The defendants also claimed the right of presentation, alleging that the chapel had been erected by the freeholders and endowed by the defendants, and conveyed to the Ecclesiastical Commissioners to make declaration of the right of nomination, pursuant to 14 & 15 Vict. c. 97; that before making any declaration, application had been made by the freeholders to the Commissioners, containing such information as is required by the said statute, and notice of the same had been sent to the plaintiff, both as patron and incumbent, as required by the said statute; that the plaintiff was not in fact patron, but that after notice he had allowed the defendants to endow the chapel and procure it to be consecrated in the belief that he was, and was therefore estopped from denying he was patron; and that three months after such notice the right to nominate was duly declared to be for ever in the defendants:—Held, that the plaintiff had not shewn any title to the right of presentation; but that, if he had, the facts alleged by way of estoppel would not have been an answer to his claim, as a vicar's rights are not mere private rights which may be waived or renounced at his own will or pleasure. *M'Allister v. The Bishop of Rochester*, 49 Law J. Rep. C.P. 114; Law Rep. 5 C.P. D. 194.

(c) *Exchange of livings: effect of deed of resignation.*

3.—R., the rector of a living, obtained the consent of the patron and the bishop to exchange livings with P., and the patron having promised to do all things necessary to carry out the exchange, R. executed a deed of resignation of the living for the purpose of such exchange, and delivered it to the bishop's registrar, who received it with knowledge of the purpose for which it was executed. The patron, however, refused to present P., and presented the defendant instead, who, with full knowledge of the circumstances, accepted the presentation, and took possession of the rectory-house, glebelands and living. On demurrer to an action of ejectment by R.,—Held, that R. could not recover. *Rumsey v. Nicholl*, Law Rep. 2 C.P. D. 179; affirmed on appeal, Law Rep. 2 C.P. D. 294.

## (B) CHANCEL.

4.—The parish church of St. Nicolas, Arundel, regarded as one building, is a cruciform church with a central tower; the portion east of this tower is called the Fitzalan Chapel, and occupies the place commonly filled by the chancel. The plaintiff claimed this portion of the building as his private property, and built a wall across the west end of it, so as to separate it structurally from the rest of the church. The defendant pulled down part of this wall, alleging that the chapel known as the Fitzalan Chapel was the chancel of the parish church, and, even if it were not, still that the parishioners were

entitled either by prescription at common law, or by virtue of a lost grant, or under the Prescription Act (2 & 3 Will. 4. c. 71), to light from this chapel. Evidence was given of numerous acts of exclusive ownership by the plaintiff and his ancestors for more than 300 years; documentary evidence of title to the same effect was produced, and at the trial before Lord Coleridge, C.J., without a jury, judgment was given for the plaintiff:—Held (by the Court of Appeal), that the evidence shewed that the disputed building was not the chancel of the parish church, but had always been the property of the plaintiff and his predecessors in title, and that the claim to light could not be maintained on any of the grounds set up by the defendant. *The Duke of Norfolk v. Arbuthnot* (App.), 49 Law J. Rep. C.P. 782; Law Rep. 5 C.P. D. 300.

(C) ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

5.—The three months mentioned in section 29 of the above Act refer to the bishop's direction to the surveyor and not to the surveyor's inspection and report. Where, therefore, the bishop, within three calendar months after resignation of a benefice, directed the surveyor to inspect the buildings of the benefice, and after the expiration of the three months the surveyor inspected and reported to the bishop, who then made an order for the cost of the necessary repairs,—Held, in an action by the new incumbent upon the order against the late incumbent, that a plea by the latter that the surveyor neither inspected nor reported within the three months limited by section 29 was no defence to the action. *Gleaves v. Mariner*, Law Rep. 1 Ex. D. 107.

6.—Upon the death of the incumbent of a sequestrated benefice, the diocesan surveyor inspected the buildings, and the bishop made an order under section 34 of the Ecclesiastical Dilapidations Act, 1871, declaring that the estate of the late incumbent was liable for the cost of the repairs thereof:—Held, as between the new incumbent and the creditors under the sequestration, that the profits of the benefice in the hands of the sequestrator were not liable for the costs of repairs of the buildings. *Jones v. Dangerfield*, 45 Law J. Rep. Chanc. 161; Law Rep. 1 Ch. D. 438.

7.—An agreement between two incumbents to exchange their livings without payment on either side on account of dilapidations is not of itself invalid and illegal; for it is not necessarily simoniacal, and it does not contravene the provisions of the Ecclesiastical Dilapidations Act, 1871. *Wright v. Davies* (App.), 46 Law J. Rep. C.P. 41; Law Rep. 1 C.P. D. 638.

8.—By section 29 of the Ecclesiastical Dilapidations Act, 1871, "within three calendar months after the avoidance of any benefice . . . the bishop shall direct the surveyor, . . . who shall report to the bishop what sum is required to make good the dilapidations to which

the late incumbent or his estate is liable." More than three months after the avoidance of a benefice the bishop of the diocese directed the surveyor to inspect and report what sum was required to make good the dilapidations. The surveyor having inspected and reported accordingly, the bishop made an order for the cost of repairs which, by section 36 of the above Act, became a debt due from the late incumbent to the new incumbent. An action for the recovery of this debt having been brought by the new incumbent against the late incumbent, the latter resisted his liability on the ground that the order being made more than three months after the avoidance of the benefice was invalid, and all proceedings thereunder void:—Held, that the words of the Act were directory and not imperative, and therefore the defence was no answer to the action. *Caldon v. Picell*, 46 Law J. Rep. C.P. 541; Law Rep. 2 C.P. D. 562.

(D) CHURCHWARDENS.

*Disqualification by bankruptcy.* [See VESTRY, 1.]

*Custom as to election of: private Act: new parish.* [See STATUTE, 3.]

*Status of: parish divided into two divisions with separate vestry.* [See PARISH.]

(E) CHURCHYARDS.

(a) *Faculty for erection of mortuary.*

9.—Upon the application of the vicar and churchwardens of a parish church, a faculty was granted to erect a mortuary for the parish in a part of the parish churchyard closed for burials, but so much of the application as sought to add to the mortuary a room for coroners' inquests and living-rooms for the keeper and his family was rejected. *Hansard v. St. Matthew's, Bethnal Green*, Law Rep. 4 P. D. 47.

10.—Upon the application of the rector, churchwardens and burial board of an urban parish for the grant of a faculty to authorise the erection of a parochial mortuary with a *post-mortem* room attached, in a consecrated burial ground situate in a populous part of the parish, and closed for burials by Order in Council, the Court, being of opinion that the petitioners had made out their case for the establishment of a mortuary on the site proposed, directed that a faculty should issue for the erection of the mortuary, but directed that certain conditions to be specified in the faculty should be imposed with respect to the manner of using the mortuary. *The Burial Board of St. George's, Hanover Square v. Hall*, Law Rep. 5 P. D. 42.

(b) *Inscription on tombstone.*

11.—The word "reverend" is not a title of honour or dignity. It is merely a laudatory epithet or mark of respect. And a faculty was granted for the erection of a tombstone de-

scribing a duly appointed Wesleyan minister "Reverend." *Kee v. Smith*, 45 Law J. Rep. P.C. 10; Law Rep. 1 P. D. 73.

#### (F) FACULTY.

##### (a) As to goods and ornaments.

12.—Faculty granted for the erection in a church of a dwarf wall, not exceeding two feet high, between nave and chancel. Erection of gates to be attached to the wall not allowed. *In re St. Augustine's, Haggerston*, Law Rep. 4 P. D. 112.

13.—Faculty granted for erection of a chancel screen, thirteen feet one inch high, but not for gates. *The Church of the Annunciation, Chislehurst*, Law Rep. 4 P. D. 114.

14.—Faculty granted for removal of various things introduced into a church without the sanction of a faculty, comprising steps to the communion table and a wooden screen separating the transept from the rest of the church. Confirmatory faculty for retention of a chancel screen but without gates. *Bradford v. Fry (Bullard and Nash intervening)*, Law Rep. 4 P. D. 93.

15.—Faculty granted for the restoration of a central compartment of a reredos, consisting of a sculptured panel representing the Crucifixion, having the figure of Our Saviour on the Cross, and of St. John and the three Marys on either side, all in high relief, and which had been removed in consequence of the bishop objecting to consecrate the church unless it were removed. *Hughes v. Edwards*, Law Rep. 2 P. D. 361.

16.—An incumbent applied to the ordinary for a faculty authorising the decoration of the reredos of his church with a painted design, intended to represent the Adoration of Our Lord in Majesty by the Faithful, divided into three compartments, and containing in the centre compartment a figure intended to represent Our Lord seated as King; in the right-hand compartment figures representing St. Lawrence and the Blessed Virgin; and in the left-hand compartment figures representing St. Stephen and St. John; the four last-mentioned figures being represented with their faces turned towards the centre compartment of the reredos. The grant of the faculty was not opposed:—Held, that there would be danger of the representation contained in the centre compartment of the reredos being abused by receiving superstitious reverence, and that, therefore, the Court ought, in its discretion, to refuse to sanction its introduction into the church. *In re St. Lawrence, Pittington*, Law Rep. 5 P. D. 131.

##### (b) In other cases.

*For erection of mortuary.* [See No. 9 supra.]

*Repairs of church: parish divided into two divisions with separate vestries.* [See PARISH.]

#### (G) PEW.

##### (a) Prescriptive right to.

17.—A parishioner who claims by prescription a pew in the nave of his parish church, must, in addition to evidence of occupation, shew that any necessary repairs have been done at his expense or that of those through whom he claims the right. The Prescription Act does not apply to such a claim. *Crisp v. Martin*, Law Rep. 2 P. D. 15.

##### (b) Mortgage of pew rents.

18.—Pew rents of a district church, constituted under the Church Building Acts, are livings appointed for ecclesiastical ministers, within the 13 Eliz. c. 20, and a mortgage of them is therefore void. *In re Leeson; ex parte Arrowsmith (App.)*, 47 Law J. Rep. Bankr. 46; Law Rep. 8 Ch. D. 96.

#### (H) OFFENCES.

##### (a) Vestments: ceremonies: ornaments.

19.—The Act of Uniformity (1 Eliz. c. 2) by section 25 provided "that such ornaments of the church and of the ministers thereof shall be retained and be in use as were in this Church of England by authority of Parliament in the second year of King Edward the Sixth, until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of her Commissioners appointed under the Great Seal of England for causes ecclesiastical or of the metropolitan of this realm." The Advertisements of 1566 provided that "every minister saying public prayers or ministering the sacraments or other rites of the Church shall wear a comely surplice with sleeves." The ornaments rubric of 1662 provides "that such ornaments of the Church and of the ministers thereof at all times of their ministration shall be retained and be in use as were in this Church of England by the authority of Parliament, in the second year of the reign of King Edward the Sixth":—Held, first, that these Advertisements were a taking of order within the meaning of the Act, and are to be read as part of the Act; secondly, that the Act and the advertisements were not repealed or altered by the rubric in the Prayer-book of 1662; thirdly, that the proper ornament of the minister in the ministration of the holy communion and other rites in parish churches is a surplice only. *Ridsdale v. Clifton*, 46 Law J. Rep. P.C. 27; Law Rep. 2 P. D. 276; on appeal from the Court of Arches, Law Rep. 1 P. D. 316.

The rubric of 1662 directs that "when the priest, standing before the table, hath so ordered the bread and wine that he may with more readiness and decency break the bread before the people, and take the cup into his hands," he shall say the prayer of consecration:—Held, that by the words "before the people," coupled with the direction as to the manual acts, is

meant in the sight of the people, and that the minister must stand in such a position that the people may see him perform the manual acts. *Ibid.*

The rubric of 1662 directs that "to take away all occasion of dissension and superstition which any person hath or might have concerning the bread and wine, it shall suffice that the bread be such as is usual to be eaten":—Held, that by the words "it shall suffice," taken in connection with the other words, that which is not bread usually eaten will not suffice, and that the use of flour and water rolled very thin into the form of a wafer and unleavened is unlawful. *Ibid.*

A crucifix placed on a screen separating the chancel from the body of the church is not a lawful church ornament. *Ibid.*

Although the judgment of the Judicial Committee on appeal from the Arches Court is final *inter partes*, yet the proceedings being penal in their consequences, their Lordships will in some circumstances entertain an appeal *alias* involving questions already decided. *Ibid.*

20.—Semble, that the set of delineations used in Roman Catholic churches, and known as the "Stations of the Cross," are decorations forbidden by the law of the Church of England. *Clifton v. Ridsdale*, Law Rep. 1 P. D. 316.

21.—A movable cross, placed, with the intention that it should remain there, on a retable, being a wooden ledge fixed to the wall behind and just above the communion table, is unlawful. *Masters v. Durst*, 45 Law J. Rep. P.C. 61; Law Rep. 1 P. D. 123, 373.

#### (b) Administration of holy communion.

22.—Where in a proceeding under the Public Worship Regulation Act, 1874, it was proved that the incumbent of a parish church in the celebration of holy communion consecrated and received the elements when there was only one other communicant, and that the same thing had several times before occurred during his incumbency and no steps had been taken by him to prevent it,—Held, that he must be admonished to obey the rubric. *Clifton v. Ridsdale*, Law Rep. 1 P. D. 316.

23.—The statute 1 Edw. 6. c. 1. s. 8, provides "that the priest shall not, without lawful cause, deny 'the communion' to any person that shall demand and humbly desire it." The 27th canon (1603) provides that "no minister, when he celebrateth the communion, shall wittingly administer the same to any that are common and notorious depravers of the Book of Common Prayer." The appellant having published a volume of "Selections from the Old and New Testaments," omitting chapters and parts of chapters, and being requested by his minister to explain such omissions, wrote a private letter stating, "The parts I have omitted are quite incompatible with religion or decency":—Held, that the appellant was not a common and notorious depraver of the Book of

Common Prayer, within the meaning of the canon. *Jenkins v. Cook*, Law J. Rep. P.C. 1; Law Rep. 1 P. D. 80.

The "cause" which under the words of the rubric, defining a cause for repulsion, is sufficient to warrant a minister of his own authority in repelling a parishioner from the holy communion, is that he is "an open and notorious evil liver," who thereby gives offence to the congregation; the term "evil liver" being limited to moral conduct as distinguished from belief. *Ibid.*

#### (c) Control of organ.

24.—The organist of a parish church, even though appointed and paid by the vestry, is guilty of an ecclesiastical offence if he plays on the organ immediately before or immediately after divine service without the directions of the incumbent. *Wyndham v. Cole*, Law Rep. 1 P. D. 130.

#### (I) SEQUESTRATION.

*Of profits of benefice.* [See SEQUESTRATION.]

#### (K) CHURCH DISCIPLINE ACT: OBLIGATION ON BISHOP TO ISSUE COMMISSION.

25.—A parishioner of the parish of C. made a complaint to the bishop, under the Church Discipline Act (3 & 4 Vict. c. 86. s. 3), in respect of offences committed by the rector of the parish against the laws ecclesiastical. By 3 & 4 Vict. c. 86. s. 3 it is provided that "in every case of any clerk in holy orders who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit of his own mere motion, to issue a commission . . . for the purpose of making enquiry as to the grounds of such charge or report." By section 13 it is further provided that "it shall be lawful for the bishop, if he think fit," to send the case, by letters of request, to the Court of Appeal of the province, there to be heard and determined. The bishop declined to issue a commission or to send the case to the Provincial Court, not on the ground that the matters complained of were not offences against the ecclesiastical law or were of too unsubstantial a character to call for enquiry, but on the ground that the rector was of advanced age, and that the complaint was made in opposition to the expressed wishes of the great majority of the parishioners. A writ of *mandamus* was then applied for, directed to the bishop, commanding him to issue a commission to enquire into the matter of the complaint, or to send the case to the Provincial Court by letters of request:—Held (by the Queen's Bench Division), that the rule for the

*mandamus* must be made absolute, inasmuch as the words "it shall be lawful," in 3 & 4 Vict. c. 86, s. 3, imposed a duty which required the exercise of the power in the circumstances contemplated by the statute. The refusal of the bishop was founded not on the nature of the complaint or on the right of the applicant to seek redress, it being admitted that there had been such a substantial departure by the rector from the established ritual as amounted to an offence against the ecclesiastical law:—Held, further, that, under these circumstances, the Court ought not, in the exercise of its discretion, to refuse to issue the writ:—Held (by the Court of Appeal, reversing the decision of the Queen's Bench Division), that the words "it shall be lawful" are in this section permissive, not compulsory, and confer on the bishop a discretion, so that he can, under section 3 of 3 & 4 Vict. c. 86, refuse to allow any proceedings to be instituted against a clerk who has offended against the laws ecclesiastical. *Reg. v. The Bishop of Oxford* (App.), 48 Law J. Rep. Q.B. 609; Law Rep. 4 Q.B. D. 525.

Under the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), which applies also to offences such as formed the subject-matter of the complaint by the applicant, there is no provision for the summoning of a commission of enquiry, but three parishioners can set the bishop in motion, who then has an arbitrary discretion to determine whether the suit shall proceed or not. It is further provided by section 18 that, where sentence has been pronounced against an incumbent for an offence under 3 & 4 Vict. c. 86, he shall not also be proceeded against under the later Act, and *vice versa*:—Held (by the Queen's Bench Division, and by the Court of Appeal, affirming the decision of the Queen's Bench Division), that the Public Worship Regulation Act, 1874, does not repeal the earlier statute and does not preclude a promoter from applying to the bishop to take proceedings under it; for that the Public Worship Regulation Act was intended to provide a more expeditious and a more simple procedure in criminal ecclesiastical suits. *Ibid.*

Judgment of Wightman, J., in *Reg. v. The Bishop of Chichester* (29 Law J. Rep. Q.B. 23), approved and followed. *Ibid.*

Held (by the House of Lords), that the above-mentioned sections do not prescribe two alternative courses, one of which must be taken, but that the bishop has a discretion, so that he can refuse to allow any proceedings to be instituted against a clerk accused of ecclesiastical offences. *Julius v. The Bishop of Oxford* (H.L.), 49 Law J. Rep. Q.B. 577; Law Rep. 5 App. Cas. 214.

The words "it shall be lawful," when used in a statute, are in themselves always permissive, not compulsory. Where it has been held that there is an obligation to exercise an authority conferred by such words, the obligation must be found in the context of the statute, or in the nature of the act authorised. *Ibid.*

# (L) PUBLIC WORSHIP REGULATION ACT.

## (a) Disqualification of bishop as patron.

26.—The action of the bishop under section 9 of the Public Worship Regulation Act, 1874, is a judicial action which he is disqualified from performing if he is the patron of the living; and the word "patron" includes as well a bishop who has the second turn as one who has the next presentation, each being interested in avoiding the benefice. *Serjeant v. Dale*, 46 Law J. Rep. Q.B. 781; Law Rep. 2 Q.B. D. 558.

Proceedings were taken against D., the rector of the united benefices of St. Vedast and St. Michael-le-Querne under section 9 of the Public Worship Regulation Act, 1874. D. had notice of the proceedings, but did not appear, whereupon a motion was issued against him. D. was afterwards inhibited, and his living sequestrated. It appeared that during D.'s incumbency, the alternate right of patronage of the dean and chapter of St. Paul's had been transferred to the Bishop of London. Of this fact D. was unaware until after sentence had been given against him;—Held, that the Bishop of London was a patron of the benefice within the meaning of section 16 of the Act, and was therefore disqualified from acting in the matter. Held also, that prohibition might be granted after sentence when the sentence had not been fully executed, and the applicant had neither acquiesced in the jurisdiction of the Court, nor done anything to estop himself from complaining of it. *Ibid.*

## (b) Jurisdiction of judge: place of hearing.

27.—The Public Worship Regulation Act (37 & 38 Vict. c. 85), in section 9, enacts that when a representation against an incumbent under that Act has been transmitted by the bishop, in the mode prescribed, to the Archbishop of the province, "the Archbishop shall forthwith require the Judge" (*i.e.* the Judge of the Provincial Courts of Canterbury and York, appointed under section 7 of the Act) "to hear the matter of the representation at any place within the diocese or province, or in London or Westminster." A representation under this Act having been in due course transmitted to the Archbishop of Canterbury by the Bishop of Rochester, the Archbishop sent to the Judge a requisition to hear the matter of the representation "at any place in London or Westminster, or within the said diocese of Rochester as you may deem fit." The Judge gave due notice to the defendant that the case would be heard at Lambeth. Lambeth is in the province of Canterbury, but not in the diocese of Rochester. The defendant did not appear, and the case having been heard in his absence judgment was pronounced against him:—Held, on motion for prohibition, that all the proceedings before the Judge were void, on the ground that the Judge had no jurisdiction except by virtue of the requisition to him of the archbishop, and that the archbishop having limited the place

for hearing, the Judge had no power to hear the case outside the limits so prescribed. *Hudson v. Tooth*, 47 Law J. Rep. Q.B. 18; Law Rep. 3 Q.B. D. 46.

(c) *Transmission of representation.*

23.—The provision of section 9 of 37 & 38 Vict. c. 85, as to the time within which a copy of a representation should be transmitted to the party complained of is imperative, and if it is not complied with, any proceedings taken are invalid. *Howard v. Bodington*, Law Rep. 2 P. D. 203.

(M) ECCLESIASTICAL COURTS: JURISDICTION, PLEADING AND PRACTICE.

(a) *Jurisdiction.*

(1) *Criminal suit against layman.*

29.—There is no jurisdiction in the Arches Court of Canterbury to entertain a suit by letters of request against a layman for falsely swearing before a surrogate to an affidavit to lead to the issue of a marriage licence. *Phillimore v. Machon*, Law Rep. 1 P. D. 481.

(2) *Monition appended to definitive sentence.*

30.—A beneficed clerk, having been convicted in a criminal suit in the Court of Arches of offences against the laws ecclesiastical, was suspended *ab officio* for a certain time, and admonished not to repeat the offence. He disobeyed this monition, and on this being proved the Court again admonished him. This second monition having been also disobeyed, application was made to the Court by motion on affidavits to enforce the monition. The clerk did not appear, and the Court sentenced him to be suspended *ab officio et beneficio* for three years. A writ of prohibition directed to the Judge of the Court of Arches to prohibit him from enforcing this sentence was applied for in the Queen's Bench Division, and granted by Cockburn, C.J., and Mellor, J. (*dissentiente* Lush, J.):—Held (in the Court of Appeal), by Coleridge, C.J., James, L.J., and Thesiger, L.J. (*dissentientibus* Brett, L.J., and Cotton, L.J.), reversing the decision of the Queen's Bench Division, that the writ of prohibition ought not to issue; for that such a monition could be so appended to a definitive sentence in a penal suit in an Ecclesiastical Court; that disobedience to such a monition could be punished as contumacy; that such contumacy could be punished, on summary process, by suspension *ab officio et beneficio*; and that the motion to enforce the monition was not a fresh proceeding instituted within the meaning of section 23 of the Church Discipline Act (3 & 4 Vict. c. 36). *Martin v. Mackonochie* (App.), 49 Law J. Rep. Q.B. 9; Law Rep. 4 Q.B. D. 697. [Affirmed by the House of Lords on appeal, but not yet reported.]

(b) *Appearance by proctor.*

31.—A respondent in a cause in the Court of Arches must appear either personally or by a proctor; he cannot appear by a solicitor of the Supreme Court who is not also a proctor of the Court of Arches. *Crisp v. Martin*, Law Rep. 1 P. D. 302.

(c) *Duplex querela: responsive allegation.*

32.—In a suit of *duplex querela*, arising out of the refusal of the bishop to institute the *promoveant*, it is not sufficient for the bishop in a responsive plea to the libel to allege generally that the ground of his refusal was that the *promoveant* was *non idoneus* and *minus sufficiens in literatura*. The statement must be such that the Court may be enabled to decide, from the facts stated, upon the validity of the objection taken, and to enable the *promoveant* to put the facts in issue. *Willis v. The Bishop of Oxford*, Law Rep. 2 P. D. 192.

(d) *Evidence: advertisements of Elizabeth.*

33.—In support of a charge against an incumbent of wearing illegal vestments whilst officiating at the Holy Communion in a parish church, it is not necessary to prove the Advertisements of Queen Elizabeth. *Combe v. Edwards*, Law Rep. 2 P. D. 354.

(e) *Disobedience to monition.*

34.—Articles charging a vicar with illegal ceremonial acts during divine service were held to be proved, and the defendant was ordered to file in the registry a declaration stating whether he would in future abstain from such acts, with intimation that on a repetition of them the Court would proceed further. The defendant failed to file the declaration, and repeated the acts. On motion by the promoter and proof of the repetition of the acts the Court, without fresh articles being exhibited, suspended the defendant *ab officio et beneficio* for six months. The promoter afterwards proved a further repetition of the acts, and moved for sentence of suspension, but in the meantime the Queen's Bench Division had prohibited the Dean of Arches from enforcing a decree of suspension in a similar case. In deference to, though strongly dissenting from, the decision of the Queen's Bench, the Judge ordered the motion to stand over. *Combe v. Edwards*, Law Rep. 2 P. D. 103.

(f) *Stay of proceedings pending appeal.*

35.—The Public Worship Regulation Act, 1874, by section 9, provides that the "Judge may on application in any case suspend the execution of such monition pending an appeal, if he shall think fit." The appellant being admonished by a decree of the Arches Court to abstain from certain acts, gave notice of appeal and moved for an inhibition, which was refused:—Held, that the issuing of an inhibition

is not a matter of course, and that the Judge under the above statute has a discretion in each case to consider whether the decree shall be suspended pending an appeal. *Ridsdale v. Clifton*, 45 Law J. Rep. P.C. 12; Law Rep. 1 P.D. 316.

#### CHURCH DISCIPLINE ACT.

[See CHURCH AND CLERGY, 25.]

#### CHURCH RATES.

1.—After the expiration of twenty years from the date of borrowing, under 6 Geo. 4. c. 36. s. 1, from the Public Works Loan Commissioners, for the purpose of repairing a church, churchwardens have no power to make a rate for the purpose of repaying the loan. The section is imperative and not directory, and must be strictly followed. *Reg. v. All Saints', Wigan* (H.L.), Law Rep. 1 App. Cas. 611 (affirming the decision of the Exchequer Chamber, Law Rep. 9 Q.B. 317).

#### CHURCHYARDS.

[See BURIALS, CHURCH AND CLERGY, 9-11.]

#### CHURCHWARDEN.

[See CHURCH AND CLERGY, D.]

#### CIVIL PROCEDURE.

[Repeal of unnecessary enactments relating to civil procedure; and abolition of outlawry in civil proceedings. 42 & 43 Vict. c. 59.]

#### CIVIL SERVANT.

*Superannuation Act*. [See PETITION OF RIGHT, 4.]

#### CLASS.

*Gifts to*. [See WILL, CONSTRUCTION, H 2-7.]

*Representation of*. [See PRACTICE, U 26-27; ADMINISTRATION, 32.]

#### CLUB.

1.—The committee of a club had, by the rules, power to expel any member whose conduct they thought injurious to the character and interests of the club. One of the members wrote to the committee a letter which they considered discourteous, and as they felt they could not pass it over without weakening their authority, and that would be highly injurious to the interests of the club, they expelled him. The member filed a bill to have his name restored to the list of members:—Held, on the facts, that the power had been exercised *bona fide*, and not capriciously, and therefore that

the Court could not interfere. *Lyttelton v. Blackburne*, 45 Law J. Rep. Chanc. 219.

The club was a proprietary club—that is, a club where a person, not a member, took the fees and subscriptions, and provided what was requisite for the use of the members. Semble, that on this ground alone, the bill could not have been sustained, as the plaintiff did not retain an interest in property. *Ibid*.

2.—Where the committee of a club have, according to their rules, a power of expelling a member from the club, such committee, being a quasi-judicial tribunal, are bound to act in accordance with the ordinary principles of justice, and before adjudicating upon the conduct of any member, are bound to give him notice of their intention to proceed against him, and afford him an opportunity of justifying or palliating his conduct; and if the committee pass a resolution expelling such member, without previous notice to him, such resolution being based upon *ex parte* evidence, the Court will declare such resolution to be void, and will restrain the committee from interfering with his rights and privileges as a member of the club. *Fisher v. Keane*, 49 Law J. Rep. Chanc. 11; Law Rep. 11 Ch. D. 353.

3.—By the rules of a club it was provided that in case the conduct of any member should in the opinion of the committee, after enquiry, be injurious to the welfare and interests of the club, the committee should call upon him to resign, and in the event of his refusal to do so, should call a general meeting, which was to be called on giving a fortnight's notice, at which it should be competent for the votes of two-thirds of those present to expel such member. The committee having called on the plaintiff, a member of the club, to resign on the alleged ground that his conduct was injurious to its interests, and the plaintiff having refused to do so, a general meeting was summoned by notices issued on the 1st of November for the 14th of November, when 117 members were present, of whom 115 voted—77 in favour of a resolution for expelling the plaintiff, and 38 against it. The resolution was declared to be carried. On a motion to restrain the committee from interfering with the enjoyment by the plaintiff of the use and benefit of the club:—Held, on the facts of the case, that the committee had acted without full enquiry and without giving the plaintiff notice of any definite charge; that the general meeting was summoned without proper notice; that the resolution was carried by an insufficient majority; and that the plaintiff was entitled to an injunction. *Labouchere v. Earl of Wharncliffe*, Law Rep. 13 Ch. D. 346.

#### COAL MINES REGULATION ACT.

*Responsibility of owner for breach of general rules.*

1.—Upon an information under the Coal Mines Regulation Act, 1872, s. 51 (enacting, by its last



paragraph, that in the event of a breach of any of the general rules in that section by any person whomsoever the owner shall be guilty of an offence, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the general rules, to prevent such breach, it appeared that there had been a breach of one of the general rules in that section (rule 22, requiring a machine used for lowering or raising persons to have certain appliances for preventing the rope from slipping), and that the defendant was a jointowner of the mine in question. The defendant proved that the general rules were duly published, and that he had appointed as certificated manager the person who was joint owner and partner with him in the mine, and that he entrusted the entire management of the mine to his partner; he himself resided at a distance from the mine. He had not personally done any act towards enforcing the rules. The justices having found as a fact that the defendant had taken all reasonable means, by publishing and to the best of his power enforcing the rules, to prevent the breach:—Held, that there was evidence upon which the justices might so find. *Baker v. Carter*, 47 Law J. Rep. M.C. 87; Law Rep. 3 Exch. D. 132.

#### *Powers of inspector.*

2.—By 35 & 36 Vict. c. 76, s. 46, the inspector of mines has power, in certain cases, by notice in writing, to call upon a mine-owner to remedy any matter connected with his mine which, in the opinion of the inspector, is dangerous and defective, so as to threaten or tend to the bodily injury of any person. The appellants were the owners of certain coal mines, adjoining which was a disused colliery belonging to B. In one of the pit-shafts of the latter, which communicated with the appellants' mines, water had accumulated to a considerable extent, so that there was danger of the flow of water from the pit-shaft flooding a portion of the appellants' mine, and so endangering the lives of the men working therein. The inspector of mines accordingly gave notice, in writing, to the appellants, under 35 & 36 Vict. c. 76, s. 46, requiring them to remedy the matter. The appellants thereupon took the best practicable measures for removing the accumulation of the water, but failed to comply with the notice; they however continued the men at their work, though requested by the inspector not to do so:—Held (by Cockburn, L.C.J., and Mellor, J.; *dissentiente* Lush, J.), that the inspector had no power to call upon the appellants to remove a danger which was not immediately connected with their own mines, also that the terms of the 46th section conferred no authority on an inspector to order the withdrawal of men under any circumstances. *Spon Lane Colliery Company (Lim.) v. Baker*, 43 Law J. Rep. M.C. 25; Law Rep. 3 Q.B. D. 673.

#### *Checkweigher : discontinuance of office.*

3.—Where the men employed in a mine appoint and pay a checkweigher under the Coal Mines Regulation Act, 1872, and are afterwards all discharged, his office ceases. If they are re-engaged with others, but nothing further is done with regard to the checkweigher, he is not "stationed by the persons employed in the mine" within the meaning of the Act, and cannot maintain an action against the mine-owner for preventing him from acting after the re-engagement of the men. *Whitehead v. Holdsworth*, 48 Law J. Rep. Exch. 254; Law Rep. 4 Ex. D. 13.

#### *Insufficient ventilation.*

4.—By the Coal Mines Regulation Act, 1872 (35 & 36 Vict. c. 76), s. 51, it is provided that, in the event of any contravention of the general rules set out in that section, the owner, agent, and manager shall be each guilty of an offence, unless he proves that he has taken all reasonable means to prevent such contravention. The first of all such general rules provide that an adequate amount of ventilation shall be constantly produced in every mine to render harmless noxious gases, so that the working places of the shaft of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein. The respondent, who was a certified manager of a colliery mine, at a salary of 1*l.* per week, was charged with an offence under section 51, rule 1. It was proved that the mine was improperly ventilated, and that the respondent might have improved the ventilation with the resources at his disposal, but that the requisite provision for the proper ventilation of the mine would have involved an outlay of 200*l.*:—Held, that the finding of the justices, that the respondent had omitted to employ the resources at his disposal for the improvement of the ventilation of the mine, disclosed an offence under section 51, for which he was liable to be convicted. *Hall v. Hopwood*, 49 Law J. Rep. M.C. 17.

*Lease : cesser of term when mine worked out.*

[See LEASE, 6.]

#### COIN.

[Prohibition of importation of counterfeit coin or silver coin below standard. 39 & 40 Vict. c. 36.]

#### COINING.

The 24 & 25 Vict. c. 9, s. 9, enacts that "whosoever shall tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanour." The prisoner uttered two coins which were or had been real sovereigns, coined at the Mint, but they had been fraudu-

wards dissolved the community:—Held, that the wife's property was bound by such hypothec. *Hamel v. Panet*, 46 Law J. Rep. P.C. 5; Law Rep. 2 App. Cas. 121.

A notarial deed was written on several pieces of paper:—Held, that each paper did not require the initials of the notary. *Ibid.*

(f) *Navigable river: old French law.*

13.—By the old French law the question whether a river is navigable or not is one of fact, depending on how far it can be used for purposes of traffic. The appellant was the owner of land abutting on a river navigable for small craft. The respondents, under statutory powers, constructed a bridge across the river, and thereby impeded the navigation for masted craft. The access to the appellant's land was not affected:—Held, that in the absence of special damage no action would lie by the appellant as a riparian owner. *Bell v. The Corporation of Quebec*, 49 Law J. Rep. P.C. 1; Law Rep. 5 App. Cas. 84.

(g) *Parliament: Controverted Elections Act.*

14.—The "Quebec Controverted Elections Act, 1875," vested the decision of controverted elections in the Superior Court, and section 90 enacted "that such judgment shall not be susceptible of appeal":—Held, on petition for leave to appeal, that having regard to the subject matter of legislation, the Act excluded the prerogative right of appeal to the Crown. *Theberge v. Laundry*, 46 Law J. Rep. P.C. 1; Law Rep. 2 App. Cas. 102.

15.—The British North American Act, 1867, by section 41, enacts that, until the Parliament of Canada shall otherwise provide, the laws relating to controverted elections shall apply to elections in the respective provinces. Section 91 enacts that it shall be lawful for the Parliament of Canada to make laws in all matters not assigned to the provincial legislatures, and section 92 that such legislatures shall exclusively make laws in relation to the administration of justice in each province. The Dominion Act, 7 Vict. c. 10, by section 3, enacts that the Superior Court of each province shall have jurisdiction in election petitions:—Held, that an election petition is not a matter in relation to the administration of justice within the meaning of section 92, and was within the legislative power of the Dominion Parliament. *Valin v. Langlois*, 49 Law J. Rep. P.C. 37; Law Rep. 5 App. Cas. 115.

(h) *Railway Act, 1868.*

16.—An award under the Railway Act, 1868, directed a monthly payment to be made by a railway company to the lessee of land until a watercourse should be set free and a culvert constructed by the company to protect the watercourse:—Held, that such award was bad; first, on the ground that the arbitrator had no power either to order a periodical payment or

the construction of a culvert; secondly, that as the payment was to cease on completion of the culvert, the award was bad for uncertainty. *Bourgois v. La Compagnie du Chemin de Fer de Montréal, Ottawa et Occidental, and the Attorney-General of Quebec*, 49 Law J. Rep. P.C. 68; Law Rep. 5 App. Cas. 381.

The Railway Act, 1868, by sub-section 7, gives power to a railway company to "alienate, sell or dispose of its land." *Ibid.*

A railway company, incorporated by an Act of the province of Quebec, was by an Act of the Parliament of Canada declared to be a federal enterprise. By deed, confirmed by an Act of the province, the company transferred "all their property, liabilities, rights and powers," to the government of the province:—Held, first, that such deed and Act were of no force or validity unless ratified by the Parliament of Canada; secondly, that the land of the company could not be severed from other property of the company comprised in the deed, and that in respect of the land the deed was inoperative. *Ibid.*

(i) *Seigniorial rights: purchase by Crown.*

17.—By the law of Lower Canada the acquisition by the Crown of land held from a seignior as part of his fief extinguishes all feudal rights in such land, and gives to the seignior a mere right to an indemnity. *Les Sœurs Dames Hospitalières de St. Joseph de l'Hotel-dieu de Montréal v. Middlemiss*, 47 Law J. Rep. P.C. 89; Law Rep. 3 App. Cas. 1102.

*Powers of provincial legislature: taxation: stamp.* [See STAMP, 8.]

*Servitude: repair of road.* [See 3 supra.]

(B) CAPE COLONY.

18.—The curators of the public roads at the Cape of Good Hope have power to take gravel and other materials for making and repairing the public roads out of land held on a perpetual quit-rent tenure. *The Divisional Council of the Cape Division v. De Villiers*, 46 Law J. Rep. P.C. 95; Law Rep. 2 App. Cas. 567.

19.—The intention to impose a charge upon the subject must be shown by clear and unambiguous language. Where, by an Act of the Cape Colony (No. 6, 1864), "for imposing a duty upon bank notes," which Act was assumed to have been validly extended to the province of Griqualand West, it was provided that banks issuing within the colony notes of their own, purporting to be issued within the colony, and so (unless expressed to be payable elsewhere) to be payable by them within the colony, should make a return thereof, with a view to the imposition of the duty chargeable by that Act; it was,—Held, that the appellant bank, which had a branch within the province, and there put in circulation notes issued by the bank in the colony, payable in the colony, but did not issue any notes payable in the province, was not

liable, according to the true construction of the Act, to make any return to the respondent, the treasurer of the province, or to pay duty on the notes put into circulation by its branch. Although, by section 10 of the Act, banks of issue liable to make the return prescribed by the Act, must include within such return such notes also as they have put into circulation, yet banks which, not issuing any notes purporting to be locally issued, and therefore not liable to make a return, put into circulation within the province their own notes, issued elsewhere, are not in respect thereof liable to the duty imposed by the Act. *The Oriental Bank Corporation v. Wright* (P.C.), Law Rep. 5 App. Cas. 842.

## (C) CEYLON.

20.—A testator and his wife, by a mutual will, appointed their daughter, her husband, and their child, "and also the other children which may hereafter be procreated by their daughter," heirs of their estate. The husband died, and the daughter married again, and had issue:—Held, first, that such issue were not entitled under the will; secondly, that the second husband became entitled under the testator's will to one-third of his estate, but that as he died before the testator's wife, his share in the wife's property lapsed into residue. *Dias v. De Livera*, 49 Law J. Rep. P.C. 26; Law Rep. 5 App. Cas. 123.

## (D) GRIQUALAND.

21.—The appellant was the grantee on perpetual quit-rent of land in Griqualand, under a grant made prior to the resumption of sovereignty by Great Britain. The grant was made "subject to all conditions and regulations as are already or may in future be fixed referring to land granted on the same conditions":—Held, that the minerals were the property of the appellant, subject to the rules and regulations imposed by the Ordinance and Proclamation of 1871. *Webb v. Giddy*, 47 Law J. Rep. P.C. 71; Law Rep. 3 App. Cas. 909.

## (E) HONG KONG.

22.—The provisions contained in section 167 of the Bankruptcy Ordinance, 1864, of Hong Kong, do not apply to "deeds, instruments or agreements" executed by a debtor under section 165 of that Ordinance. *Benecke v. Whittall*, 46 Law J. Rep. P.C. 81; Law Rep. 2 App. Cas. 381.

## (F) INDIA.

23.—Act No. XXII. of the Indian Legislature, excluding the jurisdiction of the High Court within certain specified districts, is not inconsistent with the Indian High Courts Act (24 & 25 Vict. c. 104), or with the charter of the High Court, and is, in its general scope, within the legislative power of the Governor-General in Council. The 9th section of that Act is conditional legis-

lation, and not a delegation of legislative power. *Reg. v. Burah* (P.C.), Law Rep. 3 App. Cas. 889. *Rangoon : company : borrowing powers.* [See COMPANY, D 25.]

*Statute of Limitations : speciality debt contracted in India.* [See LIMITATIONS, STATUTE OF, 10.]

## (G) ISLE OF MAN.

24.—The Act of Settlement of the Isle of Man, 1703, confirmed to the tenants their customary estates of inheritance, "saving always all mines and minerals, of what kind and nature soever, quarries, and delfs of flag slate or stone":—Held, that a custom by the tenants to dig for clay and sand did not contravene the saving clause, and that such tenants were entitled to dig for clay and sand. *The Attorney-General of the Isle of Man v. Mylchreest*, 48 Law J. Rep. P.C. 36; Law Rep. 4 App. Cas. 294.

## (H) JAMAICA.

25.—The Supreme Court Procedure Law, 1872 (Jamaica), by section 19 provides, "that in any action against a person residing out of Jamaica, it shall be lawful for the Court or a Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of a breach of contract made within the jurisdiction, and that such person carries on in Jamaica any trade or business, and that he has no known agent in Jamaica authorised to bring actions . . . to order that the service of the writ and all subsequent proceedings may be made on any servant or agent in Jamaica engaged in carrying on for such person such . . . trade or business." The appellants were a company conveying mails and passengers to and from Great Britain to the West Indies. The company was domiciled in London, but had a superintendent in Jamaica:—Held, that the appellants were a "person" within the meaning of the above section, and that they carried on a business in Jamaica. Secondly, that an order directing service on their superintendent in Jamaica was correct. *The Royal Mail Steam Packet Company v. Braham*, 46 Law J. Rep. P.C. 67; Law Rep. 2 App. Cas. 602.

26.—The governor of a colony does not possess sovereign power. His authority is derived from his commission, and is limited to the powers thereby expressly or impliedly entrusted to him, and he may be sued in the Courts of the colony of which he is governor. *Sir Anthony Musgrave v. Pulido*, 49 Law J. Rep. P.C. 20; Law Rep. 5 App. Cas. 102.

## (I) JERSEY.

27.—The declaration stated that the plaintiff was employed as master of a ship insured by the defendant, and that the defendant refused to continue such insurance if the plaintiff was placed in command, whereby the plaintiff lost

his employment. Plea, that the defendant acted in good faith and without malice, and in the belief that certain information was true:—Held, that such plea, if proved, was a good defence to the action. *Hamon v. Falle*, 48 Law J. Rep. P.C. 45; Law Rep. 4 App. Cas. 247.

28.—By the law of Jersey the Court has no power to continue a "curatelle" in respect of property when such "curatelle" is unnecessary in respect of person. *In re Nicolle*, 49 Law J. Rep. P.C. 51; Law Rep. 5 App. Cas. 346.

#### (K) NEWFOUNDLAND.

29.—By 17 Vict. c. 1, of Newfoundland, the respondents were incorporated for the purpose of establishing telegraph communication between America and England, *via* Newfoundland, and section 14 provided that "No other person shall, during fifty years, be permitted to make any lines on the island, or to extend to or enter upon or touch any part of the island or the coast thereof, or of the islands or places within the jurisdiction of the government of the colony, with any telegraphic cable, wire or other means of telegraphic communication from any other island, country or place whatsoever." The appellants moored a telegraph cable to a buoy placed more than three miles from the shore of Newfoundland in Conception Bay, where the soil is permanently under water, for the purpose of telegraphic communication between America and England, and messages were not repeated in the colony:—Held, first, that Conception Bay is part of the territory of Newfoundland, and that the above statute prohibited the use of any part of such territory for telegraphic purposes by any other than the respondents. *The Direct United States Cable Company v. The Anglo-American Telegraph Company*, 46 Law J. Rep. P.C. 71; Law Rep. 2 App. Cas. 394.

#### (L) NEW SOUTH WALES.

30.—The Land Act Amendment Act, 1875, provides that the holder of Crown lands under lease for pastoral purposes may, in virtue of intended improvements, apply for, and on certain terms obtain, the right to pre-emption of such land, "provided that no such application shall be made for more than one square mile within each block of five square miles":—Held, that by "square mile" area is intended, and not form. *Robertson v. Day*, 49 Law J. Rep. P.C. 9; Law Rep. 5 App. Cas. 63.

31.—By Order in Council of November 13, 1850, an appeal is given from any final judgment of the Supreme Court in respect of any matter in issue above the value of 500*l*. The 24 Vict. No. VIII. s. 1 (Colonial statute), provides that "every plaintiff who shall hereafter obtain a verdict in an action in the Supreme Court, upon which he shall hereinafter obtain judgment, shall be entitled to interest at the rate of eight per cent. per annum, from the time of obtaining such verdict until the time of entering up judgment thereon, and the amount of

such interest shall be included in the judgment":—Held, that the matter in issue is the amount recovered, together with the interest thereon, from the verdict till the judgment. *The Bank of New South Wales v. Ouston*, 48 Law J. Rep. P.C. 25; Law Rep. 4 App. Cas. 270.

32.—A colonial statute provided that the corporation of a borough should have the "care, construction and management of public roads" within the borough. The corporation constructed a street, and a drain by the side thereof, which became out of repair, and a dangerous hole was formed, into which the respondent fell and was injured:—Held, that the corporation were liable to an action at the suit of the respondent. *The Borough of Bathurst v. Macpherson*, 48 Law J. Rep. P.C. 61; Law Rep. 4 App. Cas. 286.

33.—Testator born in Scotland, emigrated to Queensland, where he bought a station and resided for four years. He afterwards bought land and built a house in New South Wales, where he resided with his wife and family till his death, which occurred suddenly at the station in Queensland, and he was buried there by his own wish:—Held, that testator had abandoned his domicile of origin, and had acquired a domicile of choice in New South Wales. *Platt v. The Attorney-General of New South Wales*, 47 Law J. Rep. P.C. 26; Law Rep. 3 App. Cas. 386.

34.—The Crown Lands Alienation Act, 1861, by section 13, provides that, "on and after the 1st day of June, 1861, Crown lands," with certain exceptions, "shall be opened for conditional sale by selection" in manner following, namely:—"Any person may, upon any Land Office day, tender to the land agent for the district a written application for the conditional purchase of any such lands":—Held, that the word "person" in the above section is not limited to persons of the age of twenty-one years. *O'Shanassy v. Joachim*, 45 Law J. Rep. P.C. 43; Law Rep. 1 App. Cas. 82.

35.—Six persons bound themselves, and each of them jointly and severally, to the respondents, to repay advances made to two of them named; another two of them became insolvent, and entered the debt to the respondents under the bond in the schedules of their separate estates, as being a debt unconnected with the partnership:—Held, that the respondents were properly admitted to prove against the estates *pari passu* with other creditors. *Hoare v. The Oriental Bank Corporation (P.C.)*, Law Rep. 2 App. Cas. 589.

#### (M) NEW ZEALAND.

36.—The Southland Waste Lands Act (39 Vict. No. 59. s. 26), provides that rural land shall be open for sale at a fixed price, "provided that it shall be lawful for the governor to raise the price." The respondent made application to the Commissioners of Waste Lands for certain land, and such application was received and

filed, and the consideration thereof adjourned. Pending such adjournment, the price of the land was raised:—Held, that the respondent was entitled to a grant of the land at the price fixed at the time of application; and that an injunction would lie to restrain the commissioners from selling the land to other persons. *Pearson v. Spence*, 49 Law J. Rep. P.C. 13; Law Rep. 5 App. Cas. 76.

37.—Under the Southland Waste Lands Act of 1865, section 12, the appellant on the 7th of July, 1873, caused his name to be entered in the application book mentioned therein, as a person desirous to make an application to the Board for a grant of certain Crown lands. At that date the price of such lands was 1*l.* an acre, but on the 9th of the same July the price thereof was raised to 3*l.* an acre, the appellant receiving immediate notice thereof. On the 10th of July the appellant's application was presented to the Board, which then determined that he was entitled to purchase the land, no price being specified either in the application or by the Board. Upon a rule *nisi* for a *mandamus* to the Receiver of Land Revenue to receive payment from the appellant at the rate of 1*l.* per acre for the said lands:—Held, that the grant of the application must be taken to have been at the price ruling on the 10th of July, namely, at 3*l.* an acre, and not at the price ruling at the date of appellant entering his name in the application book. *Bell v. The Receiver of Land Revenue* (P.C.), Law Rep. 1 App. Cas. 707.

#### (N) QUEENSLAND.

38.—The Queensland Agricultural Reserves Act, 1863, empowers the Crown to set apart lands as agricultural reserves: and by section 8 provides that "if any person selecting lands in agricultural reserves should fail to occupy and improve the same as required by the Act, then the right and interest of such selector to the lands selected shall cease and determine." The Leasing Act, 1866, empowers the Crown to grant leases of reserve lands, subject to the above provisions, for eight years, at a yearly rent; and on payment of the eighth year's rent the lessee is entitled to a grant in fee. The appellant became lessee under the above Act, but failed to occupy and improve the land. The Crown, with notice of such failure, received the rent:—Held, that such failure did not render the lease void but voidable, and that the Crown, by such receipt of rent, had waived the right of forfeiture. *Davenport v. The Queen*, 47 Law J. Rep. P.C. 8; Law Rep. 3 App. Cas. 115.

39.—The 31st Vict. No. 46, by section 51, provides that the lessee of any land shall reside on his selection, and that if at any time during the currency of a lease it shall be proved to the satisfaction of the commissioner that the lessee has abandoned his selection, and failed in regard to the performance of the conditions of residence during a period of six months, it shall be lawful

for the governor to declare the lease absolutely forfeited and vacated. Section 55 provides that it shall be lawful for any selector of any piece of land to make additional selection of lands adjoining to his first selection, subject to all the conditions applicable to such first selection except residence:—Held, that selectors of additional selections are exempt from residence on such selection, even though they cease to reside on their first selection. *Smith v. The Queen*, 47 Law J. Rep. P.C. 51; Law Rep. 3 App. Cas. 614.

The same Act provides land commissioners, and enacts, by section 5, that "All questions shall be decided by the commissioner, who shall give his decision in open Court":—Held, that an enquiry by such commissioner is a judicial enquiry, and that a proceeding for forfeiture, in which the evidence was not given in open Court, was invalid. *Ibid.*

40.—The Land Act, 1868, by section 51, sub-section 9, provides that if, after a lessee has obtained a certificate by the commissioners that he has duly completed the conditions required by the Act, he shall pay the amount of the annual rent during the unexpired portion of the lease together with the amount of the deed fee, such lessee shall be entitled to a grant in fee of the land comprised in such lease. The appellant having made the declaration required by the Land Act, and received a lease of land, obtained a certificate from the commissioners that he had complied with the conditions of the Act, and paid the aggregate amount of rent and the deed fee. The declaration was false:—Held, that the declaration was part of the basis of the contract, and being false the appellant was not entitled to a grant in fee. *Fisher v. Tully*, 47 Law J. Rep. P.C. 59; Law Rep. 3 App. Cas. 627.

41.—Under the Queensland Goldfields Management Act (20 Vict. c. 29), and the Regulations of 1866, the holder of a miners' right and claim is, during the continuance of such right, the owner of the claim occupied by him, and all gold in and upon such claim is the absolute property of such owner. *Hollyman v. Noonan*, 45 Law J. Rep. P.C. 62; Law Rep. 1 App. Cas. 594.

Under the Regulations of 1866 an ordinary quartz claim does not vest in the holder the right to all gold or quartz beneath the surface area of the claim, and such claim is not a block claim, but is confined to the line of quartz reef to which the claim refers. *Ibid.*

#### (O) SIERRA LEONE.

42.—By treaty between England and Portugal for suppressing the slave trade, the contracting parties agreed that the ships of each nation should have the right to search and detain vessels of the other nation during the voyage, and that certain articles found on board should be *prima facie* evidence that a vessel was engaged in the slave trade; and that if any such articles were found in any vessel detained,

no compensation should be granted for such detention:—Held, that this provision relates only to vessels upon the high seas, and does not extend to vessels in a foreign port or in foreign territorial waters. *Reg. v. Manoel dos Santos Casaca*, 49 Law J. Rep. P.C. 41; Law Rep. 5 App. Cas. 548.

(P) SOUTH AUSTRALIA.

43.—Trustees under a composition deed made pursuant to the Australian Insolvent Act, 1860, to whom shares in a joint-stock company have been transferred by such a deed, have the same right as assignees in bankruptcy either to accept or reject such shares. *Leri v. Ayers*, 47 Law J. Rep. P.C. 83; Law Rep. 3 App. Cas. 842.

44.—Re-exchange is the measure of damage sustained by the holder of a dishonoured bill of exchange drawn in one country on a person in another country, and is payable in addition to the amount of the bill. *Willans v. Ayers*, 47 Law J. Rep. P.C. 1; Law Rep. 3 App. Cas. 133.

*L. & Co.* carried on business both in London and in Australia. The firm in London drew bills on the firm in Australia, and delivered them to creditors of the firm in London. *L. & Co.* became insolvent under a deed providing for liquidation in Australia:—Held, that such creditors were not, under the circumstances, entitled to prove in respect of "re-exchange." *Ibid.*

(Q) VICTORIA.

(a) Land Acts.

45.—A mining company in consideration of advances executed a mortgage of their mine and plant to a bank, with power of sale in default of payment after notice. The bank by a collusive sale became the purchaser of the whole, and afterwards re-sold the mine. The company by their bill admitted the execution of the mortgage, but alleged that the same was *ultra vires*, and prayed that it and the sale to the bank and the re-sale by the bank might be declared void, and for an account, but did not offer to redeem:—Held, that as the company admitted the execution of the mortgage they were entitled to an account without prayer for redemption; that the sale to the bank was void, and the re-sale also void under the power of sale, the bank not having complied with the provisions of the 84th section of the Land Transfer Act. *The National Bank of Australia v. The United Hand in Hand and Band of Hope Company and Another*, 48 Law J. Rep. P.C. 50; Law Rep. 4 App. Cas. 391.

46.—By 5 & 6 Vict. c. 36. s. 5, the governors of the Australian Colonies were authorised in the name and on behalf of her Majesty, to convey in fee simple to a purchaser any waste land of the Crown in such colonies:—Held, that a conveyance under the above statute did not transfer the rights of the Crown to gold which might be found in such land. *Woolley v. The*

*Attorney-General of Victoria*, 46 Law J. Rep. P.C. 18; Law Rep. 2 App. Cas. 163.

47.—The Transfer of Land Act (Victoria, 2 & 3), by section 106, provides: "That no execution registered shall bind, charge or affect any land, but the Registrar, on being served with a copy of any writ of *fieri facias*, accompanied by a statement specifying the land sought to be affected thereby, shall, after marking upon such copy the time of such service, enter the same in the register book, and after any land shall have been sold under such writ, the Registrar shall, on receiving a transfer, enter such transfer in the register book, whereupon the purchaser shall become the transferee, and be deemed proprietor of the land, provided that until such service as aforesaid, no sale or transfer under the writ shall be valid as against a purchaser for value, notwithstanding the writ was actually lodged for execution at the time of the purchase, and the purchaser had actual or constructive notice of the lodgment of such writ. Every such writ shall cease to affect any land, unless a transfer upon a sale under such writ shall be left for entry upon the register within three months from the day on which the copy was served." A copy of a writ of *fi. fa.* against a registered proprietor was served on the Registrar, and a copy of an *alias* writ was served within three months, but no transfer under the original writ was left for entry within three months. After the expiration of three months from the service of the original writ the Registrar issued a certificate of title to a purchaser from the registered proprietor, the transfer being lodged for registration before the service of the *alias* writ:—Held, that the Registrar was justified in issuing such certificate. *The Registrar of Titles of Victoria v. Paterson*, 46 Law J. Rep. P.C. 21; Law Rep. 2 App. Cas. 110.

(b) Will: probate and other duties.

48.—The Victoria Statute, No. 388, by section 7, imposes on the Master of the Supreme Court the function of collecting and accounting for the duties on the estates of deceased persons:—Held, that the Master in carrying out such function is under the control of the Court, and that such Court has power to make a mandatory order on him in respect of such function. *Armstrong v. Wilkinson*, 47 Law J. Rep. P.C. 31; Law Rep. 3 App. Cas. 355.

The same statute, by section 24, provides that when the children of a testator are the only persons entitled under his will, the duty shall be calculated at a lower rate. A testator directed the trustees of his will to hold his estate in trust for his children, the interest of a son or sons to vest absolutely on twenty-one, and of a daughter or daughters at that age or marriage. There was a bequest over in the event of no child acquiring an absolutely vested interest:—Held, that a liberal construction in favour of the subject ought to be given to such proviso;

that the interest of the children became vested at testator's death, and that the bequest came within the words of the proviso notwithstanding the gift over in certain events. *Ibid.*

49.—Probate duty in England is a stamp duty payable upon the subject of the probate when granted. In Victoria, under Act No. 388, it is more in the nature of succession duty payable on the property of the deceased at the time of his death, and is payable whether probate is sought or not. *Bell v. The Master in Equity* (P.C.), Law Rep. 2 App. Cas. 560.

50.—Where a testator, whose assets consisted partly of personal estate in the colony of Victoria, where duty is payable on the property of all deceased persons, had died domiciled in England, and by his will gave many pecuniary legacies, and divided the residue among some of the pecuniary legatees:—Held, that the duties attaching in Victoria and all expenses of realisation were payable out of the general estate before distribution, and that the pecuniary legatees were entitled to their legacies free of all colonial duties and expenses, except the English legacy duty. *Peter v. Stirling*, Law Rep. 10 Ch. D. 279.

(c) *Race: racecourses.*

51.—The Local Government Act, 1874 (Victoria), by section 253, provides that "all land shall be rateable property, save land the property of Her Majesty, which is unoccupied or used for public purposes." Land was demised by the Crown to the respondent upon trust for the "Victoria Racing Club," for the purpose of public races. The club had power to take tolls and to make bye-laws, and members of the club were exempt from toll, and had certain other privileges:—Held, that this land was not used for public purposes within the meaning of the Act. *The Mayor of Essendon v. Blackwood*, 46 Law J. Rep. P.C. 98; Law Rep. 2 App. Cas. 574.

(d) *Insolvency Act, 1865.*

52.—The Insolvency Act, 1865 (Vict.), by section 27, provides that all deeds which shall be executed by an assignee, purporting to convey, assign, release or assure any part of an estate of an insolvent to any purchaser or mortgagee shall be valid and effectual, both at law and in equity, for conveying, assigning, releasing or assuring the same. Section 71 provides that an assignee shall make sale of the estate of the bankrupt, giving due notice thereof in the *Gazette*. Section 81 provides that any creditor who shall hold any security upon an insolvent estate shall be obliged, upon oath, to put a value upon such security. The respondent having mortgaged real estate to the appellants became insolvent. The assignee, in consideration of the appellants abstaining from proving their debt, conveyed the equity of redemption to the appellants. No notice was given in the *Gazette*, nor was the security valued on oath:—

Held, first, that such a release was within the general powers of an assignee under the Act; secondly, that such a release was not a sale requiring a notice in the *Gazette*; thirdly, that section 81 applies only to mortgagees who elect to prove under an insolvent estate. *Melbourne Banking Corporation v. Brougham*, 48 Law J. Rep. P.C. 12; Law Rep. 4 App. Cas. 156.

A party who has received the benefit of a contract cannot afterwards repudiate such contract on the ground of informality. *Ibid.*

(e) *Contract: restraint of trade.*

53.—Certain persons carrying on the business of stevedores at Melbourne agreed to distribute their business at that port in certain proportions amongst themselves, and covenanted with each other that none of them would undertake or be in any way concerned in the stevedoring of any ship otherwise than according to such agreement:—Held that such covenant was a general restraint of trade, and void. *Collins v. Locke*, 48 Law J. Rep. P.C. 68; Law Rep. 4 App. Cas. 674.

### COMMISSION.

*Receipt of, by agent.* [See MARINE INSURANCE, 1; PRINCIPAL AND AGENT, 20, 23, 24.]

*Sale of ship: principal and agent: introduction of purchaser.* [See PRINCIPAL AND AGENT, 22.]

*To determine boundaries.* [See BOUNDARIES.]

*To take evidence.* [See EVIDENCE, 32.]

### COMMISSION AGENT.

Quere whether a commission agent is entitled to be indemnified out of the proceeds of his principal's goods, sold by him, against all liabilities incurred by him on account of his principal, including the amount of an accommodation bill drawn by the principal and accepted by the agent. *Hood v. Stallybrass, Balmer and Company* (P.C.), Law Rep. 3 App. Cas. 880.

### COMMITTEE OF EXPERTS.

*Cotton marks: appeal.* [See TRADE MARK, 12.]

### COMMON.

[Amendment of the Acts relating to the improvement and inclosure of commons, 39 & 40 Vict. 56.]

[Amendment of the law respecting the expense of regulating commons, 41 & 42 Vict. c. 56.]

[The Commons Act, 1876, amended, 42 & 43 Vict. c. 37.]

*Exclusive right of pasture.*

1.—The plaintiffs, on behalf of themselves and all other owners and occupiers of lands and

tenements in a parish, brought an action to establish a right of pasture over certain so-called lammas lands, being partly freehold, partly copyhold of the manors of L. and K. They pleaded that the lammas lands had, time out of mind, lain as open and common pastures for the cattle of the said owners and occupiers, as thereafter mentioned, and that such owners and occupiers had enjoyed as appurtenant to their lands and tenements in the parish a right of pasture thereon during the season between the removal of the crops and the time for sowing in each year; that the precise commencement and close of the season was regulated by by-laws anciently and of right made by the persons entitled to exercise the right and the owners of the lammas lands, and which, with their consent, and on their behalf, were afterwards made by the Courts of the said manors, and for many years past by the homage of the manor of L.; that the number of cattle each owner or his occupier was entitled to turn out was proportioned to the annual value of his tenement according to a scale fixed by the homage:—Held, that the right as claimed could have no legal origin if it was claimed as an exclusive right; and if it was claimed as appurtenant, then on the grounds that there was no connection shewn between the commonable beasts and the land in respect of which the right was claimed, and that it was unreasonable that either the stint, or the commencement and close of the season, should be fixed by the person entitled; and a demurrer was allowed with costs, with liberty to amend. *Baylis v. Tyssen Amhurst*, 46 Law J. Rep. Chanc. 718; Law Rep. 6 Ch. D. 500.

*Prescription by occupiers of tenements.*

2.—Occupiers of tenements in a manor cannot prescribe for common. *Austin v. Amhurst*, 47 Law J. Rep. Chanc. 467; Law Rep. 7 Ch. D. 689.

By-laws purporting to regulate the right to pasture on lammas lands of a manor were made by the homage from time to time. The latest by-law provided that freeholders and copyholders might depasture a number of cattle regulated by the number of acres they held; and that occupiers might also depasture a number of cattle regulated in a different mode by the number of acres they occupied. Some of the lammas land was taken for the purpose of public undertakings, and compensation paid in respect of the right to depasture. An action by occupiers on behalf of themselves and other occupiers, claiming to participate in the compensation, was dismissed. *Ibid*.

*Right of pannage.*

3.—The right of pannage does not entitle the owner of the right to restrain the grantor from lopping his trees in a proper course of management, or cutting them down when they are ripe for cutting for timber. The plaintiff

alleged a "right in the inhabitants of the parish of and within the manor of L. during a certain period of the year to cut or lop under the name of lopwood the boughs or branches of the trees growing upon the waste lands of the forest within the manor so as not to destroy or unnecessarily injure the trees, for the proper use and consumption of such inhabitants as fuel." The defendant admitted the existence of the right:—Held, that the right as alleged was unknown to the law, and could only exist by Crown grant; and the Court would not presume a lost grant. *Chilton v. The Lord Mayor and Corporation of London*, 47 Law J. Rep. Chanc. 433; Law Rep. 7 Ch. D. 735.

A Judge being bound to take judicial notice of all Acts of Parliament, is not at liberty to assume the existence of an Act which is necessary to give validity to a right which is admitted in the pleadings before him. *Ibid*.

The admission by a defendant of the existence of a right which cannot be supported in law does not entitle the plaintiff to judgment in respect of it. *Willingale v. Maitland* (36 Law J. Rep. Chanc. 64) explained. *Ibid*.

*Improvement under the statute of Merton.*

4.—The plaintiffs, who were freeholders of lands, conveyed together with rights of common of pasture, turbary and estovers to their predecessors in title in 1614 by the then lord of the manor of C., brought an action for disturbance of such rights against the present lord and his tenant, who had dug clay and brick earth under a lease of part of the common from the lord. Notwithstanding the existence of similar leases (the earliest of which produced was dated 1751 and was for a term of ninety-nine years) under which clay had from time to time been got, and which affected in all fifteen acres out of the 4,500 of the common, no interference with such operations on the part of any person had occurred until 1865, when a commoner, living near a part where a new kiln was erected, threatened an action against one of the present defendants unless he removed his kiln to another part of the common. Besides the freehold and copyhold tenants of the manor the owners and occupiers of freehold lands within the parish of C., not parcels of the manor, had from a time before living memory exercised, without interference by the lord, rights of common of pasture, turbary and estovers. Traces of clay pits, of which mention is made in a perambulation of 1595, were still visible. Neither these nor the other parts used for brickmaking under the later leases were fenced off from the common, but in such parts the heather, of the roots of which the turves consist, had been destroyed. Gorse also had been used for fuel at the kilns. There had, however, always been a sufficiency of turbary and estovers, and also of pasture for the average number of animals turned out by the commoners, but of late years the commoners had not, in fact, exercised their full right of



common in respect of turning out animals in consequence of a different breed of sheep being now generally kept, for which the common pasture was unsuitable. No special or particular damage had been done to the plaintiffs by the acts of the defendants, and there was no evidence of accidents having happened by reason of the clay pits, nor of any one abstaining from using the common on that account. Small portions of the waste had from time to time been granted by the lord to be held as copyholds, the earliest entry on the Court Roll of such a grant being in 1664, and their whole extent being fifty-one acres. These grants had been made by the steward, with the consent of the homage at General Courts Baron, the copyholders only being sworn on the homage:—Held, first, on the evidence in the case, that a sufficiency of pasture had been left; secondly, that the acts of the lord, in leasing portions of the common for brickmaking, amounting to an improvement against common of turbary and estovers, and so not authorised by the statute of Merton, could not be justified, except under a custom; thirdly, that there was evidence, from the granting of the leases, that the lord had a right, by custom of the manor, to approve, so that he left a sufficiency of turbary and estovers, and that such custom might well co-exist with the other custom of granting portions of the waste as copyhold with the consent of the homage of copyholders; fourthly, that the grant of 1614 did not confer on the plaintiffs, as freeholders, common rights more extensive than those of the copyholders, but must be taken to have been subject to the customs of the manor; fifthly, the grant to the plaintiffs being so subject, the entries on the Court Rolls, and the facts stated in reference to grants of parcels of the waste by the lord with the consent of the homage, admittedly evidence of custom against the copyholders, were (as in the former case of the leases of clay-pits) also evidence as against the freeholders, and a custom established by such evidence might be valid as against the plaintiffs, although such grants were made with the consent of the homage at Courts, consisting of copyholders only. *Lascelles v. Lord Onslow*, 46 Law J. Rep. Q.B. 333; Law Rep. 2 Q.B. D. 433.

5.—H. acquired by purchase ancient freeholds of a manor, out of a small parcel of which a quit rent of 5s. 10d. issued:—Held, that he was entitled to sue on behalf of the other freehold tenants of the manor. *Hall v. Byron*, 46 Law J. Rep. Chanc. 297; Law Rep. 4 Ch. D. 667.

H. was also the owner of a small piece of freehold land which had formerly been copyhold, and had been enfranchised under the Copyhold Acts:—Held, that he was entitled to sue on behalf of himself as owner of land formerly copyhold, and on behalf of other copyholders who had enfranchised in like manner, and of the copyhold tenants of the manor. *Ibid.*

H., in 1870, purchased a farm from the  
DIGEST, 1875-1880.

defendant, a small part of which was copyhold. The copyholds were surrendered to extinguish the tenure, but were not enfranchised under the Copyhold Acts. Several years previously common rights had been exercised in respect of this farm, but there was no evidence of their having been enjoyed at the time of the conveyance:—Held, that the general words in the conveyance, which did not include the words "at any time heretofore" enjoyed, did not recreate the common rights. *Ibid.*

The lord has, apart from the statute of Merton, a right to take gravel, marl, loam and subsoil from the common, provided he does not interfere with the commoners' rights. But where the lord did not claim a custom to dig without leaving sufficient for the commoners, a qualified injunction was granted to restrain him from so digging. Quere, if he had claimed a right to dig, not leaving sufficient for the commoners, and had produced evidence of such a custom, whether the custom would have been good. *Ibid.*

*Bateson v. Green* (5 Term Rep. 411) considered. *Ibid.*

6.—By a decree made in 1693, in a suit between the owners of Ashdown Forest and persons claiming rights of common, 7,500 acres of the forest were allotted to the owners for improvement, and the residue, consisting of 6,400 acres, was allotted to remain open and unenclosed, so that the commoners should have and take "sole common pasturage and herbage" thereof, and that the owners should be excluded from having or claiming "any common of pasture or herbage upon or in the said lands so left for common." The commoners claimed under this decree the right to cut and carry brakes, fern, heather and litter, to litter their yards, and manure and improve their lands and tenements:—Held, that under "common pasturage and herbage" the commoners were only entitled to take what could be taken by the mouth or bite of their cattle, and not to cut and carry any part of the growth of the soil. Held also, that no special custom entitling the commoners to take any part of the growth of the soil was proved. Held also, that under the circumstances a prescriptive claim based on sixty years' user could not be supported. *Earl De la Warr v. Miles*, 49 Law J. Rep. Chanc. 476.

*Metropolitan commons: validity of by-law: right of public meeting.* [See METROPOLIS, 21.]

*Several oyster fishery: navigable river: claim to take without stint: free inhabitants of ancient tenements.* [See FISHERY, 2.]

#### COMPANY.

[And see FRIENDLY SOCIETY: PARTNERSHIP: RAILWAY COMPANY.]

#### (A) PROMOTERS.

- (a) *Who are promoters.*
- (b) *Ratification of contract by company.*
- (c) *Liability of.*
  - (1) *For fraud in prospectus.*

- (2) *For fraudulent or improper sale to company.*
- (8) *In respect of fraudulent scheme to float company.*
- (d) *Preliminary expenses, who liable for.*
- (e) *Promotion money.*
- (B) PROSPECTUS.
- (O) REGISTRATION.
  - (a) *Certificate of, conclusive effect of.*
  - (b) *Delivery of list of members to Registrar.*
  - (c) *Association formed to carry on business.*
- (D) CONSTITUTION AND MANAGEMENT.
  - (a) *Memorandum and articles of association.*
    - (1) *Improper provisions in : fraud on public.*
    - (2) *Repudiation of resolution.*
    - (3) *Alteration of.*
  - (b) *Title and designation of company.*
  - (c) *Directors.*
    - (1) *Qualification of.*
    - (2) *Disqualification of.*
      - (i) *To make profit out of company.*
      - (ii) *To avail themselves of unregistered charges ; section 43.*
    - (3) *Liability of.*
      - (i) *For fraudulent or improper transactions.*
      - (ii) *Ultra vires acts and dealings : ratification by shareholders.*
      - (iii) *Misfeasance, &c., within section 165.*
      - (iv) *Notice to : entries in registers, &c.*
      - (v) *Intending director.*
      - (vi) *For acts of others.*
  - (d) *Solicitor or agent.*
    - (1) *Employment of solicitor.*
    - (2) *Lien of agent on goods.*
  - (e) *Meetings of company : voting and proceedings at.*
  - (f) *Mortgages, bonds, and debentures.*
    - (1) *Obligation whether a charge on assets of company.*
    - (2) *Register of mortgages.*
    - (3) *Rights and priorities of debenture holders.*
  - (g) *Reduction of capital.*
  - (h) *Fully paid up shares.*
    - (1) *Registration of contract under Companies Act, 1867, section 25.*
    - (2) *Payment in cash.*
    - (3) *Proof for damages for breach of contract to allot.*
  - (i) *Shareholders.*
    - (1) *Contract to take shares.*
      - (i) *Persons who have signed the memorandum of association.*
      - (ii) *Persons who have been induced to take shares by fraud or misrepresentation.*
    - (2) *Notice of allotment.*
    - (3) *Agreement by director : withdrawal of application.*
  - (k) *Rectification of register.*
  - (l) *Forfeiture, surrender and cancellation of shares.*
  - (m) *Sale or transfer of shares.*
- (1) *Dividend declared after sale.*
- (2) *Purchase for value without notice ; transfer under seal executed in blank.*
- (8) *Infant transferee : liability of stock jobber.*
- (4) *Certificate of transfer.*
- (5) *Refusal to register transfer.*
- (E) ACTIONS AND PROCEEDINGS BY AND AGAINST COMPANIES.
  - (a) *By individual shareholders : action when to be brought in name of company.*
  - (b) *Right to use name of company.*
  - (c) *Action by creditor in collusion with company against shareholder.*
  - (d) *English shareholder in foreign company : liability of, on foreign judgment obtained in his absence.*
- (F) SCIRE FACIAS AGAINST SHAREHOLDER OR DIRECTOR.
- (G) AMALGAMATION AND TRANSFER OF BUSINESS OR ASSETS.
  - (a) *Whether valid or ultra vires.*
  - (b) *Novation of contract by policy-holder.*
  - (c) *Mode of distribution of consideration for transfer.*
- (H) WINDING-UP.
  - (a) *Petition and winding-up order.*
    - (1) *Creditor's petition : right to present.*
    - (2) *Shareholder's petition.*
    - (3) *Demurrable petition.*
    - (4) *Number of members.*
    - (5) *Order where assets only 71.*
    - (6) *Several petitions.*
    - (7) *Unregistered Company.*
    - (8) *Life Assurance Company.*
    - (9) *Appearance on hearing.*
    - (10) *Effect of winding-up order : debenture holders.*
  - (b) *Liquidator.*
    - (1) *Appointment of.*
    - (2) *Provisional liquidator.*
    - (3) *Liability of, for costs.*
    - (4) *Assets vesting in.*
    - (5) *Removal of.*
    - (6) *Power to continue business.*
    - (7) *Power of surviving liquidator.*
  - (c) *Receiver.*
  - (d) *Creditors.*
    - (1) *Landlord's claim for rent.*
      - (i) *Claim for future rent.*
      - (ii) *Distress for rent.*
    - (2) *Debenture holders : proof by.*
    - (3) *Policy-holders : proof by.*
    - (4) *Secured creditors.*
      - (i) *Definition of.*
      - (ii) *Proof by.*
    - (5) *Preferential debts.*
    - (6) *Execution creditors.*
    - (7) *Dismissal of action no bar to claim.*
    - (8) *Compromise enforceable against.*
    - (9) *Creditor-shareholder, right of, to dividends.*
  - (e) *Contributories.*
    - (1) *Person who has never contracted to take shares.*

- (2) *Contract to incur liability beyond nominal amount of shares.*
- (3) *Trustee of shares not placed on register.*
- (4) *Bankrupt or liquidating shareholder.*
- (5) *Husband of female shareholder.*
- (6) *Executrix of person who had signed memorandum of association.*
- (7) *Directors of company.*
- (8) *Past members.*
- (9) *Cancellation of shares.*
- (10) *Fire and life insurance: distinct departments.*
- (11) *Mutual insurance association: outside debts.*
- (12) *Compromise with liquidator: application of sums received by way of compromise.*
- (13) *Set-off.*
  - (i) *Of debt against calls.*
  - (ii) *Of debt against assets in hands of contributory.*
- (14) *Scottish order: calls.*

(f) *Services.*(g) *Appeals and rehearings.*

- (1) *Jurisdiction.*
- (2) *Time.*
- (3) *Admission of new evidence.*

(h) *Discovery and inspection and production of documents.*(i) *Stay or transfer of proceedings against company.*(k) *Witnesses, examination of, under section 115.*(l) *Costs.*

- (1) *Of petitioner.*
- (2) *Of opposing creditor.*
- (3) *Of official liquidator.*
- (4) *Of appeal: security for.*
- (5) *Of respondent.*
- (6) *Of winding-up: compromise with contributories.*

(7) *Of action before winding-up.*(n) *Voluntary winding-up.*

- (1) *Appointment of mortgagees as receivers and managers.*
- (2) *Notice of meeting.*
- (3) *Effect of: time: jurisdiction of court.*
- (4) *Continuation of, under supervision of the court.*
- (5) *Sale or transfer of business.*
- (6) *Closing of.*
- (7) *Examination of witness.*

## (I) SCHEME OF ARRANGEMENT UNDER COMPANIES ARRANGEMENT ACT, 1870.

[The Companies Acts of 1862 and 1867 amended. Power to companies to reduce capital by writing off losses, &c. 40 & 41 Vict. c. 26.]  
 [The Companies Acts of 1862, 1867, 1877, and 1879, amended. 43 Vict. c. 19.]  
 [Unlimited companies empowered to register as limited companies. 42 & 43 Vict. c. 76.]

## (A) PROMOTERS.

(a) *Who are promoters.*

1.—P. had a silver mine in America which he desired to sell for the best price. The defendants, who were metal-brokers receiving a commission on the sale of the ore from the mine, were aware of this, and that the mine could only be sold to a company to be formed for that purpose. By the establishment of such a company in England the defendants would sustain a loss on their commission, but P. promised the defendants that if they would assist him in getting the mine sold he would guarantee them against such loss by giving them 5,000*l.* in paid-up shares of whatever company was formed, it being intended that P. should include in his purchase-money a sum sufficient to cover such 5,000*l.* The defendants gave P. active assistance in selling the mine to some company, but it was not proved that they took any part in the formation of the company which was in fact established. Afterwards P., in fulfilment of his promise, gave the defendants 250 paid-up shares of such company, from which they realised on sale 5,968*l.* The arrangement between P. and the defendants for thus remunerating them for their services to him, out of money to be charged to the company as part of the purchase-money, was unknown to the company:—Held, in an action by the company against the defendants for profits received to the use of, and as trustees for, the company, that it was a question of fact for the jury whether the defendants were promoters, and that on the above facts there was evidence on which a jury might find that the defendants were promoters, and that they were liable to refund the profits they had received on the 250 shares of the company. *The Emma Silver Mining Company v. Lewis*, 48 Law J. Rep. Chanc. 256, 257; Law Rep. 11 Ch. D. 918.

(b) *Ratification of contract by company.*

2.—Contracts made by promoters when the company was not in existence may be ratified by the company. *Melhado v. The Porto Allegre, &c. Railway Company* (43 Law J. Rep. C.P. 258; Law Rep. 9 C.P. 503) observed upon. *Spiller v. The Paris Skating Rink Company*, Law Rep. 7 Ch. D. 368.

(c) *Liability of.*(1) *For fraud in prospectus.*

[See B 1 *infra*.]

*Intending director: position of, with relation to company prior to incorporation of company.*  
 [See D 39 *infra*.]

(2) *For fraudulent or improper sale to company.*

3.—A., a promoter of a joint-stock tramway company intended to be formed, entered into a contract with B., another promoter of such company, by which the latter, in consideration of

A. obtaining for him the contract from the intended company for making the tramway on terms satisfactory to him, agreed to pay A. a large sum of money out of what he should receive from such company under the contract. B. also entered into a contract with C., who had obtained a concession from a foreign government necessary for allowing the tramway to be made, and who afterwards became a director of the company, and by this contract B. was to give C. a large sum for such concession, but the contract was to be void in the event of B. failing to obtain from the intended company the contract for the construction of the tramway:—Held (by the Common Pleas Division), that both the contract between A. and B., and the contract between B. and C., were within section 38 of the Companies Act, 1867 (30 & 31 Vict. c. 181), and therefore were required to be mentioned in the prospectus of the company which A. and B. issued; and that their omission gave a right of action against A. and B., to a shareholder who took shares in the company on the faith of such prospectus and in ignorance of the existence of such contracts, and that, notwithstanding A. and B., when they issued such prospectus, *bona fide* believed that the contracts need not by law have been set forth. *Treycross v. Grant* (App.), 46 Law J. Rep. C.P. 636; Law Rep. 2 C.P. D. 469.

Held also, that the prospectus was issued by the promoters as promoters, within the meaning of the statute, notwithstanding they issued it after the company had been registered, and after the prospectus had been settled by the board of directors. *Ibid*.

On appeal, Held, by Cockburn, L.C.J., and Brett, L.J. (*dissentientibus* Kelly, C.B., and Bramwell, L.J.), affirming the decision of the Court below, that it was rightly left to the jury to say whether the contracts were material to the interests of the company, and material to be made known to the shareholders; and that these questions having been found in favour of the plaintiff, the case was within the 38th section. *Ibid*.

4.—In 1869 the Government of San Domingo granted to Hartmont & Co. a concession for fifty years of the guano and guanito, or phosphate of lime, in the island of Alta Vela. Hartmont & Co. became trustees of the concession for themselves, Lawson & Son, and Ogle, and those persons then formed a committee to get up a company for the working of the island. In 1871 Engelbach & Keir, on behalf of the intended company, contracted with Lawson & Son as the ostensible vendors, for the purchase from them of the concession for 65,000*l.*, of which sum 50,000*l.* was to be paid to Hartmont & Co., Lawson & Son, and Ogle, in shares agreed upon between them, and 15,000*l.* to Engelbach & Keir. On the 8th of May, 1871, the company was registered, and on the 29th the concession was sold to it for 65,000*l.*, but without any proper investigation of the title. Hartmont & Co. were at that time aware that the concession

was either void or voidable for breach of the conditions on which it was originally granted, and the Dominican Government did in fact afterwards cancel the concession, which they re-granted to other parties. Upon a bill filed by the company against Hartmont & Co., and the several persons implicated in forcing the concession on the company,—Held (affirming the decree of Malins, V.C., 45 Law J. Rep. Chanc. 465), that Hartmont & Co. and the estate of Lawson & Sons, who had become bankrupts, were jointly and severally liable to restore to the plaintiffs the price paid for the concession, and that Engelbach & Keir were liable to repay the 15,000*l.* received by them. *The Phosphate Sewage Company v. Hartmont* (App.), 46 Law J. Rep. Chanc. 661; Law Rep. 5 Ch. D. 394.

5.—The defendant purchased certain calico printing works and premises for 15,000*l.* These were afterwards conveyed to the plaintiff company by the defendant and S. for 20,000*l.*, the defendant having previously purported to sell the premises to S. for that sum by a sham contract intended to be used for the purpose of the negotiations with the company. The defendant made an agreement with S., which existed at the date of the incorporation of the company, by which S. was to have 3,000*l.* out of the purchase-money paid by the plaintiff company. The defendant and S. were at the time of the sale promoters of the company, and the directors, who were in fact nominees of the defendant and S., knew that the defendant had previously purchased the property for 15,000*l.*:—Held (by Bowen, J., on further consideration), that the plaintiff company was entitled to enforce against the defendant the secret agreement to pay over 3,000*l.* to S. so far as it remained still unexecuted, upon the ground that the contract with S. must, under the circumstances, be treated as a contract made for the profit of the plaintiff company. *The Whaley Bridge Calico Printing Company (Lim.) v. Green*, 49 Law J. Rep. Q.B. 326; Law Rep. 5 Q.B. D. 109.

6.—The lease of a mineral property was sold, subject to the sanction of the Court, for 55,000*l.* to a person who was in fact the agent of a syndicate, and the contract was subsequently approved by the Judge. The syndicate then formed and registered a new company for the acquisition of the lease and working of the minerals, and a provisional contract bearing even date with the articles of association was executed for the sale of the property to a trustee for the company for 110,000*l.* The articles named five directors, with power to adopt the contract, and made two directors a quorum at their meetings. Of these five directors two were abroad at the time of the incorporation of the company, and took no part in the proceeding relating to the completion of the contract; one was the agent who purchased the property on behalf of the syndicate; another obtained his share qualification by way of loan from the principal member of the syndicate; the fifth subscribed and paid for his own qualification

shares. The three last mentioned directors attended the first meeting and adopted the contract. A prospectus was then issued, naming the agent of the syndicate as one of the directors, and mentioning the provisional contract, which recited the previous contract, but not the price paid by the syndicate. At the first general meeting of the company, held in February, 1872, questions were asked by a shareholder with regard to certain rumours relating to the difference between the price at which the property had been purchased by the promoters and that at which it had been resold to the company, but the chairman avowed himself ignorant of the truth of the rumours, but stated his belief that the property was worth the money given by the company. In the following June, at the annual general meeting of the company, the question was again raised, and a committee of investigation was appointed, who presented their report in August. After some correspondence, this suit was instituted in the following December:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. Chanc. 425; Law Rep. 5 Ch. D. 73), that by reason of the concealment by the promoters of the price paid by them for the property, the contract for sale thereof to the company was liable to be rescinded, and also (*dissentiente Cairns, L.C.*), that there was no *laches* or acquiescence on the part of the company such as to preclude them from suing for a rescission of the contract. *The New Sombrero Phosphate Company v. Erlanger* (H.L.), 48 Law J. Rep. Chanc. 73; Law Rep. 3 App. Cas. 1,218.

The position and duties of promoters defined. *Ibid.*

The circumstances which will raise a case of *laches* or acquiescence discussed, especially with reference to the case of a company. *Ibid.*

### (3) *In respect of fraudulent scheme to float company.*

7.—The trustees of the will of James Bagnall desired to sell extensive iron works of their testator to a company to be formed to purchase and work them, and entered into negotiations with Duignan for this purpose. Richard Bagnall, the tenant for life of the proceeds of sale, offered Duignan 1,500*l.* if he effected a sale. Duignan negotiated with Richardson, Richardson with Carlton, and Carlton with Grant. Eventually two agreements of March 6, 1873, were entered into, one called the secret, the other the ostensible agreement. By the secret agreement Carlton agreed with the trustees to form a company to purchase the ironworks, and, if he failed, to forfeit a deposit of 20,000*l.*, and the trustees agreed with Carlton, if the company succeeded, to return him the 20,000*l.*, and to pay him 85,000*l.* out of the purchase-money. By the ostensible agreement the trustees agreed to sell the ironworks to a trustee for the company to be formed, at the price of 290,000*l.* By a con-

temporaneous agreement between Carlton and Grant it had been agreed that Grant should find the 20,000*l.* for the deposit, and should bring out the company, and should receive 65,000*l.* out of the 85,000*l.* for his remuneration. Grant prepared the prospectus, and Duignan saw it and approved of it; the only agreement referred to in the prospectus was the ostensible agreement. The company was brought out and succeeded, and the moneys payable under the agreements were paid. Duignan became solicitor to the company, and received his 1,500*l.* from Richard Bagnall, but neither he nor anyone disclosed the existence of the secret agreement to the directors of the company. In November, 1874, some of the directors discovered the secret agreement; the matter was at once submitted to the shareholders, and by their direction a bill was filed to have a rescission of the contract and for repayment to the company of the 85,000*l.* by Carlton, Grant and Richardson, and of the 1,500*l.* by Duignan. Before the hearing, the part of the suit against the vendors asking for the rescission of the contract was compromised by a money payment. An offer was made by the bill to allow to Carlton, Grant and Richardson a reasonable sum for expenses and commission:—Held (affirming the decision of Bacon, V.C.), that Carlton, Grant and Richardson were liable to refund the 85,000*l.* to the company, but held (varying the decision) that they were entitled to deduct a sum for the expenses they had incurred, and, as an express offer had been made by the bill, a reasonable sum was awarded by the Court as commission:—Held also (affirming the decision of Bacon, V.C.), that Duignan was not liable to refund the 1,500*l.* which had been paid him by Richard Bagnall, but held (reversing that decision) that the suit ought to have been dismissed against Duignan at the time the compromise was made with the vendors, and that while Duignan ought not to receive any costs up to that time, he was entitled to be paid costs by the plaintiffs from that time. Per Cotton, L.J.—When once persons who have got a contract for a company to be formed, do put forward to the public an option to join in the company, and to take the purchase, then, from the very time when the contract is entered into, they make themselves trustees for the company, and are in the same position as if the company was existing at the time when the contract was entered into. *Bagnall v. Carlton* (App.), 47 Law J. Rep. Chanc. 30; Law Rep. 6 Ch. D. 371.

8.—A promoter of a company who made a profit of twenty per cent. of the purchase-money under a secret agreement with the vendor, held liable to refund to the company the amount of such profit, less the actual expenses paid by him in the formation of the company. *The Emma Silver Mining Company v. Grant*, Law Rep. 11 Ch. D. 918.

*Bagnall v. Carlton* (see last case) followed *Ibid.*

[And see D 1 *infra*.]

(d) *Preliminary expenses, who liable for.*

9.—The owner of certain property agreed with a solicitor and an accountant that if they should succeed in forming a company to purchase the property at a valuation, he would pay them 1,500*l.*, besides their costs and expenses to be received from the company. The company was formed, but proved abortive, and the purchase was never carried out, nor the 1,500*l.* paid. The agreement had not been disclosed to the subscribers of the memorandum, who were the only contributories. In the winding-up, it was held that though a company is generally bound in equity to pay the expenses of its formation, and though if the company had adopted and carried out the purchase they might, notwithstanding the fraud, have been bound to discharge such expenses, and their only remedy might have been to recover the 1,500*l.*, yet the company having proved abortive, the fraud absolved them from any liability to pay the preliminary expenses, and also was a defence in equity to their legal liability for professional services rendered by the promoters after the company's formation. Held also, that the claim of the valuer (against whom there was no imputation) for the valuation made by him by direction of the promoters, was legally only a claim against them, and that as a claim against the company it failed with theirs. *In re The Hereford and South Wales Waggon, &c. Company; Head and Walter's Claims* (App.), 45 Law J. Rep. Chanc. 461; Law Rep. 6 Ch. D. 261.

10.—Where a private Act provided for payment by a company of all expenses incurred in the formation thereof:—Held, that this did not justify a claim for remuneration by a clerk of the promoter, but that he must be deemed to have looked for payment to the promoter. *In re The Kent Tramways Company* (App.), Law Rep. 12 Ch. D. 312.

(e) *Promotion money.*

11.—Upon the formation of a company promotion money had been improperly paid. B., who was cognisant of the payment but not a party thereto, subsequently became a director, but took no steps to recover the money for the company. On a summons by the liquidator in the winding-up of the company to make B. liable:—Held, that B. was not liable for wilful default or misfeasance under section 165. *In re The Forest of Dean Coal Mining Company*, Law Rep. 10 Ch. D. 480.

*Solicitors employed in formation of unregistered company: petition by, to wind up company: petitioning creditor's debt.* [See H 15 *infra*.]

## (B) PROSPECTUS.

1.—P., by circular, asked persons for an estimate of what shares they were likely to take in a company to buy and carry on certain works. Afterwards, P. bought the works, and resold

them to trustees for an intended company, which was afterwards formed:—Held, that a prospectus issued by P., which did not specify his contract for purchase, was not to be deemed fraudulent on his part. And an admission by P., in answer to interrogatories, that he was a promoter at the time of issuing the circular, did not alter the case. *Craig v. Phillips*, 46 Law J. Rep. Chanc. 49; Law Rep. 3 Ch. D. 722.

2.—A mere understanding that a vendor to a company will give shares to directors or promoters is not a contract within the 38th section of the Companies Act, 1867. In an action for loss on shares procured to be taken by misrepresentation, the measure of damages was held to be the difference between what was paid for the shares and what would have been paid had the truth been known. *Armerwright v. Newbold*, 49 Law J. Rep. Chanc. 684.

3.—All contracts which might reasonably affect the mind of a person in determining him to take or not to take shares in a company, are contracts which ought to be specified in the prospectus of the company, within the meaning of section 38 of the Companies Act, 1867. A statement of claim alleged that the plaintiff was a shareholder in a company, formed for the purpose (amongst others) of buying the patent rights in a certain manufacture; that he was induced to take his shares on the faith of a prospectus issued on the formation of the company by the defendants, who were promoters; that the prospectus was fraudulent as against the plaintiff within the meaning of section 38 of the Companies Act, 1867, by reason of the defendants having knowingly omitted to specify certain contracts entered into by the promoters before the formation of the company, by which contracts a small part only of the purchase-money of the patent rights was to be paid to the vendor, and the remainder was to be divided among the promoters; and the plaintiff claimed the amount paid for his shares. On demurrer, it was,—Held (by Baggallay, L.J., and Thesiger, L.J., Bramwell, L.J., dissenting), that the contracts were such as ought to have been disclosed in the prospectus, within section 38, and therefore that the statement of claim was good. (Per Bramwell, L.J.)—Section 38 requires such contracts only to be disclosed in the prospectus as bind or, if adopted, may bind, the company when formed. *Sullivan v. Mitcalfe* (App.), 49 Law J. Rep. C.P. 815; Law Rep. 5 C.P. D. 455.

*Liability of promoters, directors and others in respect of fraudulent prospectus.* [See A 3, 7, 8 *supra*, D 42 *infra*.]

*Reputation of shares.* [See D 74, 78 *infra*.]

## (C) REGISTRATION.

(a) *Certificate, conclusive effect of.*

1.—The certificate of incorporation of a company, given by the Registrar under section 18 of the Companies Act, 1862, is sufficient to in-

corporate the company, notwithstanding the fact of any of the statutory seven subscribers to the memorandum of association being persons not *sui juris*. *In re The Nassau Phosphate Company (Lim.)*, 45 Law J. Rep. Chanc. 584; Law Rep. 2 Ch. D. 610.

Where an order had been made on petition for the compulsory winding-up of a company whose memorandum of association had been subscribed by "seven persons" under section 6 of the Companies Act, 1862, and registered in the usual way, a second petition, subsequently presented under section 199, for winding up the company as unregistered, on the ground that one of the seven subscribers was an infant and that the previous order was therefore invalid, was dismissed with costs. *Ibid.*

Semble, it is not the duty of the Registrar to require evidence as to whether the several subscribers to a memorandum of association brought to him for registration are *sui juris*, and if the memorandum of association of a company capable of being incorporated under the Act is brought to him for registration after having been signed by seven persons, he is bound, under section 17 of the Companies Act, 1862, to register it. *In re The Hertfordshire Brewery Company* (43 Law J. Rep. Chanc. 358), not followed. *Ibid.*

(b) *Delivery of list of members to Registrar.*

2.—The appellant was convicted upon an information alleging that he being a director of a company subject to the Companies Act, 1862, which made default in complying with the provisions of that Act with respect to forwarding such list of members and summary as are mentioned in the 26th section of that Act to the Registrar of joint-stock companies, and continued such default for the space of 160 days up to and including the 25th of February, 1875, knowingly and wilfully did authorise and permit such default. At the hearing it was proved that the appellant was one of the directors when the company was formed in 1851, and that he continued to be a director in 1856. He was the holder of a large amount of shares, and the number of shareholders was only seven. The solicitor for the appellant declined to produce the minute-book, although notice to produce it had been served directed to the company and its secretary. No evidence was given that the company had ever held any general ordinary meeting. No list of members or summary, as required by the Companies Act, 1862, s. 26, was forwarded to the Registrar of joint-stock companies in 1874.—Held, that the appellant was rightly convicted; for, first, the primary object of section 26 was to secure the sending in of the list and summary once a year, and the enactment as to the time of sending in the same was merely directory; secondly, that there was evidence that the appellant continued to be director; and thirdly, that there was evidence that the appellant knowingly and wilfully per-

mitted the company's default. *Edmonds v. Foster*, 45 Law J. Rep. M.C. 41.

3.—By section 39 of the Companies Act, 1867, every company formed under the principal Act of 1862 must hold, under a penalty, a general meeting within four months after its memorandum of association is registered. By section 26 of the Companies Act, 1862, every company under that Act must, within fourteen days after the first ordinary general meeting, make out a list of its members, and forward the same to the Registrar of joint-stock companies within a further period of seven days, subject to a penalty of 5*l.* *per diem* in default. On a summons taken out against the Ladies' Association (*Lim.*) for not having forwarded a list of members as aforesaid, the magistrate decided that it was necessary for the complainant to prove that the first ordinary general meeting had been held, and on failure of such proof, dismissed the summons.—Held, that the magistrate was right; for the date of the general meeting formed a *tempus a quo* from which the period of fourteen and seven days was to run, and that it could not be presumed against the company that a general meeting had been duly held. *Edmonds v. Foster* (see last case) distinguished on the ground that the summons in the present case set out the period of time in the words of the statute, and therefore the requirements of the statute must be strictly followed. *Reg. v. Newton*, 48 Law J. Rep. M.C. 77.

(c) *Association formed to carry on business.*

4.—A deed was made between the defendants, called trustees, of the one part, and a covenantee on behalf of the holders of certificates of the other part, reciting subscriptions by numerous persons for the purchase by the trustees of the stocks, shares and debentures of certain submarine telegraph companies, which had been transferred into the trustees' names, and that it was intended to issue to the subscribers certificates of the nominal amount of 100*l.* in respect of every subscription of 90*l.*, and to issue as part of the certificate coupons of reversion, one coupon for each subscription of 90*l.*, in addition to the certificates for 100*l.*, and the deed contained provisions by way of trust for application of the annual produce in payment of expenses and interest, and the redemption of the certificates according to a scheme and for distribution of the available moneys *pari passu* among the certificate holders; and that the certificates to be redeemed should be selected by lot; and for ultimate division of any surplus between the holders of the coupons of reversion; and for sale or conversion of the securities at the discretion of the trustees, the produce to be applied in the redemption of certificates, or, with the assent of the certificate holders, in the purchase of similar securities; and for remuneration of the trustees; and for an annual meeting of the certificate holders, the proceedings thereat to be in manner pre-

scribed by Table A.; the business of the meeting to be (a) to receive a report of the trustees on the condition of the trust; (b) to appoint auditors; (c) to elect new trustees. The 4,200 certificates were issued, and the holders were more than twenty.—Held (reversing the decision of the Master of the Rolls), that the certificate holders did not form an association which, under section 4 of the Companies Act, 1862, was illegal for want of registration. That the object of the deed was not the carrying on a business for the acquisition of gain within the section, but the holding and management of a trust fund, and that the powers given by the deed of selling and re-investing in certain cases were merely provisions similar to those found in ordinary settlements, and as being merely incidental to the management of the trust fund did not bring the case within the section. That the business (if any) authorised by the deed to be carried on was carried on by the trustees as trustees, and not as directors, and that they being under twenty, the case did not fall within the section. *Sykes v. Beadon* (48 Law J. Rep. Chanc. 522; Law Rep. 11 Ch. D. 170) disapproved; and *In re The Arthur Average Association* (44 Law J. Rep. Chanc. 569; Law Rep. 10 Chanc. 542) doubted by Brett, L.J. (Per Brett, L.J.) No transaction within the association or company between the members of it can be taken into consideration to determine whether the company or association was one formed to carry on a business within the meaning of section 4. *Smith v. Anderson* (App.), 50 Law J. Rep. Chanc. 39; Law Rep. 15 Ch. D. 247.

#### (D) CONSTITUTION AND MANAGEMENT.

##### (a) Memorandum and articles of association.

##### (1) Improper provisions in: fraud on public.

1.—A company was incorporated in 1873 with a capital of 100,000*l.*, in shares of 1*l.* each. The 11th clause of the articles of association provided that if it should appear to the directors that the capital of the company for the time being subscribed should be sufficient for the purposes of the company, they might allot any shares which then might remain unallotted to and among the then shareholders in proportion to the number of shares respectively held by them, and such shares might be allotted as fully or partially paid-up shares, although no moneys might be received by the company in respect of such shares from any allottee thereof. Six weeks after the incorporation of the company, when only 25,000 shares had been allotted, of which nearly 22,000 were allotted as fully paid-up shares, pursuant to duly registered contracts, the directors passed a resolution in conformity with the 11th clause of the articles, and thereupon, and by virtue of a duly registered agreement, the remaining 75,000 shares of the company were rateably allotted as fully paid-up shares amongst the then existing share-

holders of the company. The concern was then puffed up, and some 50,000 of these paid-up shares were sold in the market as shares of 1*l.* each at a premium, of which shares A. bought 100. Subsequently the company, which was a hopeless failure from the outset, went into voluntary liquidation. Nine months afterwards A. presented a petition for a compulsory order, alleging (amongst other things) great irregularities in the formation of the company and in the conduct of the directors, that no consideration was given for the 22,000 shares which had been allotted as fully paid-up, that the 11th clause of the articles and the proceedings thereunder were a fraudulent scheme to float the company, and that the voluntary winding-up was improperly obtained and under the control of the guilty parties, and was intended to screen them and prevent investigation. The petition was supported by the bulk of the shareholders, but not by any creditor.—Held, that the case was wholly outside the winding-up Acts, for that, although the 11th clause was a most improper provision, and one calculated to be the means of fraud, no fraud or wrong had been committed against the company or its creditors; and, *semble*, even if the petition was sustainable, A. was debarred from relief by his own *laches*. Held also, that the fraud or wrong, if any, was personal to those who were deluded into purchasing the shares, for which they had a personal remedy against the parties who had defrauded them. And held (per Bramwell, L.J.), that if the alleged fraud could be proved, the guilty parties could be indicted for conspiracy. *In re The Gold Company* (App.), 48 Law J. Rep. Chanc. 28; Law Rep. 11 Ch. D. 701.

*Semble*, the 11th clause contravened the spirit of the winding-up Acts and the policy of the law, and was therefore fraudulent and void. *Ibid.*

*Construction of: articles of association acted upon by a stranger named therein as solicitor to the company.* [See D 43 *infra*.]

*Inconsistency between memorandum and articles.* [See D 58 *infra*.]

*Person signing memorandum: liability to take shares.* [See D 73 *infra*.]

*Trafficking in shares of company.* [See D 52 *infra*.]

*Ultra vires act: resolution whether affecting constitution of company.* [See G 1 *infra*.]

##### (2) Repudiation of resolution by company.

2.—The defendant, as vendor of a business to the plaintiffs, received payment partly in fully paid-up shares and partly in cash, and was appointed managing director to the company for the term of five years, in consideration of which he guaranteed a minimum dividend on the paid-up capital during that period. All this appeared in the articles of association. Some twelve months afterwards the directors of the company resolved to convene a meeting



of shareholders for the purpose of disposing of part of the business, and also of releasing the defendant from his guarantee, upon condition of his giving up his shares, and assigning the right to five new patents. The resolution was duly passed and confirmed at extraordinary general meetings of the shareholders. The company thereupon accepted the shares from the defendant, which comprised all his interest in the concern, and appointed in his stead another managing director possessed of the requisite qualifications; part of the business was also disposed of. Some few months afterwards the company requested the defendant to hand over the patents; it was then discovered that only one was a new patent (which was retained for the benefit of the company), the others being provisional specifications, all of which were out of date. The company accordingly repudiated the agreement with the defendant, and brought their action on the guarantee to make up a deficit in the second year's dividend:—Held, that inasmuch as the resolution to release the defendant in no way affected the constitution of the company as defined by the memorandum of association, it was not *ultra vires* but a "regulation" within the 50th section of the Companies Act, 1862. Held also, that such resolution could not, under the circumstances, be repudiated by the company, either on the ground of its being voidable for fraud, or of the conditions not having been completely fulfilled. *The Sheffield Silver Nickel and Plated Company (Lim.) v. Unwin*, 46 Law J. Rep. Q.B. 299; Law Rep. 2 Q.B. D. 214.

A contract which cannot be rescinded *in toto* cannot be rescinded at all, but the party complaining of the non-performance or the fraud, must resort to an action for damages. *Ibid.*

### (3) Alteration of.

3.—No company registered under the Companies Act, 1862, can contract itself out of the provisions of section 50 of that Act by declaring that any particular regulation in its articles of association shall be incapable of alteration, and any such regulation will be capable of alteration by the company by special resolution duly passed. *Walker v. The London Tramways Company*, 49 Law J. Rep. Chanc. 23; Law Rep. 12 Ch. D. 705.

### (b) Title and designation of company.

4.—A banking company established in 1878, having offices in Bloomsbury, and intended to deal chiefly with tradesmen in that district, was registered in a name similar to that of a banking company established in 1863, having offices in the City, and dealing principally with wholesale merchants:—Held, that since there was no *mala fides* on the part of the new company in adopting the name they had taken, the old company were not entitled to an injunction restraining them from using it, and that as the name of the new company had been duly regis-

tered, the 20th section of the Companies Act, 1862, had no application to the case. *The Merchant Banking Company of London (Lim.) v. The Merchants' Joint Stock Bank (Lim.)*, 47 Law J. Rep. Chanc. 828; Law Rep. 9 Ch. D. 560.

*Right to use name of company in action or proceeding.* [See E 1-5 infra.]

### (c) Directors.

#### (1) Qualification of.

5.—Where the articles of association of a company provided that no person should be eligible in future as a director unless he should hold in his own right at least fifty shares in the company, and that the office of director should be vacated if he should cease to hold the requisite number of shares in the company:—Held, that a person who was elected and acted as a director of the company without taking any shares therein, was liable in the winding-up for the qualification number of shares. *In re The British, Colonial and Foreign Property Insurance Corporation; Stephenson's Case*, 45 Law J. Rep. Chanc. 488.

6.—No share qualification being required for directors by the constitution of a company, the directors fixed a qualification by resolution of the board:—Held (varying the decision of Malins, V.C.), that such a resolution was not binding on a director who afterwards joined the board with notice that some share qualification was required. *In re The British Provident Life and Guarantee Association (Lim.)*; *De Ruwigne's Case* (App.), 46 Law J. Rep. Chanc. 360; Law Rep. 5 Ch. D. 306.

7.—Articles of association provided that the directors of the company should have power to appoint any person or persons to be a director or directors at any time before the ordinary general meeting of the company to be held in 1880; that no person should be qualified to be a director who was not a holder of shares or stock in the company to the nominal value of 500*l.*; and that no person except the original directors and such persons as might be appointed by them under the previous clause should be qualified to be a director who had not been a holder in his own right of such shares or stock at least six months. J., who was not a holder of shares or stock in the company, was appointed a director by the original directors, and attended several meetings of the board, but he never applied for any shares, and none were ever allotted to him. The company was ordered to be wound up:—Held (affirming the decision of the Master of the Rolls, 46 Law J. Rep. Chanc. 543; Law Rep. 5 Ch. D. 705, *nom. Hamley's Case*), that the articles made the possession of the qualification a condition precedent to the appointment of a director, and that J., not having the qualification at the time of his appointment as director, the appointment was void; and, as he had never agreed to take any shares, he could not be put on the list of

contributories. *In re The Percy Kelly, &c. Company*; *Bishop Jenner's Case* (App.), 47 Law J. Rep. Chanc. 201; Law Rep. 7 Ch. D. 132.

8.—A company's articles provided that no person should be qualified as director unless he had held twenty shares for two months or was recommended by the board for election. A., having consented to act, was elected by six of the seven only shareholders and directors. He held no shares, and before any were allotted to him, wrote refusing to have anything to do with the company:—Held, that his election was void, and that he was not a contributory. *In re The East Norfolk Tramways Company*; *Barber's Case* (App.), Law Rep. 5 Ch. D. 963.

9.—The articles of association of a company provided that a director's qualification should be twenty-five shares, that every director ceasing to hold that number of shares should vacate office, and that twenty-five fully paid-up shares should be issued to each original director as remuneration. An original director who attended one meeting and resigned two days afterwards, was held to have entered into a contract to take twenty-five shares, but that they must be deemed to be the twenty-five fully paid-up remuneration shares only. *In re The Australian Direct Steam Navigation Company*; *Miller's Case* (App.), Law Rep. 5 Ch. D. 70.

Decision of the Master of the Rolls (Law Rep. 3 Ch. D. 661) affirmed. *Ibid*.

10.—A provision in articles of association that every director should at the time of his appointment, and thenceforth during his continuance in office, hold at least four shares, and if any director should at any time cease to hold the qualification, his office should thereupon become vacant:—Held, to apply to original directors named by the articles; and an original director who was on the register for one share only was put upon the list of contributories for four shares as having become the possessor thereof upon his appointment. The articles named the first managing directors, and provided that they should remain such for five years:—Semble, that the managing directors named were restricted from becoming holders of fewer than four shares during the period of their service. *In re The Esparto Trading Company*; *Finch and Goddard's Cases*, 48 Law J. Rep. Chanc. 573; Law Rep. 12 Ch. D. 191.

11.—One of the articles of association of the defendant company provided that no person should be eligible as a director unless he held as registered member, in his own right, capital of the nominal value of 500*l.*; and another that a director was to vacate his office if at any time he held less than the nominal amount of capital required as his qualification for election. P., whose name appeared on the register of the company as holder of 100 shares, was elected a director on the 23rd of August, 1877. He had, however, transferred the shares by way of mortgage in the previous January, but his name by agreement remained on the register. The other

directors, being informed of the transfer by P., excluded him from the board of directors on the ground that he had vacated his office by being no longer the "holder in his own right" of the necessary qualification shares. On motion by P. in an action against the company and the other directors to restrain them from so excluding him,—Held, that P. had a right of action as for an individual wrong done to him personally, and that the words "holder in his own right" did not mean "beneficial holder." *Pulbrook v. The Richmond Consolidated Mining Company (Lim.)*, 48 Law J. Rep. Chanc. 65; Law Rep. 9 Ch. D. 610.

The meaning of those words is, that they must not be shares to which the holder is entitled as legal personal representative, husband of a female member, or a trustee in bankruptcy. *Ibid*.

A company cannot look behind the register as to the beneficial interest in the shares, or enquire into the trusts affecting them, but must take the register as conclusive. *Ibid*.

*Payment by director for qualifying shares out of money paid to him on behalf of vendor.* [See D 68 *infra*.]

### (2) Disqualifications of.

#### (i) To make profit out of company.

12.—A director of a company is also a trustee for it; and in any transaction between him and the company, all that knowledge of its affairs which, as a director, he could in the due discharge of his duty have acquired, will be imputed to him; and, as a trustee, he will not be allowed to make a profit out of a purchase by him, after he has ceased to be a director, of a portion of the property of the company. *In re The Imperial Land Company of Marseilles (Lim.)*; *ex parte Larking* (App.), 46 Law J. Rep. Chanc. 235; Law Rep. 4 Ch. D. 566.

A company went into liquidation, and L. (who had been a director of it and a party to the improper issue of its debentures) afterwards resigned his directorship, and then with knowledge of the insolvency of the company bought in the market, at a reduced price, some of the debentures. L. claimed to prove in the winding-up of the company for the full value of the debentures:—Held (by Malins, V.C.), in accordance with the above principles, that if L. refused the offer by the company of what he had actually paid for the debentures with interest, his claim must be disallowed; and, on appeal, the liquidators offering to make such payment, the Court concurred in the view taken by Malins, V.C., and made an order for payment with interest at five per cent., but no costs on either side. *Ibid*.

[And see D 31 *infra*.]

13.—A company being unable to get its shares taken up, the directors resolved that a commission of 2*s.* 6*d.* per share should be paid to anyone who should find persons to take the shares. B., the secretary and solicitor of the

company, accordingly made a proposal for the allotment of 2,000 shares to a client of his. The directors passed a resolution that the offer should be accepted, and that 250*l.*, being commission at 2*s.* 6*d.* per share, should be paid to B. The shares were duly allotted to K., the company's engineer, and by him transferred to R. B., who was chairman of the company, and also B.'s father. The directors knew that R. B. was the person who was really taking the shares. The company was wound up, and upon a summons taken out by the liquidator for that purpose,—Held, that B. must repay the liquidator the 250*l.* commission. *In re The Stapleford Colliery Company (Lim.)*; *ex parte Chatteris* 49 Law J. Rep. Chanc. 253.

(ii) *To avail themselves of unregistered charges; section 43.*

14.—Where a director or officer of a limited company advances money upon mortgage or charge, specifically affecting any property of the company, the entry in the register, pursuant to 25 & 26 Vict. c. 89. s. 43, must contain a short description of the property charged, in order to give such charge priority over the general creditors in a winding-up. *In re The Native Iron Ore Company (Lim.)* (App.), 45 Law J. Rep. Chanc. 517; Law Rep. 2 Ch. D. 345.

15.—The rule that a director or officer of a limited company cannot avail himself as against creditors of an unregistered mortgage or charge in his own favour on the property of the company is founded on an assumed personal disqualification of such director or officer by reason of his omission to see to the registration of his mortgage or charge, and does not prevent a stranger to the company claiming under him from taking the benefit of the security. The cases of *Ex parte Valpy* (Law Rep. 7 Chanc. 289) and *In re The Native Iron Ore Company* (see last case) disapproved. *In re The International Patent Pulp and Paper Company*, 46 Law J. Rep. Chanc. 625; Law Rep. 6 Ch. D. 556 (*nom. Knowles's Mortgage*).

16.—The personal disqualification in a director or other officer of a company under section 43, to avail himself of an unregistered charge or mortgage as holder, is not to be extended to the prejudice of innocent persons; and the principle cannot be extended to the case of a partnership. *In re The South Durham Iron Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 480; Law Rep. 11 Ch. D. 579.

Semble, the delinquent partner, if he is to be got at, must be got at personally. Where T., a member of a partnership, was also a director in a limited company, and the firm lent partnership moneys to the company, and obtained a security for the repayment of the loan, but that security was not registered, and the company was subsequently wound up,—Held (by Jessel, M.R., and Bramwell, L.J., *dissentiente* Baggallay, L.J.), that the case was distinguish-

able from *Valpy and Chaplin's Case* (Law Rep. 7 Chanc. 289) and *In re The Native Iron Ore Company (Lim.)* (45 Law J. Rep. Chanc. 517), and that the non-registration of the security did not invalidate it in the hands of the innocent partners, for the personal disability of T. to avail himself of the security, upon the principle of these decisions, was not to be extended to the prejudice of his partners, who had not been guilty of any default or omission. Per M.R.—The personal disability is the personal disability of the holder at the time he comes to enforce his charge, and unless that holder was himself guilty of some default, he does not lose the benefit of his security. Personal disqualifications are odious in equity, and ought not to be extended further than actual decided law warrants without absolute necessity. Per Bramwell, L.J.—The words of section 43 suppose a *mens rea*, culpable negligence. *Ibid.*

Whether the duty imposed on a limited company by the section can be enforced by *mandamus*, *quære*. *Ibid.*

Consideration of the circumstances under which the Court of Appeal may not be bound by its previous decisions. *Ibid.*

17.—A company conveyed nearly all its property to trustees by deed, in trust to secure the repayment of money lent to the company. In pursuance of the terms of the deed, debentures for the amounts lent by them were issued to the lenders. Neither the trust deed nor any of the debentures were registered in manner provided by section 43 of the Companies Act, 1862. Some of the debenture holders were directors of the company. The company was afterwards wound up:—Held, that, notwithstanding the want of registration, the directors were entitled to claim, as against the other creditors of the company, payment of the amount due on the debentures held by them. *In re The Wynn Hall Colliery Company* (39 Law J. Rep. Chanc. 695); *Ex parte Valpy & Chaplin* (Law Rep. 7 Chanc. 289); and *In re The Native Iron Ore Company* (45 Law J. Rep. Chanc. 517) discussed. *In re The Globe New Patent Iron and Steel Company (Lim.)*, 48 Law J. Rep. Chanc. 295.

[And see D 49 *infra*.]

(3) *Liabilities of.*

(i) *For fraudulent or improper transactions.*

18.—A person entering into a contract with a company cannot set up the fraud of the directors to which he was a party against the company. *The Odessa Tramways Company v. Mendel* (App.), 47 Law J. Rep. Chanc. 505; Law Rep. 8 Ch. D. 235.

Parts of an agreement can be separately enforced if an intention to separate the parts appear in the agreement. *Ibid.*

The fact that an agreement is carried out by two instruments affords a presumption that the contracts in the two instruments are separable. *Ibid.*

M. agreed in writing to take shares in a com-

pany, the directors at the same time by a separate instrument agreed to pay M. 4,000*l.* for services rendered. In an action for calls against M., the defence stated that the two transactions were made in pursuance of an agreement to issue shares, in breach of the company's articles, below par:—Held, that the defence was untenable. *Ibid.*

19.—Where directors under a *bona fide* belief that they had power so to do, issued a stock as "No. 1" preference stock, which in fact ranked below both "No. 1" and "No. 2" preference stock, and this stock was purchased by the plaintiffs, who did not suppose that they were purchasing "No. 1" preference stock, but a new stock which ranked with "No. 1" preference stock:—Held, that the plaintiffs had not been deceived by a misrepresentation of fact, but that there had been a common misconception of fact, reversing the decision of the Master of the Rolls, who held that the company, directors and secretary were liable to make good their misrepresentation. *Eaglesfield v. The Marquis of Londonderry* (App.), Law Rep. 4 Ch. D. 693.

20.—In an action by a company against a director, who had received fully paid-up shares from the promoters, as an inducement to him to become a director, claiming a declaration that he was a trustee of the shares for the company, or for the value of them with interest:—Held, that restitution was not sufficient, and that the director must pay to the company 80*l.* per share (that being the value of the shares when he became director, although their value at the time of action brought was only 1*l.*), with interest at four per cent. from the date of the transfer of the shares to him, and the costs of the action. *The Nant y Glo and Blaenau Iron Works Company v. Grove*, Law Rep. 12 Ch. D. 738.

The principles of *McKay's Case* (45 Law J. Rep. Chanc. 148; Law Rep. 2 Ch. D. 1) and *Pearson's Case* (46 Law J. Rep. Chanc. 339; Law Rep. 5 Ch. D. 336), apply to proceedings by the company by action as well as to proceedings under the Companies Act, 1862, s. 165. *Ibid.*

21.—Contract by J. with a trustee for an intended company for sale of a coal mine to the company for 35,000*l.*, 10,000*l.* in cash, and the rest in paid-up shares; J. during the first two years of the company to pay the company sufficient to make up the net profits to five per cent. on the capital, the money so paid being repayable to J. in a certain event. The contract was recited and adopted in the company's articles of association, and a sum of money was paid by J. to the directors, to make up a deficiency in the net profits. After the last payment became due, but before it was paid, the company was wound up voluntarily, and J. paid to the shareholders the requisite amount to bring up the last dividend to five per cent. The liquidator having claimed this money as part of the company's assets:—Held, that the money was properly payable to the shareholders,

and was not part of the assets of the company, and that the contract was not void as being in evasion of section 12 of the Companies Act, 1862. *In re The South Lianharran Colliery Company; ex parte Jagon* (App.), Law Rep. 12 Ch. D. 305.

22.—By an agreement, headed as between a limited company of the one part and the plaintiff of the other, in consideration of the advance by the latter of 500*l.* to the company, the undersigned three directors of the company agreed to repay the loan in six months, and they thereby assigned as security for the advance the machines and tools as invoiced to him, to be removed by him only in case default should be made in repayment of the 500*l.* The agreement was not sealed with the company's seal nor countersigned by the secretary, nor was there any statement by the directors that they signed on behalf of the company. Default having been made, the plaintiff took possession, but was restrained from dealing with the machines by a perpetual injunction obtained by the company, on the ground that the directors had no power to make the assignment. On action brought subsequently by the plaintiff against the three directors personally, to recover the advance with interest, and also his costs of defending his possession of the machines against the company:—Held (by Lush, J., on further consideration), that the agreement was to be read as a guarantee given by the defendants personally for repayment of the advance, and that the heading expressing it to be made on the part of the company must be rejected, as inconsistent with the form of signature; but there being no representation that the directors had special authority from the company to assign the machines, and it being incumbent on all persons dealing with directors to know how far under the articles of association their general powers extend, the plaintiff was not entitled to recover the costs of resisting the injunction. *McCollin v. Gilpin*, 49 Law J. Rep. Q.B. 558; Law Rep. 5 Q.B. D. 390 [affirmed on appeal, Law Rep. 6 Q.B. D. 516].

23.—M. & T. were the principal shareholders in the Ambrose Lake mine, which was a cost book company divided into 6,000 shares. In 1871 it was determined to convert it into a limited company, and for this purpose the lease of the mine was assigned to E., a clerk of T., and an agreement was executed that E. should convey it to T. and another as trustees for a new company to be thereafter formed in consideration of the sum of 24,000*l.* to be paid to E. as follows: 6,000 fully paid-up shares of 2*l.* each and 12,000 shares with 20*s.* each considered as paid thereon in the capital of the company to be formed. This new company was incorporated under the above title on the 19th of January, 1872, and the agreement which was printed in the memorandum and articles of association was duly registered. M. and T. were two of the directors named in the articles. One of the objects for which the company was established

was as stated in the memorandum—the purchase of the lease of the Ambrose Lake Mine, and the nominal capital of the company was stated to be 36,000*l.* divided into 18,000 shares of 2*l.* each. By the articles of association it was provided (*inter alia*) that the first 6,000 shares were to be deemed fully paid up, and the remaining 12,000 to have 20*s.* per share paid thereon on allotment. At the first meeting of the directors, all of whom had interests in the cost book mine, a resolution was passed adopting the agreement to purchase the mine, and the articles of association. The shares which formed the purchase-money were, in pursuance of an arrangement, divided by E. between M. and T. and the other shareholders of the cost book mine, according to their former holdings in the mine. Shares were allotted to M. and T. of the nominal value of 11,450*l.* and 11,410*l.* respectively. There was no allotment of shares to the outside public, the new company consisting entirely of the former holders in the cost book mine or their nominees. No prospectus was issued. The company was ordered to be wound up compulsorily in January, 1878, and the liquidator applied in the winding-up that M. and T. might be ordered under the 165th section of the Companies Act, 1862, to pay the sums of 11,450*l.* and 11,410*l.* respectively, by way of compensation for misfeasance as directors. The vice-warden of the Stannaries held that they were purchasing the mine from themselves, and that they were standing in a fiduciary relation to the company, and he ordered them to pay the difference in value between their shares in the new company, including all profits made by the sale of them, and the value of their interest in the cost book mine. Held, on appeal, that though the conversion of the cost book mine into a limited company might be a fraud on the public, it was not a wrong as between the company and the vendors; it was no fraud on the existing shareholders, because they were all cognisant of it, nor on future shareholders, because by the constitution of the company there could be no future allottees of shares. The vendors and the purchasers forming the whole company, the company could not complain, the remedy (if any) being the remedy of a purchaser from the original allottees who might have been deceived by the representation of his vendor as to the value of the shares. *In re The Ambrose Lake Tin and Copper Mining Company (Lim.)*; *ex parte Moss*; *ex parte Taylor* (App.), 49 Law J. Rep. Chanc. 457; Law Rep. 14 Ch. D. 390.

24.—Directors of a limited company against whom judgment had been recovered for money in respect of which they had given their personal guarantee paid up the amount of their shares in full, and applied the money in reduction of the amount due on the judgment. Upon the winding up of the company,—Held, reversing the decision of one of the Vice-Chancellors, that the transaction was unimpeachable, and the directors were not liable as contributories. *In re*

*The Wincham Shipbuilding and Boiler Company. Poole, Jackson and Whyte's Case* (App.), 48 Law J. Rep. Chanc. 48; Law Rep. 9 Ch. D. 322.

*Bribe to director: statute of limitations.* [See LIMITATIONS, STATUTE OF, 14.]

*Director ordered to pay value of shares: Debtors' Act.* [See DEBTORS' ACT 5.]

*Fraud by directors: repudiation of shares.* [See D 78 *infra*.]

*Reduction of capital by sale of surplus land.* [See D 51 *infra*.]

*Refusal by, to register transfer.* [See D 92, 93 *infra*.]

(ii.) *For ultra vires acts and dealings.*

25.—Articles of association of a company registered under a Colonial statute adopting the Companies Act, 1862, provided that, subject to powers given at meetings of shareholders, the directors should have power to borrow on the property of the company any sum “not exceeding in the aggregate one half the paid up capital.” The articles further provided that one half of the votes of the shareholders called for the purpose should be “necessary” to enlarge, extend, rescind, or alter all or any of the provisions contained therein. The directors exceeded their borrowing powers:—Held, that the limitation of the power of borrowing was merely a limitation of the authority of the directors, and was not part of the constitution of the company; that the act of the directors might be ratified by the company at a half-yearly meeting, but that such ratification would not enlarge the borrowing powers of the directors for the future. *Irvine v. The Union Bank of Australia*, 46 Law J. Rep. P.C. 87; Law Rep. 2 App. Cas. 366.

26.—The application by directors of a sum of 1,500*l.* out of the undivided profits of a manufacturing company in paying a gratuity of one week's extra pay to each worker in the factory who had worked there with good character throughout the year,—Held, not *ultra vires*, and a reasonable exercise of the powers of management conferred on the directors by the 90th section of the Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16). *Hampson v. Price's Patent Candle Company*, 45 Law J. Rep. Chanc. 437.

27.—Where directors, who had power to borrow on debentures, and otherwise, issued debentures at a discount of  $7\frac{1}{2}$  per cent., some of which were taken by directors; Held, that the transaction was perfectly legal, and that such directors were not liable to refund the amount of discount to the company in the winding up. *In re The Compagnie Générale de Bellegarde. Campbell's Case*, Law Rep. 4 Ch. D. 470.

28.—The defendants were directors of a company which had been formed for the purpose of receiving money from depositors and investing

it upon security. The plaintiff deposited with the company the sum of 1,000*l.* upon the terms that it should remain in their hands for five years, that they should meanwhile pay him interest at the rate of six per cent., that by way of security they should transfer to him a mortgage made to them, and that if the mortgage should become ineffective before the expiration of the five years they would replace it by another. The mortgage, upon which the 1,000*l.* belonging to the plaintiff was secured, was paid off before the expiration of the five years, but the company did not replace it by another, and dealt with the proceeds as part of the funds of the company. The company having gone into liquidation, the plaintiff sued the defendants to recover from them the sum of 1,000*l.* paid by him to the company, on the ground that it was lost to him by reason of the defendants' gross negligence. At the trial of this action it was proposed to shew that, at the time when the mortgage securing the plaintiff's 1,000*l.* was paid off, the company was insolvent: the Judge rejected the evidence, directed the jury to find for the defendants, and entered judgment for them:—Held (per Bramwell, L.J., and Brett, L.J., Baggallay, L.J., dissenting), that the evidence was properly rejected; that there was no evidence upon which the defendants could be made liable, and therefore that the judgment was rightly entered. *Wilson v. Lord Bury* (App.), 60 Law J. Rep. Q.B. D. 90; Law Rep. 5 Q.B. D. 518.

*Acquiescence by shareholder.* [See D 51, 76 *infra*.]

(iii) *Misfeasance, &c., within section 165.*

29.—Directors of a company, pursuant to a resolution of shareholders, paid interest on the fully paid up capital. This interest was in fact paid out of capital, there having been no profits of the business of the company. But such payments were, from time to time, approved of at the annual general meetings of the company:—Held, that the directors had been guilty of misfeasance within section 165 of the Companies Act, 1862, and were personally liable to repay not only the interest which they themselves had received, but the interest paid to the shareholders, during the time they were respectively directors. *In re The National Funds Assurance Company*, 48 Law J. Rep. Chanc. 163; Law Rep. 10 Ch. D. 118.

30.—Certain persons who had agreed to become directors of a company, upon the promoters qualifying them and freeing them from expense, agreed to pay to such promoter 3,500*l.* for preliminary expenses; and this sum was accordingly paid to him without any vouchers being required or produced. The promoter also received a large sum from the company's vendor, out of which sum and the 3,500*l.* he paid for the directors' qualifications,—Held, that the directors had been guilty of a misfeasance, and were jointly and severally liable to refund the 3,500*l.* to the com-

pany. *In re The Englefield Colliery* (App.), Law Rep. 8 Ch. D. 388.

Decision of Malins, V.C., affirmed. *Ibid*.

31.—On the 2nd of November, 1871, K. on behalf of the M. Company, then about to be formed, entered into an agreement with H. for the purchase of the lease of the M. Mine, the consideration to be paid partly in cash and partly in paid up shares in the company. At the same time, there was a secret arrangement between H. and K., that a portion of those shares should be transferred gratuitously to K. The company was formed on the 7th of November, and K. acted as secretary from that date till the 8th of March, 1872. All the shares were allotted, and on the 5th of March, the stipulated number of paid up shares were issued to H., who, on the 12th of April, transferred them for a nominal consideration to K. In the meantime K. had left England, having first executed the transfer in blank. He returned to England, and was appointed a director in December, 1874, and continued in that capacity till the winding up in February, 1875. Calls were made under the winding up to the full amount of the shares, and the official liquidator took proceedings against K. under the 165th section of the Companies Act, 1862, for a misfeasance as an officer of the company:—Held, first, affirming the decision of the vice-warden of the Stannaries, that K. could only acquire the shares for the benefit of the company. Secondly, affirming the same decision, that proceedings were properly taken under the 165th section, and thirdly, that the measure of compensation was the amount which the company would have received, had the shares been ordinary shares issued to a solvent purchaser, and the fact that they had been worthless to K. was immaterial. *In re The Morroak Consols Tin Mining Company (Lim.)*; *M'Kay's Case* (App.), 45 Law J. Rep. Chanc. 148; Law Rep. 2 Ch. D. 1.

32.—A director joined in allotting shares to himself as fully paid up on the nomination of a person who was entitled to them under an improper and invalid contract entered into after he became a director:—Held, in the winding up of the company, that he could not be treated as the holder of the shares as unpaid shares. But held, that he had been guilty of a misfeasance within the meaning of section 165 of the Companies Act, 1862, and, it appearing that shares in the company were subscribed for by the public, and paid up at their nominal amount, shortly after the date of the improper allotment, it was held that the Court might properly take such nominal amount as the value of the property misapplied. *In re The British Provident Life and Guarantee Association*; *De Ruigne's Case* (App.), 46 Law J. Rep. Chanc. 360; Law Rep. 5 Ch. D. 306.

33.—P. assisted W. H. in the formation of a company, and subscribed the memorandum of association, and as director took an active part in carrying out a provisional contract adopted by the articles, for the purchase of a colliery for

14,000*l.* in cash and paid-up shares. After the completion of the purchase, P. accepted from W. H. share warrants for twenty-five fully paid-up shares of 5*l.* each, being some of the shares allotted under the contract. W. H. was in fact (through a nominee) one of the vendors to the company, but P. denied that he had known this. W. H. also stated that the shares were given to provide P.'s director's qualification. P. denied that there was any agreement that his qualification should be found, but claimed to retain the shares in remuneration for his services to W. H. in getting up the company. On an application made in the winding-up, under section 165 of the Companies Act, 1862,—Held (affirming the decision of Bacon, V.C., Law Rep. 4 Ch. D. 222), that P. must restore the shares or (at the option of the company) account for their value. *In re The Caerphilly Colliery Company; Pearson's Case* (App.), 46 Law J. Rep. Chanc. 339; Law Rep. 5 Ch. D. 336.

It appeared that at the time of the allotment other shares had been allotted to the public to be paid up in the usual manner, and further that P. had himself treated the shares as equal in value to their nominal amount:—Held, that the value to be restored ought to be assessed at this amount, though the shares might since have become worthless. *Ibid.*

[And see D 20 supra.]

34.—Where the articles of association of a company gave no power to the company to purchase its own shares, and directors of the company in perfect good faith purchased certain shares as trustees for the company, which purchase was approved by a majority of the shareholders,—Held (in an application by the liquidator in the voluntary winding-up of the company to substitute the name of the vendors on the register for those of the trustees), that the rights of creditors having intervened, the transfer to the directors was effectual and the register could not be disturbed. *Cree v. Somerset* (H.L. sc.), Law Rep. 4 App. Cas. 648.

35.—C. and D. were appointed, and for some time acted, as directors of a company in which the qualification for a director was the holding 100 shares. Neither of them was the holder of any shares. No act of misfeasance was alleged against either of them for which he would have been liable if he had been a duly qualified director. The company was now in course of being wound up. The liquidator applied under section 165 of the Companies Act, 1862, to charge them for misfeasance in acting as directors without qualification:—Held (by the Master of the Rolls), that by acting as directors they had been guilty of a misfeasance, for which they were liable under the Companies Act, 1862, s. 165, and ought to be ordered to pay a sum equal to the nominal amount of the shares requisite to qualify them to be directors:—Held, on appeal, that section 165 creates no new right, but merely provides a summary mode of calling directors to account for acts of impropriety, for which they are liable to an action;

that to make a person liable under it, he must be shewn to have been guilty of some misconduct by which the company has suffered loss; and that the application must, therefore, be dismissed. *In re The Canadian Land Reclaiming and Colonising Company. Coventry and Dixon's Case* (App.), Law Rep. 14 Ch. D. 660.

36.—J. contracted with a trustee for an intended company to sell to the company a coal mine and works for 35,000*l.*, of which 10,000*l.* was to be paid in money and the remainder in paid-up shares of the company; and he agreed to pay the company during the first two years of its incorporation such a sum as, together with the net profits of the company, would be equal to interest at five per cent. on the paid-up capital, such money to be repaid to him in a certain event. The company was formed and the contract was recited and adopted in the articles of association. The profits not being sufficient to pay five per cent., J. paid a sum of money to the directors for distribution among the shareholders to make up the deficiency in pursuance of his contract. After the last payment became due, but before it was paid, the company was wound up voluntarily, and J. paid to the shareholders the amount necessary to bring the dividend up to five per cent. The liquidators claimed the money as part of the assets of the company,—Held (reversing the decision of Hall, V.C.), that the money due from J. under his guarantee was properly payable to the shareholders, and was not part of the assets of the company, and that the contract was valid and not an evasion of the Companies Act, 1862, s. 12. *In re The South Llanharra Colliery Company; ex parte Jegon* (App.), Law Rep. 12 Ch. D. 503.

37.—Proceedings cannot be taken under section 165 of the Companies Act against the representatives of a deceased director. *Felton's Executors' Case* (35 Law J. Rep. Chanc. 196; Law Rep. 1 Eq. 219) followed. Neither in applications under this section to establish a joint and several liability, nor in actions against trustees for breach of trust, is it a rule that the whole of the persons who on the case set up would be liable must be before the Court. A special resolution was made by the company, that for the better security of the policy-holders fifty per cent. of the premiums paid on whole life policies should be invested in Government securities in the names of the trustees of the company. The directors appointed trustees, and the company issued prospectuses stating that fifty per cent. of the premiums on whole life policies was invested, and granted policies in accordance with the special resolution:—Held, that the special resolution created, first, an effectual trust of the moneys for the benefit of some class of persons designated as "the policy-holders," the object of the trust not including the general purposes of the company; and, secondly, a duty in the directors to see the investments made and preserved; that the directors were liable to account in the winding-up to the extent of the funds not invested, and

invested but applied to the general purposes of the company; and further, that such liability was for "a misfeasance or breach of trust in relation to the company," enforceable under the 165th section on the application of the official liquidator and a policy-holder as a creditor in the winding-up. A person who was an active director during a period while the failure to invest and misapplication were taking place, was held to be subject to the *onus* of proving his non-participation in the misfeasance. The policies provided that the property of the company should alone be answerable to demands under the policies, and that no director or member should be liable to proceedings in respect thereof, it being a principle of the company that no shareholder was to be liable beyond the amount of his share:—Held, that this clause had no application to a case of liability for breach of trust. A summons to establish a joint and several liability against a body of directors was adjourned into Court as against one of the respondents, and directed to stand over as against the rest. The Court made the order asked for against the respondent before it, but gave him leave to apply at chambers to be allowed his costs of the adjournment, such allowance to depend upon the effect of the decision in settling the claims against the other respondents. *In re The British Guardian Life Assurance Company (Lim.)*, 49 Law J. Rep. Chanc. 446; Law Rep. 14 Ch. D. 335.

*Evidence: onus of proof.* [See H 77 *infra*.]

(iv) *Notice to: entries in registers, &c.*

38.—A director of a company is not necessarily bound to know the contents of all the books and documents of the company. *In re The Wincham Shipbuilding and Boiler Company; Hallmark's Case* (App.), 47 Law Rep. Chanc. 868; Law Rep. 9 Ch. D. 329.

In April, 1877, H. became a director of a company, which was subject to Table A of the Companies Act, 1862, by which no share qualification was necessary for a director. On the 1st of May a resolution was passed by the board, H. not being present, "that the 608 shares applied for be allotted, and that letters of allotment be at once sent out." Fifty of these 608 shares were subsequently entered in the name of H. on the register of shareholders. H. never applied for any shares, and never received any letter of allotment, and never knew that his name was on the register until after the commencement of the winding-up of the company, when he at once repudiated his liability:—Held, that H. was not bound, *qua* director, to know the contents of the register of the shareholders, and that his name must be removed from the list of contributories. *Wheatcroft's Case* (43 Law J. Rep. Chanc. 853), disapproved of. *Ibid*.

*Promotion money paid before director took office.*  
[See A 11 *supra*.]

(v) *Intending director.*

39.—In September, 1872, F. & B. by a provisional agreement agreed to sell their business, and all subsisting contracts, as from the 1st of September, to a company to be formed, who were to adopt and carry out existing contracts as from the 1st of September, and indemnify F. & B. therefrom. M. was in the habit of supplying materials to F. & B. by contract, and he consented to become a director, and acted in that capacity prior to the 31st of October, on which day the company was incorporated with articles of association which adopted the agreement, and declared the same to be binding on the company, of which M. then became a director. During the interval prior to the incorporation M. supplied materials under existing contracts, and entered into fresh contracts with F. & B., who carried on the business on behalf of the company, and upon its incorporation became managing directors:—Held, that as the mere consent to become a director of the intended company did not create a fiduciary relation between M. and the company, and the adoption of the agreement did not substitute the company for F. & B. as principal in the contracts, M. was not liable to account to the company for the profits derived by him from the contracts. Inasmuch as M. had not offered fully to account for the profits of other contracts dated since the incorporation, no costs were given on either side. *The Albion Steel and Wire Company v. Martin*, 45 Law J. Rep. Chanc. 173; Law Rep. 1 Ch. D. 580.

[And see A 11 *supra*.]

(vi) *For acts of others.*

40.—Directors are not liable for misrepresentation of co-directors and officers.—*Peck v. Gurney (Barclay's Case)*, 43 Law J. Rep. Chanc. 19; Law Rep. 6 E. & I. App. 377, explained. *Cargill v. Bower*, 47 Law J. Rep. Chanc. 649; Law Rep. 4 Ch. D. 78.

41.—The defendants were directors of an iron ore mining company, which was compelled to cease working for want of funds. Subsequently money was advanced by the defendants, with the exception of the defendant Bell, and a small quantity of ore was raised. At an annual general meeting of the company the directors were authorised to raise money on debentures, and at subsequent meetings of the directors it was agreed, in the absence of Bell and without his knowledge, that the advance should be repaid out of the proceeds of the debentures, and, with the concurrence of Bell, that the secretary should employ brokers to place the debentures. The brokers for this purpose issued a prospectus containing unauthorised fraudulent statements. The plaintiff, on the faith of these statements, purchased debentures, and the money was devoted to the repayment of the advances. The company was subsequently wound up, and the plaintiff having brought an action to recover his purchase money,—Held



(affirming the judgment of the Exchequer Division, Law Rep. 3 Ex. D. 32 *nom. Weir v. Barnett*, by Cockburn, L.C.J., Bramwell, L.J., and Brett, L.J., *dissentiente* Cotton, L.J.), that Bell was not liable to the plaintiff. *Weir v. Bell* (App.), 47 Law J. Rep. Exch. 704; Law Rep. 3 Ex. D. 238.

(d) *Solicitor or agent.*

(1) *Employment of solicitor.*

42.—The plaintiff, a solicitor, sued the defendants, a joint-stock company, for breach of a contract to employ him as their solicitor, at the usual fees and charges, during good behaviour. By the articles of association, under the heading "directors," provision was made for the appointment, remuneration and removal of directors. Under the heading, "powers and proceedings of directors," it was provided that the directors should cause minutes to be made of all appointments of officers made by the board, and that the directors might, without further authority or power from the shareholders, appoint, remove or suspend counsel, bankers, actuaries, auditors, managers, secretaries and other officers, clerks or servants, and also establish local and foreign agencies. Under a separate heading, "solicitor," it was provided (article 118), that Mr. W. Eley (the plaintiff) should be the solicitor to the company, and should transact all the legal and parliamentary business of the company, for the usual fees and charges, and should not be removed from his office unless for misconduct. For some time after the incorporation of the company the plaintiff was employed by them as their sole solicitor. Subsequently other solicitors were employed in addition to the plaintiff, and ultimately the employment of the plaintiff was discontinued.—Held (affirming the judgment of the Exchequer Division, 45 Law J. Rep. Exch. 58; Law Rep. 1 Ex. D. 20), that upon the above facts, there was no contract with the plaintiff to employ him as alleged. Articles of association being as a general rule no more than agreements *inter socios*, no further force was given to them in the present case by the facts, first, that the article relating to the employment of a solicitor was under a distinct heading from that under which authority was given to the directors to make appointments to various offices on behalf of the shareholders; second, that the plaintiff was expressly named in that article; third, that the article was acted upon by the plaintiff. *Eley v. The Positive Government Security Life Assurance Company (Lim.)* (App.), 45 Law J. Rep. Exch. 451; Law Rep. 1 Ex. D. 88.

(2) *Lien of agent on goods.*

43.—W. was appointed agent of a company for the sale of goods manufactured by them. Part of the arrangement was that the company should draw on W. against the goods assigned to him as agent. W. accepted a bill for 200*l.* at four months' date; before the bill arrived at

maturity the company was ordered to be wound up, and the goods then in possession of W. were taken by the liquidators and sold by them. W. honoured the bill when it arrived at maturity:—Held, that W. had a lien on the goods to the extent of the payment by him in respect of the bill, and that he was entitled to be repaid the amount paid by him, out of the proceeds of the sale of the goods. *In re Pacey's Patent Felted Fabric Company (Lim.)*, 45 Law J. Rep. Chanc. 318; Law Rep. 1 Ch. D. 631.

(e) *Meetings of company: voting and proceedings at.*

44.—The articles of association of a limited company provided that every member holding at least ten shares, should have one vote for every complete number of ten shares, with this limit, that no shareholder should be entitled to more than 100 votes in all; and that the company should not be affected by notice of any trust. At a meeting of the company a poll took place upon an amendment to a resolution, and the chairman declared the amendment carried, but it would have been lost if the chairman had not ruled out 649 votes, on the ground that (as the fact was) they were given by nominees of P. and other large shareholders, who had executed duly registered transfers of some other shares, for the sole purpose of increasing their voting powers:—Held, that the votes ought to have been counted in; the right of voting being the legal right of a registered shareholder, and the directors having no right to enquire into his motives, or his beneficial interest in his shares. *Pender v. Lushington*, 46 Law J. Rep. Chanc. 317; Law Rep. 6 Ch. D. 70.

45.—Where by the articles of association of a company registered under the Companies Act, it was provided, that at every meeting all questions should be decided by the result of a show of hands, unless immediately upon such show of hands a poll be duly demanded by shareholders qualified to vote, and holding in the aggregate 2,000 shares or more,—Held, that the shareholders demanding a poll must themselves hold the requisite number of shares, and that it is not enough that by the possession of proxies they represent that number. *Reg. v. The Government Stock Investment Company*, 47 Law J. Rep. Q.B. 478; Law Rep. 3 Q.B. D. 442.

Where a poll illegally demanded has resulted in the defeat of the candidate for directorship who had obtained the show of hands at the meeting, mandamus will lie to admit him to the office, notwithstanding its assumption and occupation by the candidate victorious on the polling. *Ibid.*

46.—In ascertaining the majority on a special resolution put to a general meeting of a company the chairman is not entitled, unless a poll is demanded, to take account of the number of votes which each member has, but the voting will go by the mere numerical majority of those members present in person or by proxy; and, *semble*,

if a poll is demanded, then it must be a poll not merely of the members present in person or by proxy at the meeting, but of all the members of the company. *In re The Horbury Bridge Coal, Iron and Waggon Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 341; Law Rep. 11 Ch. D. 109.

47.—At the time and place fixed for a meeting, duly convened, of a cost book mining company under the Stannaries Act, 32 & 33 Vict. c. 19, only one shareholder was present. He passed various resolutions, and made a call upon the capital of the company. The rules of the company contained no provision as to a quorum:—Held, in an action for the amount of the call, that there had been no meeting, and the call was invalid. *Sharpe v. Davies* (App.), 46 Law J. Rep. Q.B. 104; Law Rep. 2 Q.B. D. 26.

(f) *Mortgages, bonds and debentures.*

(1) *Obligation whether a charge on assets of company.*

48.—A company was empowered by its articles of association to raise money, either by way of mortgage of its property or by "bonds, debentures, or mortgage debentures," such bonds, debentures, or mortgage debentures to be so framed that the holders thereof should be entitled "to be paid out of the securities upon which the same are respectively charged, and the moneys, property and effects of the company, the respective sums in such bonds or mortgage debentures mentioned." In 1868 the company raised 250,000*l.* by the issue of 25,000 bonds of 100*l.* each. Each bond was headed "obligation," and by it the company, in pursuance and under the powers of their articles of association, bound themselves, their successors and assigns, and all their estate, property and effects, to pay the sum mentioned in the bond with interest at a fixed rate on the 24th of June, 1875. The company reserved the right to redeem the bonds by yearly drawings:—Held, per Curiam, that reading the bond with the articles of association, it was a charge upon the assets for the time being of the company. Held also (per Jessel, M.R.), that the bond by itself did not amount to a charge on the assets of the company, but was a mere money bond. But held (per James, L.J.), that the bond by itself was a charge on the assets for the time being of the company. *Norton v. The Florence Land and Public Works Company* (Law Rep. 7 Ch. D. 337) questioned. *In re The Florence Land and Public Works Company* (App.), 48 Law J. Rep. Chanc. 137; Law Rep. 10 Ch. D. 530.

*Issue of debentures at discount: liability of directors.* [See D 27 *supra*.]

(2) *Register of mortgages.*

49.—Mortgage of chattels by a company to two of the directors who furnished the secretary with the necessary particulars for entering it in the register of mortgages and directed

him to register it, which, however, he neglected to do. The directors having put in force their powers by realising their security, the company was ordered to be wound up:—Held, that, as the directors had not "knowingly and wilfully authorised or permitted the omission" of the entry of the mortgage on the register, and had realised their security before the winding-up commenced, they could not be compelled by the liquidator to refund the proceeds of the realisation. *In re The Borough of Hackney Newspaper Company*, Law Rep. 3 Ch. D. 669. [And see D 14-17, *supra*.]

*Right to inspect.* [See H 79 *infra*.]

(3) *Rights and priorities of debenture holders.*

50.—An assignment by way of mortgage of "all the undertaking" of a company means the property of the company as a going concern, and does not prevent or invalidate a future equitable assignment of the moneys to arise from a specific contract in consideration of advances made to enable the company to complete such contract. *In re Hamilton's Windsor Ironworks; ex parte Pitman and Edwards*, Law Rep. 12 Ch. D. 707.

*Power to charge after-acquired property.* [See MORTGAGE, 11.]

*Proof in winding up.* [See H 37 *infra*.]

*Priorities of different issues of debenture stock.* [See RAILWAY, 2.]

*Right of debenture holders under a second issue to rank pari passu with holders under a first.* [See H 40, *infra*.]

*Right to present winding-up petition.* [See H 2, 14 *infra*.]

(g) *Reduction of capital.*

51.—The whole of the capital of a partnership of nine persons, who in 1870 formed themselves into a limited company, under the Acts of 1862 and 1867, consisted of land, on which they spent money in improvements for the purpose of their trade:—Held, that the sale of a surplus part of the land and division of the proceeds, was a reduction of capital, which might be restrained by injunction. *Holmes v. The Newcastle-upon-Tyne Abattoir Company*, 45 Law J. Rep. Chanc. 383; Law Rep. 1 Ch. D. 682.

Held also, that the plaintiff (one of the nine partners) was not bound by acquiescence, for though he was aware of the intended sale two years before bill filed, he was not then aware of the intended division of the proceeds, nor of the illegality of such division. *Ibid*.

52.—The I. Society, limited, was originally registered with a capital of 3,000,000*l.* in 20*l.* shares, which was afterwards reduced to 1,500,000*l.* in 10*l.* shares, in accordance with the provisions of the Companies Act, 1867, and by the articles of association power was given to the company in general meetings from time to time, by special resolutions, to alter and make new provisions, instead of or in addition

to any of the regulations of the company. At an extraordinary general meeting of the company called for the purpose, resolutions were passed, which were confirmed at a subsequent meeting, authorising the board of directors to purchase from any shareholders willing to sell the same, such number of the shares of the society, not exceeding 100,000, as the board should think fit, and providing that the shares so purchased should not be reissued by the board without the authority of a general meeting:—Held, that the resolutions were invalid as authorising either a reduction of capital in a manner not authorised by the Companies Act, 1867, or else a trafficking in the shares of the society, which was not within the scope of the memorandum of association. Dictum of James, L.J., in *Teadale's Case* (43 Law J. Rep. Chanc. 578; Law Rep. 9 Chanc. 54) questioned by himself. *Hope v. The International Financial Society (Lim.)* (App.), 46 Law J. Rep. Chanc. 200; Law Rep. 4 Ch. D. 327.

53.—A company registered with limited liability under the Companies Act, 1862, and having a nominal capital of 2,283,200*l.*, divided into 74,475 shares of 32*l.* each, all of which had been allotted, and on each of which (with the exception of 515, which were fully paid up) 29*l.* had been paid, presented a petition for the confirmation of a special resolution, duly passed in conformity with their articles, to reduce the nominal capital to 1,712,925*l.*, divided into 74,475 shares of 23*l.* each, by the extinction on each of the 74,475 shares, of paid-up capital to the extent of 9*l.*, preserving the liability of 3*l.* per share on all the shares not fully paid up:—Held, that the Court had no jurisdiction to confirm the resolution. *In re The Ebbw Vale Steel, Iron and Coal Company (Lim.)*; and *in re The Companies Act, 1867*, 46 Law J. Rep. Chanc. 241; Law Rep. 4 Ch. D. 46.

54.—The Companies Act, 1867, does not authorise a reduction of capital for the purpose of writing off a loss. *In re The Kirkstall Brewery Company*, 46 Law J. Rep. Chanc. 424; Law Rep. 5 Ch. D. 535. [But see now 40 & 41 Vict. c. 26, s. 3.]

55.—On the further consideration of a petition to confirm reduction of capital, the Court required the consent of all creditors, or the amount of their debts to be paid either to them or into Court, refusing to follow *In re The Credit Foncier of England* (40 Law J. Rep. Chanc. 187). *In re The Patent Ventilating Grinary Company*, 48 Law J. Rep. Chanc. 728; Law Rep. 12 Ch. D. 254.

(h) *Fully paid-up shares.*

(1) *Registration of contract under Companies Act, 1867, sec. 25.*

56.—The Court has no jurisdiction to order a contract, involving the issue of shares as fully paid up, to be filed *nunc pro tunc* by the Registrar of Joint Stock Companies; but may, on proper evidence, rectify the register by striking

out the allotment, in order that the shares may be reissued as fully paid up after registration of the contract. *In re The Harwich Harbour, Docks, Wharves and Warehouses Company*, 45 Law J. Rep. Chanc. 56.

57.—The contract in writing required by section 25 of the Companies Act, 1867, to be registered in the case of the issue of shares in a company otherwise than subject to the payment of the whole amount thereof in cash, is a contract between the company and some person outside the company. The registration of the articles of association, providing that shares shall be issued as fully paid up, will not satisfy the requirements of the section. *In re The Caribbean Company (Lim.)*. *Crickmer's Case*, 46 Law J. Rep. Chanc. 870.

58.—A. agreed to sell the lease of a coal mine to I. for 24,000*l.* in cash and 42,000*l.* in shares of a company to be established to take over the mine with a nominal capital of 200,000*l.* A syndicate was formed to promote the company, and the company was formed and duly registered. The memorandum of association stated that the capital of the company was 200,000*l.* in 20,000 shares of 10*l.* each. The articles of association stated that 15,000 of the shares were to be considered as fully paid up and belonged to the persons mentioned in the schedule to an agreement which it was intended should be executed immediately. Shortly after the registration of the company I. executed an agreement declaring himself a trustee for the company. A few days after that the agreement referred to in the articles was executed, and the 15,000 shares were thereby divided between A., who took 4,200 in part payment for the property, and the other members of the syndicate or their nominees, who took them in consideration of their trouble in the formation of the company. This agreement was duly registered. No shares beyond the 15,000 were ever issued. A prospectus was then issued inviting the public to subscribe for 60,000*l.* of debentures paying interest at ten per cent. per annum, the principal and interest to be secured on the whole property of the company, and stating that the agreement for the purchase of the property and the memorandum and articles of association could be seen at the offices of the solicitors of the company. A. purchased for value 3,520 shares from members of the syndicate, to whom they had been allotted as fully paid up, in addition to the 4,200 shares allotted to him in respect of the purchase-money. The company was wound up, and the liquidator sought to put A. on the list of contributories in respect of these 3,520 shares:—Held (reversing the decision of Malins, V.C.), that the agreement allotting the 15,000 shares was made *bona fide* and for good consideration, and having been registered under section 25 of the Companies Act, 1867, and though not mentioned in the prospectus, yet not having been concealed from persons intending to become debenture holders, was a contract entitling the holders to be considered as holders of fully paid-

up shares. Held also (reversing the decision of *Malins, V.C.*), that the fact that the memorandum stated there were 20,000 shares, but did not say they were fully paid up, and the fact that the articles said that 15,000 shares were to be taken as paid up, did not create an inconsistency between the two documents. *Crickmer's Case* (see last case) distinguished. *In re The Wedgwood Coal and Iron Company. Anderson's Case* (App.), 47 Law J. Rep. Chanc. 273; Law Rep. 7 Ch. D. 75.

59.—A purchaser of shares fully paid up has no remedy, as for fraud, against a company for not registering a contract as to the issue of those shares as fully paid up. *In re Heaton's Steel and Iron Company. Blyth's Case* (App.), Law Rep. 4 Ch. D. 140.

Section 25 of the Companies Act, 1867, is in favour of creditors, and does not apply as between the company and creditors. *Ibid.*

Shares may be deemed to be issued before certificates are in fact issued. *Ibid.*

*Bush's Case* (43 Law J. Rep. Chanc. 772; Law Rep. 9 Chanc. 554) explained. *Ibid.*

60.—On the 8th of January, 1872, the articles and memorandum of association of a company were registered; but the provisional contract between E. and two trustees for the company for the sale by E. to the company of a mine in consideration of certain paid-up shares was not registered, being insufficiently stamped. The same day, at a board meeting of the directors, E., in the belief that the contract had been registered, named T. as one of the persons to whom certain of his paid-up shares were to be allotted. The next day T., who was managing director, hearing of the non-registration of the contract, suspended the issue of the share certificates until the contract had been registered, but in the meantime executed legal transfers of some of the shares to third parties. After the registration of the contract the share certificates were issued and dated as of the day on which they were allotted. On the winding-up of the company:—Held, that the shares having been originally allotted under a mistake, and the issue of them not having been perfected until that mistake had been rectified, T. must be treated as the holder of paid-up shares. *In re The Ambrose Lake Tin and Copper Company (Lim.)*; *Clarke's Case*; *Taylor's Case* (App.), 47 Law J. Rep. Chanc. 696; Law Rep. 8 Ch. D. 635.

61.—The 25th section of the Companies Act, 1867, in no way alters the law as to the evidence of payment for shares, and the certificate of the company that shares are fully paid-up is an absolute protection to a *bona fide* transferee from liability to calls, notwithstanding that nothing has been paid on them, and no contract for their issue, otherwise than subject to the payment of the whole amount in cash, has been registered. *Burkinshaw v. Nicholls* (H.L.), 48 Law J. Rep. Chanc. 179; Law Rep. 3 App. Cas. 1005; on appeal from the Chancery Division, *nom.* *In re The British Farmers' Pure Linseed Company. Nicholl's Case*, 47 Law J. Rep. Chanc. 415; Law

Rep. 7 Ch. D. 533, and *Potter and Brown's Case*, 48 Law J. Rep. Chanc. 56.

62.—The company agreed to buy a colliery for 5,115*l.*, which was to be paid or satisfied, as to 2,000*l.* to R. B., and as to 3,115*l.* to H., and of the 2,000*l.* the company were to pay to R. B. 500*l.* cash, and to satisfy the residue of 1,500*l.* by issuing or transferring to R. B. 300 shares of 5*l.* each, issued and registered as fully paid up. And as to the 3,115*l.*, the company was to pay the same in cash to H., or at the option of either the company or of H., to issue or transfer to H. 623 shares of 5*l.* each, issued and registered as fully paid up. This contract, through the neglect of an agent, was never registered, but 300 shares, purporting to be fully paid up, were issued to R. B. and 623 to H. Of these 623 shares, 450 were ultimately transferred (some through the hands of other transferees without notice from H.) to R. B., and 134 to B. B. R. B. was chairman, and B. B. was solicitor of the company from its formation:—Held (by Bacon, V.C.), that the agreement not having been registered, the 300 and 623 shares must, under the Companies Act, 1867, s. 25, be deemed to be unpaid shares. Held also, that R. B. and B. B. being, from their positions, cognisant of the consideration for which the shares were issued, could not evade the liability, by claiming to be holders through transferees without notice. Held, on appeal (reversing Bacon, V.C.), that such of the 623 shares as came to the hands of R. B. through transferees without notice, must be treated as fully paid up, and that the fact that R. B. and B. B. were officers of the company, made no difference as to their title. *In re The Stapleford Colliery Company (Lim.)*. *Barrow's Case* (App.), 49 Law J. Rep. Chanc. 498; Law Rep. 14 Ch. D. 432.

## (2) Payment in cash.

63.—P. & G., the proprietors of a weekly newspaper, agreed to insert the advertisements of a company fourteen times in their paper, on receiving payment in advance in 100 fully paid-up *l.* shares of the company. The shares were accordingly allotted to them as fully paid up, a receipt for 100*l.* was asked for and given, and subsequently thereto the advertisements were duly inserted. No contract in writing was filed with the Registrar of Joint Stock Companies as required by the Companies Act, 1867, section 25, and P. & G. were fixed as contributories upon the ground that their shares were issued subject to the payment of the whole amount in cash, according to the provision of that section. It was contended on their behalf, first, that the above transaction amounted to payment in cash within the meaning of the decision in *Spargo's Case* (42 Law J. Rep. Chanc. 488); and secondly, that as P. & G. had only agreed to take fully paid-up shares, they could not be made liable otherwise than in respect of fully paid-up shares:—Held, that both defences failed, and that P. & G. were liable as contributories. *In re The Church and Empire Fire Insurance Company.*

*Pagin and Gill's Case*, 46 Law J. Rep. Chanc. 779; Law Rep. 6 Ch. D. 681.

64.—A., the proprietor of a country newspaper, agreed to advertise a company's prospectus for three months on the terms of receiving payment in seventy-five fully paid-up shares of 1l. each. The shares were accordingly allotted to him as fully paid up, and he returned a receipted bill for 75l. No contract in writing was filed with the Registrar of Joint Stock Companies, as required by section 25 of the Companies Act, 1867. Upon the winding-up of the company A. was fixed upon the list of contributories, on the ground that his shares were issued subject to the payment of the whole amount in cash, according to the provision of that section; and upon appeal the decision was upheld. *In re The Church and Empire Insurance Company*. *Andrews's Case* (App.), 47 Law J. Rep. Chanc. 679; Law Rep. 8 Ch. D. 126.

65.—By a contract in writing, not registered pursuant to the 25th section of the Companies Act, 1867, a company contracted with one W. for the advertisement by him of their prospectus in his newspaper, provided he was willing to accept payment in fully paid-up shares. He inserted the advertisement, and sent the company an account for the amount due in respect thereof, which was accepted by them, and they subsequently allotted to him fully paid-up shares to the amount of the sum shewn in the account. On the winding-up of the company,—Held (reversing the decision of Hall, V.C., 48 Law J. Rep. Chanc. 236; Law Rep. 10 Ch. D. 720), that the shares had not been paid for in cash within the principle of *Spargo's Case* (42 Law J. Rep. Chanc. 488; Law Rep. 8 Chanc. 407), and therefore that W. must be put on the list of contributories of the company. *In re The Government Security Fire Insurance Company*. *White's Case* (App.), 48 Law J. Rep. Chanc. 820; Law Rep. 12 Ch. D. 511.

66.—The mortgagees of an estate which was by an unregistered contract contracted to be sold to a company for a consideration, partly in cash, and partly in paid-up shares, agreed with the vendor to accept payment of their mortgage debt partly in cash and partly in paid-up shares, and in pursuance of this agreement some of the vendor's shares were allotted to them as fully paid up and they released their charge:—Held, upon the winding-up of the company, that they must be treated as holders of unpaid shares. *In re The British Farmers' Pure Linseed Oilcake Company (Lim.)*. *Potter and Brown's Case* (App.), 48 Law J. Rep. Chanc. 56.

67.—Directors of a company approved a contract for the purchase of property for cash and fully paid-up shares, and accepted, on the vendors' nomination, an allotment of some of the shares, for which they made no separate application:—Held, in the winding-up of the company, that whatever rights the company might have against them, the liquidator could not affirm the acceptance of the shares, but treat them as unpaid. *In re The Western of*

*Canada Oil, Land and Works Company* (App.) 45 Law J. Rep. Chanc. 5; Law Rep. 1 Ch. D. 115 (nom. *Carling, Hespeler and Walsh's Cases*).

68.—A director paid up his subscription shares in a company by a cheque on his bankers for 1,000l., the day after he found that a larger sum had been paid into his account, 1,000l. of which was, in fact, so paid on behalf of the vendor, out of the purchase-money of property sold to the company under a contract approved by the director, for the purpose of providing the director's share qualification. It being assumed that the company could reclaim the 1,000l. so paid in, but it being shewn to the satisfaction of the Court, that the director had refused an offer on the part of the vendor to find his share qualification, and that he was ignorant that the 1,000l. was paid in for such qualification, and it appearing that his balance, apart from the 1,000l., was sufficient to answer his cheque,—Held, that his shares could not be treated as unpaid. *In re The Canadian Oil Works Corporation*. *Eastwick's Case* (App.), 45 Law J. Rep. Chanc. 225.

Quære, whether it would have been so held if his balance had not been sufficient, apart from the 1,000l., to answer the cheque. *Ibid*.

The director having a set-off against a mere money claim for the 1,000l., did not dispute the right of the company to recover it. Quære (per James, L.J.), whether legally the company could have recovered it. Semble (per Mellish, L.J.), that they could. *Ibid*.

69.—A transaction, by which a credit agreed to be given in consideration of a managing director giving up prospective commissions, and which credit had accrued and was appropriated to pay up shares in full, was held equivalent to a payment in cash. *In re The Regent United Stores Company; ex parte Bentley*, 49 Law J. Rep. Chanc. 240; Law Rep. 12 Ch. D. 850.

70.—A company contracted to purchase mines, and pay a part of the price in cash. By arrangement the vendor took in lieu of cash debentures which were issued and bore date some three months before the company acquired possession of the property. The debentures were payable at the end of five years, bearing interest at ten per cent. in the meanwhile. Shortly afterwards a holder gave up some of these debentures to the company in exchange for a like value in shares allotted to him as fully paid up, but which the company had no power to issue as paid up. In settling the list of contributories, the Court refused to infer that the transaction by which the debentures were exchanged for shares involved the converting of the company's obligation into a debt presently payable, which would furnish a consideration equivalent to payment in cash for the shares. Certain holders of grants or licences from the Crown of mining lands in New South Wales contracted to sell the land to a company, and to convey on payment of the purchase-money. It was afterwards arranged that part of the price should be paid in shares of the company, instead

of cash; these shares were issued (as fully paid up) to the vendors some time before the latter transferred to a company the licences of the lands:—Held, that before the transfer of the property, the price was not a debt presently payable by the company, and that the shares issued as above mentioned were not paid for in cash. *In re The Great Australian Gold Mining Company. Appleyard's Case*, 49 Law J. Rep. Chanc. 290.

71.—A. agreed to sell land to B. and C. for 7,713*l.* B. and C. agreed to sell to the company for money payable by instalments. The company being short of money, it was arranged that A. should accept 2,000*l.*, part of the money, in fully paid-up shares, and the land was accordingly conveyed by him to the company in consideration of 5,713*l.* in cash and 2,000*l.* in fully paid-up shares:—Held (reversing the decision of Little, V.C.), that an arrangement between the company, B. and C., and A., for paying 2,000*l.*, part of the sum due from the company to B. and C., by writing off a like amount of the sum due from B. and C. to A., was equivalent to a cash payment of 2,000*l.* by A. to the company, and that the shares thus taken by A. were to be treated as fully paid up, as in *Spargo's Case* (Law Rep. 8 Ch. D. 407), and *Ferrao's Case* (Law Rep. 9 Ch. D. 355). *In re The Barron-in-Furness and Northern Counties Land and Investment Company* (App.), Law Rep. 14 Ch. D. 400.

*Fully paid-up shares accepted by directors from promoter: misfeasance under section 165.* [See D 33 supra.]

(3) *Proof for damages for breach of contract to allot.*

72.—Work was done for a registered company, upon a written agreement that it should be paid for in fully paid-up shares to the amount of the usual charges. The company, without registering the contract, allotted to the contractor nominally paid-up shares to the amount specified, and afterwards went into liquidation:—Held, that the contract referred to valid paid-up shares, and that the contractor could prove for damages for the non-delivery to him of such shares. Held also, that he was not chargeable with contributory negligence for not registering the contract, though it was in his possession. There was no ascertained market value of paid-up shares at the date of the allotment, but shares were after that date taken up by the public. The company went into liquidation, and calls were made in respect of the allotted shares. The Court assessed the damages for the above breach of contract at the sum eventually called up upon the shares. *In re The Government Security Fire Insurance Company. Mudford's Claim*, 49 Law J. Rep. Chanc. 452; Law Rep. 14 Ch. D. 634.

(4) *Shareholders.*

(1) *Contract to take shares.*

(i) *Persons who have signed the memorandum of association.*

73.—Nine persons having signed the memorandum of association of a company, and the articles containing no clause giving a power to accept surrenders, at a meeting attended by four of the signatories, it was resolved that no shares should be allotted to three of the nine signatories, and that their deposits should be returned to them:—Held, that the directors had no power to remit the shares, and that the three whose shares were remitted, having signed the memorandum of association, must be put on the list of contributories for the shares for which they had signed. *In re The London and Provincial Consolidated Coal Company. Hadley, Norris and Jacob's Case*, 46 Law J. Rep. Chanc. 842; Law Rep. 5 Ch. D. 525.

*Director.* [See H 57 infra.]

*Executor of, whether liable as contributory.* [See H 56 infra.]

(ii) *Persons who have been induced to take shares by fraud or misrepresentation.*

74.—M. entered into a contract with a patentee to purchase his patent for 65,000*l.* in cash and shares in a company to be formed, and thereby engaged to form such company, of which the patentee was to be entitled to nominate two directors; and it was thereby also provided that if M. failed to form the company, the contract should be void, and a deposit of 1,000*l.* forfeited. Three months later M. entered into a contract to sell the patent to a trustee for a named company, then intended to be formed, for 125,000*l.* in cash and shares; and shortly afterwards the company was registered and a prospectus issued, which stated the date, &c., of the second contract, but not of the first. On an application (before the winding up) by a shareholder who subscribed on the faith of the prospectus to have her name removed from the register,—Held (affirming the decision of Bacon, V.C.—Brett, J. *dissentiente*), that the application must be refused. *In re The Coal Economising Gas Company; ex parte Gover* (App.), 45 Law J. Rep. Chanc. 83; Law Rep. 1 Ch. D. 182.

Held by all the Judges, that M. was not a promoter, when he entered into the first contract. *Ibid.*

Opinions of the Judges as to whether the contract was one that required to be mentioned in the prospectus according to the provisions of section 38 of the Companies Act, 1867; and whether the omission to mention it was a fraud, and the effect thereof. *Ibid.*

Fresh evidence admitted on an appeal under Order LVIII. rule 5. *Ibid.*

75. (1)—The appellant's name had since the

year 1873 appeared on the register of shareholders of a joint-stock banking company as holder of 6,000l. stock. The bank stopped payment on the 2nd of October, 1875, and on the 5th of the same month circulars were issued summoning an extraordinary general meeting to pass a resolution to wind up. On the 18th of October a report was sent to the shareholders, shewing that the insolvency of the company was so great that very large calls would have to be made. On the 21st of October A. raised an action for reduction of his contract to take stock on the ground that he was induced to purchase by fraudulent misrepresentation of the directors; and on the same day the summons in the action was served on the company. On the 22nd of October an extraordinary resolution was passed for a voluntary winding-up, and A. was placed on the list of contributories:—Held, that the rights of innocent third parties having intervened, A.'s action for reduction of his contract was too late to exempt him from liability. *Tennent v. The City of Glasgow Bank*, H.L. Sc. Law Rep. 4 App. Cas. 615.

(2)—Where a person has been induced to become a shareholder by the fraud of the company's agents, he cannot bring an action for damages against the company so long as he remains a member of it, his only remedy is rescission of the contract, and, if by the winding-up of the company, or otherwise, rescission becomes impossible, his action for damages is irrelevant. *Houldsworth v. The City of Glasgow Bank* (H.L. Sc.) Law Rep. 5 App. Cas. 317. *Oakes v. Turquand* (36 Law J. Rep. Chanc. 949; Law Rep. 2 H.L. 325), and *Tennent v. The City of Glasgow Bank* followed. *Ibid.*

76.—The plaintiff filed his bill against a railway company to set aside his contract to take shares in it, on the ground of misrepresentation by the company. The plaintiff's object was (*inter alia*) to prevent the company from proceeding with the construction of part only of their line with an insufficient capital; but inasmuch as it appeared from the facts of the case that the plaintiff had acquiesced in the matters of which he complained, his bill was dismissed with costs; and upon appeal the decision was affirmed. *Sharpley v. The Louth and East Coast Railway Company* (App.), 46 Law J. Rep. Chanc. 269; Law Rep. 2 Ch. D. 663.

77.—An allottee of shares brought an action for fraudulent misrepresentation against directors of his company, and by the indorsement on the writ he claimed indemnity and rescission of his contract to take shares. The company was ordered to be wound up. The plaintiff by his claim asked for indemnity, but not rescission. An application to determine whether the plaintiff was to be a contributory stood over pending this trial:—Held, that the plaintiff could not obtain rescission on the pleadings, and leave to amend was refused. *Cargill v. Bower*, 47 Law J. Rep. Chanc. 649; Law Rep. 10 Ch. D. 502.

Directors are not liable for misrepresentations

of co-directors and officers. *Peck v. Gurney* (43 Law J. Rep. Chanc. 19; Law Rep. 6 E. & I. App. 377) explained. *Ibid.*

78.—The principle that a shareholder who has been induced to take shares in a company by the fraudulent representations of the directors, cannot repudiate his shares or recover back the price paid for them after the company has been wound up, if at the time of the intended repudiation there are any debts of the company unpaid, extends to the case of a voluntary winding-up without supervision. *Stone v. The City and County Bank*; *Collins v. Same* (App.), 47 Law J. Rep. C.P. 681; Law Rep. 3 C.P. D. 282.

79.—B. was induced to buy shares in a company by untrue statements in the prospectus. After receiving notice of the allotment he discovered the facts, and at once applied to the secretary of the company to have the allotment cancelled, which the secretary declined. B. did not pay the sum payable by a shareholder on allotment, but kept the letter of allotment, and took no further steps to have the allotment cancelled. The company having been wound up:—Held, that he could not now rescind his contract to take the shares, and must pay the allotment money, notwithstanding that the liquidators had already enough assets of the company to pay in full its debts and liabilities and the costs of the winding-up. *In re The Hull and County Bank (Lim.)*. *Burgess's Case*, 49 Law J. Rep. Chanc. 541; Law Rep. 15 Ch. D. 507.

*Persons who have never contracted to take shares.*  
[See H 51 *infra*.]

### (2) Notice of allotment.

80.—S. applied for fifty shares in a company, which were allotted, and notice of allotment sent to him by letter on the 15th of October, 1874. This allotment letter was unstamped. On the 19th of October and the 14th of November S. wrote to the company, declining to pay calls till certain information as to the position of the company was afforded him. On the 12th of December a duplicate letter of allotment duly stamped was sent by the company to S. On the 15th of December S. wrote to the company that it was his intention to withdraw his application for shares, and he returned the allotment letters, with a request for the return of his deposit. On the 22nd of December S. was informed by the secretary that his name was entered on the register for fifty shares. From that date till October, 1875, several letters were sent by S. to the company, by which he repeated his refusal to take up the shares, and asked for a cancellation of the allotment, and a return of the deposit. The company, however, did not cancel the allotment, nor return the deposit, and S.'s name remained on the register at the date of the winding-up order in October, 1875. Upon an application by S. that his name

might be removed from the list of contributories.—Held, first, that the first allotment letter, though unstamped, was receivable as evidence that S. had received notice of the allotment, and that, at any rate, the defect (if any) was cured by the second stamped letter; and, second, that S. having taken no actual steps for the removal of his name from the register, and allowed it to remain there at the date of the winding-up order, must remain on the list. *In re Whitley, partners (Lim.). Steel's Case*, 49 Law J. Rep. Chanc. 176.

(3) *Agreement by director: withdrawal of application.*

81.—The chairman of a company who held fifty shares represented to several persons that he intended to hold 500, and ultimately, upon being pressed so to do, signed an application for 450 shares. These shares were not allotted for seven months, as negotiations were pending with regard to a commission or discount. The application was withdrawn after a resolution for allotment, but before actual allotment:—Held (reversing the decision of Malins, V.C.), that he was not a contributory in respect of the 450 shares. *In re The Universal Non-Tariff Fire Insurance Company. Ritso's Case* (App.), Law Rep. 4 Ch. D. 774.

*Right of member to inspect register of mortgages.*  
[See H 79 infra; PRODUCTION, 82.]

(4) *Rectification of register.*

82.—The summary jurisdiction conferred by 25 & 26 Vict. c. 89 (the Companies Act, 1862), s. 35, enabling the Court or a Judge to order the rectification of the register of a company, extends to all cases where the register is wrong, and is not confined to cases where there has been actual default or *laches* on the part of the company. *In re Sham; ex parte Piers* (App.), 46 Law J. Rep. Exch. 394.

On a sale of shares in a joint-stock company through an agent, the vendor executed a deed of transfer, exhibited it to the company, and sent it to the purchaser, who having paid the price signed the transfer and returned it to the agent. The agent fraudulently kept the money and cancelled the deed. The company having, on notice from the vendor, declined to register the name of the purchaser, he applied under section 35 of the Companies Act, 1862, to a Judge at chambers for an order that the register might be rectified by the removal of the name of the vendor, and the insertion of that of the purchaser. Both parties and the company appeared at the hearing; the company made no objection to the order asked for. The Judge heard the case, found as a fact that the purchaser had a legal right to the shares, and made the order:—Held (affirming the decision of the Exchequer Division, 46 Law J. Rep. Exch. 65), that he had, under the circumstances, jurisdic-

tion to do so; and that in doing so his discretion was rightly exercised. *Ibid.*

[And see D 93 infra.]

*In order that shares may be reissued as fully paid up.* [See D 56 supra.]

(1) *Forfeiture, surrender and cancellation of shares.*

83.—Before a forfeiture can take place all the conditions precedent must be strictly complied with. Therefore, where the notice given to a shareholder in a company subject to the regulations in Table A of the 1st schedule of the Companies Act, 1862, stated that unless the amount of a call, together with interest at the rate of five per cent. per annum from the date of the call, was paid on or before a certain day, the shares would be liable to forfeiture:—Held, that as interest was only payable from the day fixed for payment of the call, the notice was irregular, and a forfeiture founded on non-compliance with such notice was bad. *Johnson v. Lyttle's Iron Agency* (App.), 46 Law J. Rep. Chanc. 786; Law Rep. 5 Ch. D. 687.

84.—A cancellation of shares was held not to be justified under a power to forfeit and extinguish for non-payment of calls, where, though in fact calls had not been paid, the cancellation was made at the request of the holders, and without reference to the question of calls. An ineffectual cancellation of shares will not be validated by the shares being returned to the registrar of joint-stock companies as cancelled. The circumstance that the cancellation took place seven years before the company ceased to carry on business was held to be immaterial on the question of the liability of the holders as contributories. *In re The Esparto Trading Company. Finch and Goddard's Cases*, 48 Law J. Rep. Chanc. 573.

85.—C., the holder of 160 shares in a limited company, registered in the year 1870, proposed to the directors to surrender his shares in consideration of 300*l.* to be paid to him by the company. The directors, who had power, under their articles, "to accept a surrender of shares on such terms as they might think fit," acceded to his proposal, cancelled the shares, and paid the money. The company was, within twelve months, ordered to be wound up:—Held, that the surrender of shares was valid, and that C. was not liable to be placed on the A. list of contributories. Held also, that the validity of such a surrender was not affected by the provisions of the Companies Act, 1867. *In re St. James's Bank. Colville's Case*, 48 Law J. Rep. Chanc. 633.

86.—A forfeiture of shares for non-payment of calls declared by a board of directors not duly appointed according to the constitution and rules of the company is invalid:—So held, where the declaration was made by a board, some of whom ought, by the rules of the com-



pany, to have previously retired from office. *The Garden Gully United Quartz Mining Company v. M. Lister* (P.C.), Law Rep. 1 App. Cas. 39.

Construction and effect of Acts of Victoria 27 Vict. Nos. 228, 354 considered. *Ibid.*

The holder of shares improperly forfeited has a legal interest, and does not require a declaration of trust to create an interest in him, and therefore mere *laches* will not disentitle him to equitable relief. *Ibid.*

*Cancellation of shares: liability of shareholders in respect of debts contracted before the cancellation.* [See H 60 *infra*.]

(m) *Sale or transfer of shares.*

(1) *Dividend declared after sale.*

87.—A sale of shares in a company to be completed on a future day without mention of dividends passes dividends declared after the sale but before the day of completion. *Black v. Homersham*, 48 Law J. Rep. Exch. 79; Law Rep. 4 Ex. D. 24.

(2) *Transfer under seal executed in blank: purchase for value without notice.*

88.—Where the owner of shares had deposited the certificates and signed a transfer by way of security, and not to be dealt with in the events that happened, the transferee, who had not been put upon the register, nor executed an acceptance of the shares (which was a requisite for registration), fraudulently purported to transfer the shares, and handed over the previous transfer and certificates to mortgagees for value:—Held, that the mortgagees could not, after becoming aware of the true ownership, get their title perfected against the owner through further acts on the part of their mortgagor which would be a continuation of his fraud.—*Dodds v. Hills* (2 Hem. & M. 424) distinguished. And it was held, in this case, upon all the circumstances, that the mortgagees had not an equity prevailing against the owner. *Ortigosa v. Brown*, 47 Law J. Rep. Chanc. 168.

Where a transfer of shares under seal was executed with the name of the transferee in blank, the shares being transferable by a parol instrument,—Held, that the transfer could be effectual like a parol instrument, notwithstanding it purported to be a deed. Whether as a deed it would have operated by estoppel,—*quære*. *Ibid.*

It is competent to the directors of a company registered under the Joint Stock Companies Act, 1856, to require a transferee of shares to execute an acceptance before being registered as proprietor. *Ibid.*

*Quære*, if the power of the Court to order delivery up of deeds is not extended by the Judicature Act. *Ibid.*

[N.B.—This case was subsequently reversed on appeal on production of further evidence.]

*Fully paid-up shares: certificate of registration: protection of innocent transferee.* [See D 61 *supra*.]

(3) *Infant transferee: liability of stock jobber.*

89.—Where a jobber purchases shares on the Stock Exchange his contract is either himself to purchase the shares, or, in the alternative, to substitute the name of a purchaser who is competent and willing to purchase. His liability is, therefore, conditional in the first instance, but if he fails to give such a name, it becomes absolute. If, therefore, the name given is that of an infant, or of a person who has given no authority to use his name, the jobber is liable. *Nickalls v. Morry* (H.L.), 45 Law J. Rep. Chanc. 575; Law Rep. 7 E. & L. App. 530.

The period of ten days limited by the rules of the Stock Exchange, within which the seller may object to the name given, has application only to objections grounded on the pecuniary incapacity of the person named to perform the contract, not to his capacity and willingness to enter into it. *Ibid.*

*Rennie v. Morris* (41 Law J. Rep. Chanc. 321; Law Rep. 13 Eq. 203) overruled. *Ibid.*

90.—The defendants, stock jobbers, having accepted an infant as transferee of the plaintiff's shares, held liable to the plaintiff to indemnify him against calls. *Heritage v. Payne*, 45 Law J. Rep. Chanc. 295; Law Rep. 2 Ch. D. 594.

The defendants raised a special defence that the plaintiff, after commencing his suit to enforce his right to indemnity, had been released by the liquidator from further payments on account of calls, on condition that the suit should proceed, and the liquidator have the benefit of it:—Held that this agreement was no objection to the suit. *Ibid.*

(4) *Certificate of transfer.*

91.—On a transfer of stock in a company, incorporated under the Companies Act, 1862, the issue of the company's stock certificate to the transferee is not a representation that the immediate transfer to him is valid, so as to give him any right of action against the company if it proves invalid. A buyer, on the Stock Exchange, of stock in a company incorporated under the Companies Act, 1862, received and lodged with the company for registration, an instrument which purported to be a transfer of the stock from the registered holder to himself. After making enquiries, the company registered the transfer, and the buyer having transferred the stock to a bank in order to secure advances, the company registered that transfer also, and issued their stock certificate to the bank as the registered holders. The original transfer to the buyer was discovered to be a forgery, and he thereupon paid off his debt to the bank, and brought an action, in which he and the bank were plaintiffs, to recover the value of the stock from the company:—Held, that the buyer had no right by estoppel against the company in respect of the stock; that the company, by issuing their stock certificate to the bank, as the buyer's transferees, had made no representation to the buyer that the original transfer to him was valid; and, there-

fore, that the action was not maintainable. *Simm v. The Anglo-American Telegraph Company. The Anglo-American Telegraph Company v. Spurling* (App.), 49 Law J. Rep. Q.B. 392; Law Rep. 5 Q.B. D. 188.

(5) *Refusal to register transfer.*

92.—By the deed of settlement of a company it was provided that it should be lawful for every proprietor of shares to procure some person to become a proprietor of all or any of the shares so belonging to him, and having done so to give notice thereof in writing at the office of the company, and to request the board to certify their approbation or disapprobation of such person, and that no share in the company should be transferred by any proprietor to any person who had not been first approved of by the board of directors, and it was also provided that at any general meeting, in case of a ballot, every proprietor holding twenty shares in the company should have one vote and one additional vote in respect of each complete number of twenty shares (beyond the first twenty) held by him, but that no shareholder should have more than twenty votes in the whole. M. was the proprietor of 3,031 shares in the company, and he agreed to transfer 400 of such shares to E. who was ready to purchase them at the then market value. He also agreed to transfer 400 other shares to R., who was however to hold them in trust for M. The board of directors refused to sanction the transfer, in the belief that the transfers were merely colourable transactions, and made for the purpose of enabling M. to command forty additional votes, but they admitted that they had no objection to E. or R. personally:—Held, that every proprietor had an absolute right to transfer his shares, and that the directors had only a right to object to the persons of the transferees, and being satisfied on that point were not at liberty to go behind the transfers and enquire into the motives of their being made, and that the transfers were to be registered. *Moffatt v. Farquhar*, 47 Law J. Rep. Chanc. 355; Law Rep. 7 Ch. D. 591.

93.—Article 10 of Table A., in the appendix to the Companies Act, 1862, which empowers a company to decline to register any transfer of shares made by a member who is indebted to the company, applies only to a transfer by deed and not to a transmission of shares by devolution of law. A shareholder in a company subject to Table A. of the Companies Act, 1862, became bankrupt:—Held, that the trustee in bankruptcy was entitled to be registered as the owner of the shares held by the bankrupt, notwithstanding that the bankrupt was indebted to the company. *In re The Bentham Mill Spinning Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 671; Law Rep. 7 Ch. D. 900.

94.—A company by its articles had a lien upon the shares of any member for any moneys due to the company from him, and might sell any of the shares registered in the books of the company

in the name of such debtor, and apply the proceeds in discharging such debt, and might refuse to register any transfer of shares whilst the member making the transfer was indebted to the company:—Held, that “due” meant “presently payable,” and consequently, that the company was not entitled to refuse to register a transfer of shares, for the reason that it held bills of the member making the transfer which had not arrived at maturity. *In re The Stockton Malleable Iron Company; ex parte Chapman*, 45 Law J. Rep. Chanc. 168; Law Rep. 2 Ch. D. 101.

95.—The appellant sold on the Glasgow Stock Exchange certain shares belonging to him in the City of Glasgow Bank. The sales were made on the 28th and 30th of September, 1878, the settling day being the 16th of October. The brokers who bought the shares bought on behalf of the bank, who under their articles had power to purchase their own shares. Before the settling day came the bank stopped payment. On the 16th of October a deed of transfer of the shares was tendered by the appellant to the bank; but the bank refused to accept or register the transfer, and the name of the appellant was placed on the list of contributories:—Held, that the company were justified in not accepting and registering the transfer, and that the appellant was rightly placed on the list. *Nelson Mitchell v. The City of Glasgow Bank* (H.L. Sc.), Law Rep. 4 App. Cas. 624.

96.—A shareholder in a cost-book mining company transferred all his shares to a transferee for a nominal consideration. The company registered the transfer, and made calls on the transferee, and then discovered that the transferee was in indigent circumstances, and unable to pay. They brought an action and recovered judgment against him, and afterwards declared his shares forfeited for non-payment of calls. More than two years after the transfer an order was made for winding up the company:—Held that, assuming that the transfer was fraudulent under the 35th section of the Stannaries Act, 1869 (32 & 33 Vict. c. 19), the transfer having been acted on and the shares forfeited by the company with knowledge of the insolvency of the transferee, it could not be set aside in the winding-up, and the name of the transferor could not be put on the list of contributories. *In re The Wheel United Wood Mining Company. Chynoweth's Case* (App.), Law Rep. 15 Ch. D. 13.

A shareholder in a cost-book mine who has ceased to be a shareholder more than two years before the order for winding up, cannot be put on the list of contributories as a past member, although he had not so ceased for two years before the mine ceased to be worked. *Ibid.*

97.—Directors who, in the *bona fide* exercise of their powers, and under circumstances which make it reasonable so to do, decline to record future transfers which may seriously affect the liability of the partners in the company, are

not in default within the Companies Act, 1862, section 35; and their resolution not to record such transfers will be effectual. *In re The City of Glasgow Bank. Alexander Mitchell's Case* (H.L. Sc.), Law Rep. 4 App. Cas. 548.

[And see D 44 supra.]

*On amalgamation of company.* [See G 1, 2 infra.]

*Charging order on stock.* [See CHARGING ORDER.]

# (E) ACTIONS AND PROCEEDINGS BY AND AGAINST COMPANIES.

## (a) *By individual shareholders: action when to be brought in name of company.*

1.—All litigation with relation to the internal arrangements of a company and the management of its affairs must be in the name of the company, and a suit by an individual on behalf of himself and other shareholders complaining of irregularities in such management is not maintainable. *Maodougall v. Gardiner* (App.), 45 Law J. Rep. Chanc. 27; Law Rep. 1 Ch. D. 13.

2.—In an action by P. on behalf of himself and all other the shareholders in the company who voted against the amendment, and by the company against the directors, for an injunction to restrain them from ruling out the shares in question, a summons was taken out by the directors to strike out the name of the company, which had been used without the authority of the directors or of a general meeting:—Held, on the presumption that P. and the shareholders who voted against the amendment were the majority of the company, that a meeting ought to be called for determining whether the name of the company ought to be used, and that its name ought not to be struck out unless the meeting so decided. *Pender v. Lushington*, 46 Law J. Rep. Chanc. 317; Law Rep. 6 Ch. D. 70.

Semble, an action may be maintained by an individual shareholder to compel the directors to receive his vote. *Ibid.*

3.—A shareholder brought an action against the solicitors of a limited company to recover moneys alleged to have been fraudulently retained by the solicitors. The company were made defendants, but there was no allegation that they refused to sue as plaintiffs. The defendants demurred, on the ground that the action ought to have been brought in the name of the company. The Court allowed the demurrer, but granted the plaintiff leave to make the company co-plaintiffs instead of defendants, and reserved the question whether the plaintiff should pay the defendant's costs of the demurrer. *Duckett v. Gover*, 46 Law J. Rep. Chanc. 407; Law Rep. 6 Ch. D. 82.

The words "*bona fide* mistake" in Order XVI. rule 2, mean a mistake as well of law as of fact. *Ibid.*

4.—Two shareholders in a company, on behalf of themselves and the other shareholders, com-

menced an action against the managing director and two other directors of the company, and the company, to set aside for fraud the sale of the business to the company. The statement of claim alleged that the contract of sale had been entered into by the promoters and adopted by the company on the faith of false representations knowingly made by the managing director, who was the vendor to the company; that the defendant and directors formed the majority of the board, and refused to take any steps to remedy the matters complained of; and that the managing director by the preponderance of his votes had complete control over the company, and prevented the shareholders from taking any steps within the company to remedy the matters complained of. The defendant directors demurred on the ground that the action ought to have been brought in the name of the company, and the company by their statement of defence pleaded to the same effect:—Held, that the allegations were sufficient to bring the case within the principle of *Attwood v. Merryweather* (37 Law J. Rep. Chanc. 35; Law Rep. 5 Eq. 464n), and that the demurrers must be overruled. *Duckett v. Gover* (see last case) explained. *Mason v. Harris* (App.), 48 Law J. Rep. Chanc. 589; Law Rep. 11 Ch. D. 97.

## (b) *Right to use name of company.*

5.—An action being pending against the directors of a company brought by certain of the shareholders suing in the name of the company, at a general meeting it was resolved that the company should be wound up voluntarily, and it was at the same time resolved by an overwhelming majority of the shareholders that the name of the company should not be used as plaintiffs in the action. The minority insisting on their right to continue the action in the name of the plaintiffs,—Held (on the application of the liquidator), that the minority were bound by the wishes of the majority, and that the name of the company must be struck out as plaintiffs, but liberty was given to amend by making the company defendants. *The Silver Light Company v. Silber*, 48 Law J. Rep. Chanc. 385; Law Rep. 12 Ch. D. 717.

## (c) *Action by creditor in collusion with company against a shareholder.*

6.—A creditor of a cost-book mining company will not be allowed to bring an action against a shareholder of the company for the purpose of enforcing a call, and therefore if the action be not really an action by the creditor, but a collusive action by the company, it will be stayed. *Escott v. Gray*, 47 Law J. Rep. C.P. 606.

## (d) *English shareholder in foreign company: liability of, on foreign judgment obtained in his absence.*

7.—If the law of a foreign country be that the shareholders of a company there established

are subject to the provisions in the articles of association, and if the articles of such a company provide that all litigation *inter socios* shall be submitted to the jurisdiction of a certain tribunal in such country, and that, unless a shareholder with whom such litigation shall arise elects a domicile within the jurisdiction, such election shall be made for him and process validly served at such elected domicile, then a judgment for calls against a shareholder duly obtained in his absence upon process served in the manner specified will bind such shareholder, though he be an English subject, neither resident nor domiciled in such foreign country, and though he may have had no actual notice or knowledge of the proceedings; and judgment may be recovered against him in this country in an action upon the foreign judgment so obtained. *Copin v. Adamson* (App.), 45 Law J. Rep. Exch. 15; Law Rep. 1 Ex. D. 17.

The existence of such provisions in the articles of association of the company in which the defendant has become a shareholder amounts to an agreement on his part to be bound by a judgment so obtained. But Quere, whether, if such service were good by the general law relating to companies in such foreign country, any such express agreement to be bound by the judgment would be necessary beyond the fact of becoming a shareholder in the company subject to such law. *Ibid*.

#### (F) *SOIRE FACIAS* AGAINST SHAREHOLDER OR DIRECTOR.

8.—By a special Act of Parliament (36 & 37 Vict. c. cccix.), with which the Companies Clauses Consolidation Act, 1845 (8 Vict. c. 16), was incorporated, defendant and certain other persons therein described were (section 4) united into a company for making a railway, and it was enacted, *inter alia* (section 18), that the defendant and four other persons therein mentioned, should be the first directors of the company, and that they should continue in office till the first ordinary meeting held after the passing of such Act; that the capital of the company should be 600,000*l.* in 60,000 shares of 10*l.* each, and (section 16) that the qualification of a director should be the possession, in his own right, of not less than thirty shares. It was also enacted (section 40) that an agreement whereby the promoters had promised to pay the plaintiff 31*l.*, and which formed a schedule to the Act, should be valid and effectual as between the company and the plaintiff. It appeared that no meeting of the company had ever been held, though the time for holding such first ordinary meeting had long elapsed; that no directors had been appointed otherwise than by the Act itself; that there never was any register of shareholders, and that no shares had ever been allotted to the defendant:—Held (affirming the decision below—45 Law J. Rep. C.P. 305; Law Rep. 1 C.P. D. 201), that the defendant was a shareholder in respect of thirty shares of 10*l.*

each in the capital of the company, within the meaning of section 36 of the Companies Clauses Consolidation Act, 1845, and, as such, liable to a proceeding by *soire facias* at the suit of the plaintiff, who had recovered judgment against the company in an action on the said agreement. *Portal v. Emmens* (App.), 46 Law J. Rep. C.P. 179; Law Rep. 1 C.P. D. 664.

9.—The defendants T. and A. were named as directors in the special Act of a railway company. The Act provided that the qualification of directors should be fifty shares of 10*l.* each, and that the directors named in the Act should continue in office till the first ordinary meeting of the company. T. never acted as a director, and another director was appointed in his place. A. acted as director for a time and then resigned, and his place on the board was informally filled up. No shares were allotted to either of the directors, and the whole of the share capital of the company was placed in other hands. A register of shareholders of the company was drawn up, in which the names of the defendants did not appear. No ordinary meeting of the company was held, and the resignations of the defendants and the sealing of the register were therefore informal. In an action of *soire facias*, brought several years after the defendants' resignations of their directorships, by the public officer of another company which had obtained a judgment against the first-named company,—Held, that as no shares had been allotted to the defendants, and they were not *de facto* directors, and all the share capital of the company was in other hands, the defendants could not be made liable as directors on their share qualifications except by way of estoppel; and that no estoppel had been raised. *Portal v. Emmens* (see last case) explained and distinguished. *Kippling v. Todd*; *Same v. Allan* (App.), 47 Law J. Rep. C.P. 617; Law Rep. 3 C.P. D. 350.

*Acquiescence and delay, effect of.* [See A 6 supra.]

#### (G) AMALGAMATION AND TRANSFER OF BUSINESS OR ASSETS.

##### (a) *Whether valid or ultra vires.*

1.—The E. Assurance Company was constituted in 1820, and in 1848, in exercise of powers for that purpose given by the deed of settlement, regulations were made enabling the company to effect a junction with any other assurance company or a dissolution of the company; and by a private Act of Parliament it was enacted that a memorial of every change of the shareholders should be enrolled in Chancery, and until the new memorial should be enrolled the persons whose names should appear in the then last enrolled memorial and their legal representatives should be liable as existing shareholders, and should be entitled to be reimbursed out of the funds of the company for all losses sustained in consequence thereof. In 1858 an

arrangement was made for an amalgamation of the E. Company with the P. P. Society, one of the terms of which was that shareholders in the company might either have an equivalent for their shares in fully paid-up shares in the P. P. Society, or cash. D., a shareholder in the E. Company, elected to take cash for his shares, and by deed in consideration of 32l. transferred his shares to the manager of the P. P. Society. The transfer was never enrolled. The P. P. Society was afterwards incorporated with another society, which was ordered to be wound up in 1872, and the E. Company was ordered to be wound up in 1873:—Sembles, that the amalgamation was *intra vires*, although not authorised by the original constitution of the E. Company; but whether this were so or not,—Held, that D. was not liable as a contributory of the E. Company, as it would be an idle ceremony to make him pay into the funds of the company money which he would be immediately entitled to receive back. *In re The European Assurance Society Arbitration Acts, and In re The European Life Assurance and Annuity Company. Doman's Case* (App.), 45 Law J. Rep. Chanc. 801; Law Rep. 3 Ch. D. 21.

2.—The B. C. Insurance Company, established in 1821, was never registered as a joint-stock company, but by a private Act of Parliament the shares were made transferable subject to provisions that a memorial of each transfer should be enrolled in Chancery, and that until enrolment the members whose names appeared on the last enrolled memorial should remain liable for the debts of the company. In 1860, for the purpose of carrying out an arrangement for the transfer of the business of the company to and an amalgamation with the B. N. Company, a large majority of the shareholders in the B. C. Company agreed to sell their shares to a trustee for the B. N. Company, and R., a shareholder in the B. C. Company, executed a transfer of his shares to the trustee in consideration of 250l., which was in fact paid out of the transferred assets of the B. C. Company, though there was no evidence to shew that R. knew from what source the money was derived. The transfer was registered in the proprietor's ledger of the B. C. Company on the day of its execution, but was not enrolled till 1865, after the execution of a deed transferring all the assets of the B. C. Company to the B. N. Company. The B. C. Company was ordered to be wound up in 1872:—Held, that R. was not liable as a contributory of the B. C. Company. *In re The European Assurance Society Arbitration Acts, and British Commercial Insurance Company; Rivington's Case* (App.), 45 Law J. Rep. Chanc. 804; Law Rep. 3 Ch. D. 10.

3.—The deed of settlement of the B. N. Company empowered the company in extraordinary general meeting to acquire the business of any other association of a similar character upon such terms as such meeting should think fit; it also provided that every instrument binding the company should contain a declaration in effect

limiting the liability of the shareholders to the amount payable on their shares. In January, 1860, the B. N. Company, in extraordinary general meeting, passed a resolution (subsequently duly confirmed) accepting a proposal of the directors of the B. C. Company for a "union of the business" of the two companies, and empowering the directors to take the necessary steps to carry the proposed arrangement into effect, and to appoint such trustees as might be necessary for holding the shares of the B. C. Company. The deed of settlement of the B. C. Company contained no provisions for amalgamating with another company. The transaction was carried out by the shares of the B. C. Company being purchased and transferred to trustees for the B. N. Company, and in 1864 the trustees, by deed, transferred their shares to the B. N. Company, and the latter company was then entered on the register of shareholders of the B. C. Company. The deed of 1864 was not sanctioned by the B. N. Company in general meeting. In 1872 the B. C. Company was ordered to be wound up:—Held, that the transaction was *ultra vires* and void, and that the B. N. Company could not be placed on the list of contributories of the B. C. Company. *In re The European Assurance Society Arbitration. The British Commercial Insurance Company v. The British Nation Life Assurance Association* (App.), 48 Law J. Rep. Chanc. 118; Law Rep. 8 Ch. D. 679.

(b) *Novation of contract by policy-holder.*

4.—In 1855 H. effected an assurance with the R. Society on his own life for 200l., and, by the terms of his policy, the property of the society which, at the time of any demand made in respect thereof, might remain unapplied and undisposed of, was alone made liable to make good the claims in respect thereof. In 1866 the R. Society, in consideration of the E. Society undertaking all its debts, liabilities and engagements, transferred to the E. Society a proportionate part of its property and assets, and of such transfer gave notice to H. H. sent his policy to the E. Society, and had it endorsed with a memorandum under seal, to the effect that the funds and property of the E. Society should be liable for the due payment of the money assured by his policy, and he continued to pay his premiums at the same place as before, the office of the E. Society having been removed thither:—Held (reversing the decision of Lord Westbury), that H. never was in a position to object to the transfer to the E. Society, and could only claim as a policy-holder of the E. Society. *In re The European Assurance Society Arbitration Acts; and in re The Royal Naval and Military and East India Company Life Assurance Society. Hort's Case; Grain's Case*, (App.), 45 Law J. Rep. Chanc. 321; Law Rep. 1 Ch. D. 307.

G., in 1861, effected an insurance on his own life with the R. Society, the policy containing a

stipulation against his going to certain places abroad. After the amalgamation he paid his premium to the E. Society, but his policy was not endorsed. Being desirous afterwards of going to one of the prohibited places, G. applied to and obtained from the E. Society permission so to do, on payment of an extra premium. Lord Romilly having held that G. had not lost his rights as a creditor against the E. Society, this decision also was reversed on appeal. *Ibid.*

5.—By deed of settlement of the A. Insurance Company power was given to amalgamate with some other assurance company, either by sale of its business or otherwise, by a resolution of a certain majority of shareholders and policyholders, the latter having a right to vote at all meetings. By resolutions duly passed it was resolved to amalgamate the company with the B. Society, and by the deed of amalgamation all the business, property and engagements of the A. Company were transferred to the B. Society:—Held, that the holder of a policy effected with the A. Company had no claim upon that company after the amalgamation. *In re The European Assurance Society Arbitration Acts; and in re the Anglo-Australian and Universal Family Life Assurance Company. Harman's Case; Pratt's Case* (App.), 45 Law J. Rep. Chanc. 332; Law Rep. 1 Ch. D. 326.

6.—In 1861 C., a widow, effected an assurance on her life with the W. Society for 800*l.*, with profits to be apportioned so as to make the policy payable during the lifetime of the assured. She afterwards married again. In 1863 the W. Society transferred its business and assets to the B. Association. The B. Association subsequently transferred its business and assets to the E. Society. C. continued to pay her premiums through the same local agent as before, and received receipts, headed at first "B. Association, with which is united the business of the W. Society," afterwards "B. Association, in union with the E. Society," and ultimately "E. Society" alone. A bonus was afterwards declared by the E. Society, and by mistake the letter which was sent to C. announcing the bonus incorrectly stated the nature of it, and C. took no notice of the letter. Both the E. and the W. Societies being in course of winding up,—Held (affirming the decision of Lord Westbury), that (independently of the difficulty of dealing with the reversionary interest of a married woman), C. had never done anything to release the W. Society from its obligation, and that she was entitled to prove against that society for the value of her policy. *In re The European Assurance Society Acts; and in re The Wellington Reversionary Annuity and Life Assurance Society. Conquest's Case* (App.), 45 Law J. Rep. Chanc. 336; Law Rep. 1 Ch. D. 334.

7.—The R. Assurance Society was formed under a deed of settlement which contained a power enabling the directors to transfer its assets and liabilities to any other assurance

company. By a deed executed by three of the directors, granting an annuity to D., it was declared that the stocks and funds of the society should, during the life of D., be subject to the payment of the annuity, but the deed contained no reference to the deed of settlement. The R. Society afterwards, in pursuance of its powers, transferred its business, assets and liabilities to the E. Society. Both societies were afterwards ordered to be wound up. Upon D.'s claim to prove against the R. Society:—Held, that the case was not distinguishable from *Hort's Case* (No. 4 *supra*), by the omission from the deed granting the annuity of any reference to the deed of settlement, and the claim, therefore, must be disallowed. *In re The European Assurance Society Arbitration Acts. Dowse's Case* (App.), 46 Law J. Rep. Chanc. 402; Law Rep. 3 Ch. D. 384.

8.—The I. Assurance Company was formed in 1849, under a deed of settlement which contained clauses providing for a dissolution of the company, and providing that immediately upon such dissolution the directors should obtain from some other assurance company an undertaking to satisfy the demands on the company arising from insurances when and as the time for satisfaction of the same should arrive, and should cause to be transferred to such other company so much of the funds or property of the company as should be agreed upon between the contracting parties as would be sufficient with the future premiums to enable the company giving the undertaking to comply therewith, and should distribute the surplus assets of the company among the shareholders. C. in 1851 effected a policy with the company, by the terms of which the liability of the company was limited to the capital stock of the company, or so much thereof as for the time being should have been subscribed, and the other property of the company remaining at the time of any claim or demand made unapplied and undisposed of and inapplicable to prior claims and demands. In 1855 an amalgamation was agreed upon and carried out between the I. Company and the P. Society, the I. Company being dissolved and the P. Society taking over its assets and liabilities, and carrying on the business at the former offices of the I. Company. C.'s policy was not endorsed by the P. Society, nor was any fresh policy issued to him, but he continued to pay his premiums at the office as before, the receipts being headed "The P. Society, with which is incorporated the I. Company." The P. Society was afterwards incorporated with the E. Society, and from that time the receipts for premiums were headed "The E. Society." The E. Society was ordered to be wound up in January, 1872, and the I. Company in June following:—Held, that the case was governed by the decision in *Hort's Case* (*supra* No. 4), and C. was bound by the amalgamation and could not rank as a creditor of the I. Company. Decision of Lord Romilly affirmed. *In re The European Society Arbitration Acts, and Industrial and General*

*Life Assurance and Deposit Company. Cooker's Case* (App.), 45 Law J. Rep. Chanc. 822; Law Rep. 3 Ch. D. 1.

9.—On the amalgamation of the A. Insurance Company with the E. Society a policy was endorsed to the effect that the funds of the E. Society should in future be liable. The subsequent premiums were paid to the E. Society:—Held, that there was a novation, and the A. Company was discharged from liability. *Hort's Case* (No. 4 supra) and *Cocker's Case* (see last case) followed. *In re The European Assurance Society. Miller's Case* (App.), Law Rep. 3 Ch. D. 391.

(c) *Mode of distribution of consideration for transfer.*

10.—In the case of a limited company, consisting of two or more classes of members having different rights *inter se*, where resolutions are passed for winding up voluntarily, and transferring the assets to another company, in consideration of shares in such other company, the 161st section of the Companies Act, 1862, merely enables the former company to decide on the nature of the consideration to be accepted for the transfer, and does not empower it to decide as to the mode of distribution of the consideration among the classes of members; but *Semble*, such distribution must be according to their rights and interests, as required by section 133. *Griffith v. Paget*, 45 Law J. Rep. Chanc. 493; Law Rep. 5 Ch. D. 894.

(H) WINDING-UP.

(a) *Petition and winding-up order.*

(1) *Creditor's petition, right to present.*

1.—A creditor of a company who cannot get his debt paid, is not *ex debito justitiae* entitled to an immediate winding-up order, where it appears that he will not get paid by means of the order if made. *In re St. Thomas' Dock Company*, 45 Law J. Rep. Chanc. 304; Law Rep. 2 Ch. D. 116.

The capital of a limited company had been called up in full, and its entire assets were mortgaged for more than their value to the debenture holders, whose interest was in arrear. A single debenture holder presented a winding-up petition which was opposed by the bulk of the debenture holders and the company, who alleged that the business was likely to become remunerative:—Held, that, as no assets could be obtained by means of a winding-up order, the petitioner was not entitled *ex debito justitiae* to an order to wind up the company; and at the wish of the bulk of the creditors, the petition was directed to stand over. *Ibid.*

2.—A company issued debentures, which were secured by a mortgage of its property, to trustees for the debenture holders. By this deed the company covenanted with the trustees to keep them in funds to pay the debentures, and the interest from time to time due on them.

Each original debenture holder received one fully paid-up share in the company for every 100*l.* lent. Every debenture contained a covenant by the company with the holder, to pay him according to the terms of the trust deed, and at the foot was a note that the holder of the debenture would alone be recognised as having any claim to the money secured by it. A debenture holder for 600*l.*, whose interest was in arrear, presented a winding-up petition, which was opposed by the company and debenture holders for over 142,000*l.* out of the 160,000*l.* which had been advanced in all:—Held, that the petitioner was not a creditor of the company within the meaning of the Companies Acts, and therefore was not entitled to present the petition, and that, even if he had been, the Court would have exercised its discretion under section 91 of the Companies Act, 1862, and refused to make a winding-up order. *In re The Uruguay Central and Hygueritas Railway Company of Monte Video Line*, 48 Law J. Rep. Chanc. 540; Law Rep. 11 Ch. D. 372.

*Claim for unliquidated damages in respect of fraudulent misrepresentation.* [See H 104 *infra*.]

*Petitioning creditor's debt: solicitor's charges.* [See H 15 *infra*.]

(2) *Shareholder's petition.*

3.—Where a company had never carried on business, and had no shares allotted, no debts and no property, the only contributories being seven persons, who had signed the memorandum of association, the Court refused to make a winding-up order on the application of one of the contributories against the wish of the rest. *In re The New Gas Generator Company*, 46 Law J. Rep. Chanc. 550; Law Rep. 4 Ch. D. 874.

4.—On a shareholder's petition to wind up a company not registered under the Companies Acts, the Court may in its discretion refuse to make any order, notwithstanding that there is no other way in which such a company can be wound up under those Acts. *In re The Second Commercial Benefit Building Society (Lim.)*, 48 Law J. Rep. Chanc. 753.

5.—In order to entitle a fully-paid-up shareholder to a winding-up order it must be alleged and proved that the company has surplus assets in which he has a substantial interest. *In re The Rica Gold Washing Company* (App.), Law Rep. 11 Ch. D. 36.

6.—Default by a shareholder in payment of calls does not constitute an absolute bar to his presenting a winding-up petition. *In re The Diamond Fuel Company* (App.), 49 Law J. Rep. Chanc. 301; Law Rep. 13 Ch. D. 400.

7.—A company, which had ceased to carry on business for more than a year, passed a unanimous resolution at an extraordinary general meeting to wait until a change of trade rendered it desirable to proceed with its business or to reconsider its position. A shareholder

shortly afterwards presented a petition for a winding-up order on the ground that the company had ceased to carry on its business, which was opposed by the majority of the shareholders:—Held, that the Court, having regard to the wishes of the majority, would not wind up the company. *In re The Middlesbrough Assembly Rooms Company* (App.), 49 Law J. Rep. Chanc. 418; Law Rep. 14 Ch. D. 104.

Semble, although a shareholder, who presents a winding-up petition, brings his case within section 79 of the Companies Act, 1879, the Court will not make an order in opposition to the wishes of the majority of the shareholders, unless there is something tyrannous in the conduct of the majority, or some mischief or hardship will result to the minority by continuing the company. *Ibid.*

8.—A petition for winding up a company may be presented by persons who have obtained a decree of the Court ordering the company to allot them shares and register them as shareholders, although their names are not on the register at the time of the presentation of the petition. *In re The Patent Steam Engine Company*, Law Rep. 8 Ch. D. 464.

### (3) Demurrable petition.

9.—If a winding-up petition is demurrable, by reason of its not alleging a case which would authorise the Court to make a winding-up order, the Court has no jurisdiction to direct a meeting of the contributories to be summoned, or to do anything but dismiss the petition. *Decision of Bacon, V.C., reversed. In re The Langham Skating Rink Company (Lim.)* (App.), 46 Law J. Rep. Chanc. 345; Law Rep. 5 Ch. D. 669.

### (4) Number of members.

10.—Where the number of members of an unregistered loan society formed under 3 & 4 Vict. c. 110 had at the date of a creditor's petition to wind up the society fallen below seven, although the number of members had formerly exceeded that number,—Held, that by virtue of sections 199 and 200 of the Companies Act, 1862, no winding-up order could be made, but that to enable the Court to wind up the affairs of the society it was necessary to commence an action for the dissolution of the partnership subsisting amongst the present members. *In re The Bolton Benefit Loan Society. Coop v. Booth*, 49 Law J. Rep. Chanc. 39; Law Rep. 12 Ch. D. 679.

### (5) Order where assets only 71.

11.—On a petition by a creditor who was the holder of a bill of exchange for 100*l.*, which was signed by the managing director and two other directors, the Court made the usual winding-up order, notwithstanding the assets of the company were only 71*l.* *In re Lacey & Company*, 46 Law J. Rep. Chanc. 660.

### (6) Several petitions.

12.—A creditor, presenting a winding-up petition, with notice that another creditor has presented a petition with the same object, does so at the risk of having his petition dismissed with costs, unless he can prove not merely that he has reason to suspect that the first petitioner is in collusion with the company, but that such collusion actually exists. *In re The Norton Iron Company*, 47 Law J. Rep. Chanc. 9.

13.—Where two winding-up petitions were advertised in the same number of the *London Gazette*, but one petition was presented a day before the other, although advertised in a later page of the *Gazette*, the conduct of the winding-up order was given to that petitioner whose petition was first presented. *In re The Stortforth Lane Colliery Company (Lim.)*, 48 Law J. Rep. Chanc. 416; Law Rep. 10 Ch. D. 487.

### (7) Unregistered company.

14.—An unregistered company incorporated by Act of Parliament will not be ordered to be wound up on the petition of unpaid debenture holders when the special Act gives the debenture holders a remedy by the appointment of a receiver. *In re The Horns Bay Waterworks Company*, 48 Law J. Rep. Chanc. 69; Law Rep. 10 Ch. D. 42.

15.—Whether an unregistered company consisting of more than twenty persons, and not within the exceptions mentioned in the 4th section of the Companies Act, 1862, can be wound up under the 199th section, *quære. In re The South Wales Atlantic Steam Ship Company* (App.), 46 Law J. Rep. Chanc. 177; Law Rep. 2 Ch. D. 763.

A firm of solicitors, who had been employed in the formation of a company which consisted of more than twenty members, and which being unregistered was illegal under the 4th section of the Companies Act, 1862, and who had also been employed by the manager of the company to defend actions brought against individual members thereof in respect of matters incidental to the business, being unable to obtain payment of their bill of costs, presented a petition for winding-up the company:—Held (affirming the decision of Malins, V.C.), that whether such a company could be wound up at all or not, the solicitors' bill of costs did not constitute a sufficient petitioning creditor's debt. And *semble* (per James, L.J.), if such a company could be wound up, the winding-up could not go beyond dealing with existing assets and providing for existing liabilities, and could not be made the means of enforcing contribution as between the members. *Ibid.*

### (8) Life Assurance company.

16.—Petition by two policy holders to wind up compulsorily an insurance company in voluntary liquidation, charging false representations and insolvency:—Held, that where a company was in voluntary liquidation, it was



not necessary to consider whether a *prima facie* case was stated, nor order security for costs under the Life Assurance Companies Act, 1870, s. 21.—Held also, on demurrer, that policy holders might present a petition under the Act of 1870, although their debts did not amount to 50%, that a statement that under the circumstances the company was admittedly insolvent was a sufficient statement that they could not pay their debts; and that the allegations of false representations and the appointment of the secretary as provisional liquidator were sufficient to render it proper that a winding-up order should be made. *In re The British Alliance Insurance Company*, Law Rep. 9 Ch. D. 635.

On demurrer to a petition the petitioner's counsel must open his case. *Ibid.*

17.—A *prima facie* case of insolvency within the meaning of the Life Assurance Companies Act, 1870, will not be considered as made out, simply because the company has not at present the means of meeting all the claims which might be brought against it. It is necessary to consider that such claims might not arise for many years, and that new shares might be issued or new capital brought in. *In re The London and Manchester Industrial Insurance Company (Lim.)*, 45 Law J. Rep. Chanc. 170; Law Rep. 1 Ch. D. 466.

[And see INSURANCE, 7-12.]

#### (9) Appearance on hearing.

18.—Secured creditors are entitled to appear on the hearing of a winding-up petition without electing between resting on or giving up their securities. *In re The Carmarthenshire Anthracite Coal and Iron Company*, 45 Law J. Rep. Chanc. 200.

[And see H 93 *infra*.]

#### (10) Effect of winding-up order: debenture holders.

19.—A debenture, which charged the chattels and effects from time to time belonging to the company with principal at a future date, and half-yearly interest in the meantime, contained a clause providing that until default was made in payment of the principal or interest for twenty-one days after the same ought respectively to be paid, the company should be at liberty to receive and apply the assets for the purposes of the company. The company subsequently went into liquidation before the principal had become payable, and when no interest was in arrear.—Held, that, immediately upon the liquidation, the debenture took effect as an enforceable security upon the assets comprised therein as they then existed, and that the money secured by the debenture became immediately payable. *Hodson v. The Tea Company*, 49 Law J. Rep. Chanc. 234; Law Rep. 14 Ch. D. 859.

DIGEST, 1875-1880.

#### (b) Liquidator.

##### (1) Appointment of.

20.—An order in chambers appointing an accountant official liquidator was, on the motion of a large majority of unsecured creditors, discharged, and two persons engaged in a business similar to that of the company were appointed. *In re The Association of Land Financiers*, Law Rep. 10 Ch. D. 269.

21.—In appointing an official liquidator under a compulsory winding-up order, the Court, by consent, directed that all acts required or authorised by the Companies Acts to be done by official liquidators, might be done by the official liquidator thereby appointed, without the previous sanction or interference of the Court. *In re The Rochdale Property and General Finance Company*, 48 Law J. Rep. Chanc. 768; Law Rep. 12 Ch. D. 775.

##### (2) Provisional liquidator.

22.—A provisional liquidator ought not to be appointed upon an *ex parte* application. *In re The London and Manchester Industrial Assurance Company (Lim.)*, 45 Law J. Rep. Chanc. 170; Law Rep. 1 Ch. D. 466.

23.—Under urgent circumstances a provisional liquidator was appointed without the consent of the company, to protect the assets, upon his undertaking to give security, and producing an affidavit of fitness to the registrar. *In re The Hammermith Town Hall Company*, Law Rep. 6 Ch. D. 112.

*Appointment of: commencement of winding up.*  
[See No. 37 *infra*.]

##### (3) Liability of, for costs.

24.—An official liquidator is not personally liable for the costs of his solicitor in the winding-up. *In re The Anglo-Moravian Hungarian Junction Railway Company (Lim.)*; *ex parte Watkin* (App.), 45 Law J. Rep. Chanc. 115; Law Rep. 1 Ch. D. 130.

An order made after a change of solicitors, by consent, that the old solicitors should deliver over the books, &c., and that the liquidator should pay the solicitors' costs when taxed,—Held, not to make the liquidator personally liable. *Ibid.*

##### (4) Assets vesting in.

25.—The provisions of the Bankruptcy Act relating to property, goods and chattels, of which a bankrupt is reputed owner at the commencement of the bankruptcy, do not apply to the winding-up of companies under the Companies Acts, 1862 and 1867. *In re The Crumlin Viaduct Works Company*, 48 Law J. Rep. Chanc. 537; Law Rep. 11 Ch. D. 755.

26.—The vendor of property to a joint-stock company agreed to invest part of the purchase-money to guarantee the payment of dividends at 7½ per cent. for four years. A considerable

sum was accordingly invested in the name of trustees, and by an indenture to which the vendor, the company and the trustees were parties, it was declared that the trustees should hold the fund on trust to pay an aliquot part of it to the directors every half-year, and the vendor covenanted with the company that dividends at 7½ per cent. should, for four years, be paid on all shares issued to the public. The articles of association of the company provided that dividends should be payable out of profits; and payments made to the directors out of the guarantee fund should be considered as profits, and applicable only to the payment of dividends. Before the expiration of four years the company went into liquidation, and the trustees paid the fund in their hands into Court. Upon a petition by shareholders, who alleged that they had taken shares on the faith of a prospectus which stated the fact of the guarantee:—Held, that the fund belonged to the liquidator as assets of the company in the winding-up. *In re Stuart's Trusts*, 46 Law J. Rep. Chanc. 86; Law Rep. 4 Ch. D. 213.

#### (5) Removal of.

27.—The rule that a contributory who has not paid a call cannot present a winding-up petition, applies also to applications under the winding-up, e.g. for the removal of the liquidator, and, therefore, a summons for the removal of a liquidator, by a person who had, by an order of the Court, been made a contributory, but who intended to appeal from that order, was dismissed, on the ground above stated, although he offered to pay the amount of the call into Court to abide the result of the decision of the Court of Appeal as to its validity. *In re The Norwich Provident Insurance Society; in re Hesket*, 49 Law J. Rep. Chanc. 187; Law Rep. 13 Ch. D. 693.

28.—The jurisdiction of the Court to remove a liquidator under section 141 of the Companies Act, 1862, for "due cause shewn" is not equivalent to a power of removal "if the Court shall think fit." The removing of the liquidator is not a matter of pure judicial discretion, but some unfitness in him must be shewn. *In re The Sir John Moore Gold Mining Company* (App.), Law Rep. 12 Ch. D. 325.

The secretary of a company was appointed liquidator under a voluntary winding-up. He paid the debts, and completed the winding-up, except that a small sum remained in his hands for division among the contributories. A contributory took proceedings to make the liquidator and two of the directors liable for sums, for which he alleged that they had made themselves accountable before the winding-up. The liquidator was intimate with the two directors, had refused to take proceedings against one of them, and expressed a decided view in favour of their conduct in the matters complained of. The Court was of opinion that a *prima facie* case, which called for an answer, was made out against the liquidator, and also against the two

directors:—Held (by Bacon, V.C., and by the Court of Appeal), that the case was one in which due cause was shewn for removing the liquidator. *Ibid*.

#### (6) Power to continue business.

29.—The Court cannot sanction a contract by the liquidator in carrying on the business of the company under the 95th section of the Companies Act, 1862, unless it is shewn that its object is the beneficial winding-up of the company, and that it is highly expedient for that purpose. Therefore, where the object of a proposed business contract was to facilitate the reconstruction of the company:—Held (reversing the decision of Mallins, V.C.), that the Court had no jurisdiction to sanction the contract. *In re The Wreck Recovery and Salvage Company* (App.), Law Rep. 15 Ch. D. 363.

#### (7) Power of surviving liquidator.

30.—Where a company is being wound up voluntarily under the Companies Act, 1862, the survivor of two joint liquidators has no power to affix the company's seal, unless such power is expressly reserved at the time of the appointment. *In re The Metropolitan Bank and In re The Vendor and Purchaser Act*, 1874, 45 Law J. Rep. Chanc. 525; Law Rep. 2 Ch. D. 366.

#### (c) Receiver.

31.—Receiver and manager of the property of a limited mining company appointed on interlocutory application. *Peck v. The Trimaran Coal, Iron and Steel Company*, 45 Law J. Rep. Chanc. 281; Law Rep. 2 Ch. D. 115.

*Discharge of receiver appointed for debenture holders.* [See RECEIVER, 6.]

#### (d) Creditors.

##### (1) Landlord's claim for rent.

###### (i) Claim for future rent.

32.—When a company in winding up is lessee of property for an unexpired term, the landlord's claim in respect of future rent is a claim of a certain and ascertained amount; and where the company is solvent the landlord is entitled to have set apart to indemnify him such a sum as by means of principal and interest will cover all future payments of rent during the term. *Oppenheimer v. The British and Foreign Exchange and Investment Bank*, 46 Law J. Rep. Chanc. 882; Law Rep. 6 Ch. D. 744.

33.—M. was second mortgagee of leaseholds which had been underlet; the underlease was assigned to a company. A claim by M. in the voluntary winding-up of the company to have a sum impounded to meet future rent was rejected. *In re The Westbourne Grove Drapery Company. Mann's Claim*, 46 Law J. Rep. Chanc. 525; Law Rep. 5 Ch. D. 248.

(ii) *Distress for rent.*

34.—A landlord is not by reason of his power of distress a secured creditor within the meaning of section 10 of the Judicature Act, 1875; and therefore the bankruptcy law permitting distress for one year's arrears of rent has not superseded the old rule in winding up. *In re The Coal Consumers' Association*, 46 Law J. Rep. Chanc. 501; Law Rep. 4 Ch. D. 625, and *In re The Bridgewater Engineering Company (Lim.)*, 48 Law J. Rep. Chanc. 389; Law Rep. 12 Ch. D. 181.

Circumstances under which possession of leasehold property by the liquidator of a company, being for the joint accommodation of the landlord and the company and not for the business of the liquidation, was held not to entitle the landlord to rent. *In re The Bridgewater Engineering Company (Lim.)*, supra.

35.—Where in the winding-up of a company the liquidator, for the convenience of the winding-up and with a view to the better realisation of the company's assets, retains possession of leasehold property belonging to the company, leave will be granted to the lessor of the company to distrain for rent which has accrued due to him after the commencement of the winding-up; but as to previous arrears of rent, he will not be allowed to distrain, but must prove in the winding-up. *In re The North Yorkshire Iron Company (Lim.)*; *ex parte Richardson, Johnson & Company*, 47 Law J. Rep. Chanc. 333; Law Rep. 7 Ch. D. 661.

36.—The 163rd section of the Companies Act, 1862, only applies to cases in which a creditor of the company is proceeding against the estate and effects of the company. Where, therefore, a superior landlord levied a distress for rent and seized the goods of a company in liquidation which were on the premises of his lessee, the company being in occupation of the premises under an arrangement with the lessee, but no assignment or underlease having been made to the company,—Held, that the superior landlord, not being a creditor of the company, could not be restrained from proceeding with his distress. *In re The Lundy Granite Company* (40 Law J. Rep. Chanc. 588) discussed and approved. *In re The Regent United Service Stores*; *ex parte Burke* (App.), 47 Law J. Rep. Chanc. 677; Law Rep. 8 Ch. D. 616.

(2) *Debenture holders: proof by.*

37.—A land company which was empowered by articles to borrow money for the purposes of the company, provided that the amount borrowed should not at any time exceed the amount of the unpaid subscribed capital, issued debentures whereby they bound "themselves and their successors and their real and personal estate" for payment of the sums advanced, with a proviso that the holders of the debentures should be entitled to be paid the principal and interest secured to them respectively *pari passu*. The company was in liqui-

dation, a provisional liquidator having been appointed on the petition of the company, and a resolution having been subsequently passed for a voluntary winding-up, which was continued under supervision. On a claim by debenture holders to be entitled to a primary charge on the company's property, including the uncalled capital,—Held, that the debentures were a charge on the real and personal estate of the company as it existed at the commencement of the winding-up, but not including the then uncalled capital, and that the debenture holders, so far as they failed to obtain payment in full out of the property comprised in their charge, could prove with the other creditors against the general assets. Held also, that the winding-up must be taken to have commenced at the date of the appointment of the provisional liquidator. *In re The Colonial Trusts Corporation*; *ex parte Bradshaw*, Law Rep. 15 Ch. D. 465.

38.—Shareholders who hold debentures purporting to charge all the property of a company which by its articles is empowered to mortgage all its property, have priority over the general creditors, and that although the register of debentures kept by the company be defective. *In re The General South American Company* (App.), Law Rep. 2 Ch. D. 337.

39.—By the debenture bonds of a railway company the undertaking and works were charged with the payment of the principal debt at the end of one year from the date of the bonds, with interest in the meantime at the rate of 6l. per cent. per annum. The bonds not having been paid at maturity the holders recovered judgment in an action for the principal, interest, damages and costs. The company was afterwards ordered to be wound up:—Held (affirming the decision of Bacon, V.C.), that the holders of the bonds could only prove for the amount of the judgment debt with interest at 4l. per cent. from the date of the judgment, and a claim to prove for the extra 2l. per cent. was disallowed. *In re The European Central Railway Company (Lim.)*; *ex parte The Oriental Financial Corporation* (App.), 46 Law J. Rep. Chanc. 57; Law Rep. 4 Ch. D. 33.

40.—The directors of a company had power to mortgage the property of the company, and to issue debentures; and otherwise to raise money for the purposes of the company. The directors issued 100 debentures for 250l. each at six per cent. interest; of which sixty were taken up at once at 95l. The other forty they placed in the hands of two directors in trust for the company. The directors then borrowed 8,000l. from the I. F. Association, as security, for which they mortgaged the forty debentures, and gave promissory notes for 10,000l., at ten per cent. interest. The notes were dishonoured. The debt to the I. F. Association was not paid; and the company was ordered to be wound up:—Held, that the I. F. Association was entitled to rank *pari passu* with the sixty debenture holders; but to prove on the forty debentures

for interest at six per cent. only; and for so much only of their whole debt as was actually due. *In re The Regent's Canal Ironworks Company (Lim.)*, 45 Law J. Rep. Chanc. 360; Law Rep. 3 Ch. D. 43; affirmed on appeal, 45 Law J. Rep. Chanc. 620; Law Rep. 3 Ch. D. 411.

(3) *Policy holders: proof by.*

*Insurance company: amalgamation: proof by policy holder.* [See G 4, 5, *supra*.]

*Proof for damages for breach of contract to allot fully paid-up shares.* [See D 72 *supra*.]

(4) *Secured creditors.*

(i) *Definition of.* [See H 46 *infra*.]

(ii) *Proof by.*

41.—The Judicature Act, section 10, does not make the rules in section 10 of the Bankruptcy Act, 1869, applicable to the winding-up of companies. *Moor v. The Anglo-Italian Bank*, Law Rep. 10 Ch. D. 681.

Where a petitioning creditor omits in his petition either to put a value on his security or to state his willingness to give up his security in the event of the debtor being adjudicated bankrupt, the security is not thereby forfeited. *Ibid*.

An injunction will not be granted to restrain an incumbrancer on immoveable property situate abroad from prosecuting proceedings in that country, even though the mortgagor be a company in liquidation, at all events if the party seeking the injunction can appear and assert his rights before the foreign Court. *Ibid*.

42.—The provisions of section 10 of the Judicature Act, 1875, as to the winding-up of insolvent companies, do not apply to companies that at the commencement of the Act were already in liquidation; and consequently the creditors of such companies are entitled to prove for the full amount of their claims without any deduction for securities held, although their claims were not admitted before the commencement of the Act. *In re Joseph Sucho and Company (Lim.)*, 45 Law J. Rep. Chanc. 12; Law Rep. 1 Ch. D. 49.

43.—The provisions of the 10th section of the Judicature Act, 1875, for the winding-up of insolvent companies according to the rules of Bankruptcy, do not apply to companies already being wound up, where the claims of the creditors have been ascertained and admitted prior to the commencement of the Act. *In re The Phoenix Bessemer Steel Company*, 45 Law J. Rep. Chanc. 11.

(5) *Preferential debts.*

44.—The 10th section of the Judicature Act, 1875, only assimilates the rules to be observed in winding up a company to those previously existing in bankruptcy so far as relates to the mode of proof, and the debts which may be proved. It does not extend to give to any debts

such right of preferential proof as they would have had in bankruptcy. *In re The Albion Steel and Wire Company (Lim.)*, 47 Law J. Rep. Chanc. 229; Law Rep. 7 Ch. D. 547.

45.—Arrears of income tax owing to a liquidating company are payable in priority to other debts. *In re Henley & Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 147; Law Rep. 9 Ch. D. 469.

(6) *Execution creditors.*

46.—Section 10 of the Judicature Act, 1875, by which in the winding-up of companies the same rules are to prevail "as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable," as prevail under the law of bankruptcy, renders the 87th section of the Bankruptcy Act, 1869, applicable to the winding-up of a company. Accordingly, if the property of a company be sold under an execution, and a winding-up petition be presented within fourteen days of the sale and a winding-up order made upon it, the proceeds of the sale must be handed over to the official liquidator. *In re The Printing and Numerical Registering Company (Lim.)*, 47 Law J. Rep. Chanc. 580; Law Rep. 8 Ch. D. 535.

The term "secured creditor" is not limited to one who holds a security by contract, but embraces the case of a security given by interposition of a Court. *In re The Albion Steel and Wire Company* (see No. 44 *supra*) distinguished. *Ibid*.

47.—The Court has a discretion under the Companies Act, 1862, to permit an execution put in force after the commencement of winding-up to be proceeded with. *In re The Railway Plant and Steel Company; ex parte Taylor*, 47 Law J. Rep. Chanc. 321; Law Rep. 8 Ch. D. 183.

An execution creditor who had not seized till after the petition had been presented was held entitled to the benefit of his execution where it appeared that the delay in his proceedings had been owing to representations and applications for indulgence on behalf of the company. *Ibid*.

The rules in winding-up as to execution creditors are not superseded under section 10 of the Judicature Act, 1875, by the rules in bankruptcy. *Ibid*.

*Leave to issue execution.* [See I 1 *infra*.]

(7) *Dismissal of action no bar to claim.*

48.—The dismissal for want of prosecution of an action brought against a company does not bar a claim, in respect of the same matter, in the winding-up of the company. *In re The Orrell Colliery and Fire Brick Company; Holt's Claim*, 48 Law J. Rep. Chanc. 655; Law Rep. 12 Ch. D. 681.

(8) *Compromise enforceable against.*

49.—The claim of a creditor in a winding-up was compromised:—Held, that there was jurisdiction to enforce that compromise against

the creditor by summons in the winding-up. *In re Gaudet, Frères (Lim.)*; *Leslie's Case*, 48 Law J. Rep. Chanc. 818; Law Rep. 12 Ch. D. 882.

(9) *Creditor shareholder, right of, to dividend.*

50.—In the winding-up of an unlimited company, a creditor shareholder, who has paid all calls which have become due, is entitled to receive dividends at the same time and at the same rate as the other creditors. The right of such a creditor is not affected by section 10 of the Judicature Act, 1875. *In re The West of England Bank; ex parte Brown*, 48 Law J. Rep. Chanc. 604; Law Rep. 12 Ch. D. 823.

(c) *Contributories.*

(1) *Person who has never contracted to take shares.*

51.—W. bought shares in the name of H., who was described in the transfer as a gentleman, but was, in fact, W.'s foreman, at wages of 2s. 2s. a week, his address being correctly given at W.'s factory; and the directors, who had power to disapprove of transferees, registered the transfer without objection. On the company being wound up,—Held, that as W. had never contracted with the company to take the shares, he could not be made a contributory in respect of them. *In re The Humber Ironworks and Shipbuilding Company*. *Williams's Case*, 45 Law J. Rep. Chanc. 48; Law Rep. 1 Ch. D. 576.

(2) *Contract to incur liability beyond the nominal amount of the shares.*

52.—By the memorandum of association of a company the liability of the shareholders was limited to 10s. per share; but by the articles it was provided that each shareholder for the time being should contribute towards payment of two debts, for which certain shareholders had given promissory notes, "according to the number of his shares." The company was being wound up, and payment of 15,000s. which was still due in respect of the said two debts had been demanded by the holders of the notes. The liability of holders of fully paid-up shares to contribute towards payment of this sum had been decided in *Macmillan's Case* (44 Law J. Rep. Chanc. 423; Law Rep. 20 Eq. 585), and M., a holder of 258 fully paid-up shares, was put on the list of contributories. The number of shares issued was 12,706, and the capital authorised by the memorandum had been called up. A call was now made upon M. and the other holders of fully paid-up shares for contribution towards the sum of 15,000s.:—Held (by Malins, V.C.), that M. was liable, so long as any part of the debt remained unpaid, to contribute with those who could pay, not in the proportion of 258 to 12,706, but in proportion to the number of those who for the time being were able to pay. But upon appeal it was held, varying this deci-

sion, that M. was only liable in the proportion of 258 to 12,706. *In re The Maria Anna and Steinbank Coal and Coke Company (Lim.)* (App.), 46 Law J. Rep. Chanc. 819; Law Rep. 6 Ch. D. 447.

(3) *Trustees of shares not on register.*

53.—On a sale of ironworks to a company payment was partly made in 1,000 shares of 50s. each, on which 40s. was considered as paid. A part of the agreement, which was incorporated in the articles of association, was, that these shares should be placed in the power of the company to secure a guarantee given by the vendor for payment of a dividend of ten per cent. for five years, and that this should be done by a transfer of these shares to trustees for the company; but it was expressly agreed that the trustees should not be registered as owners. The shares were issued to the vendor and remained in his name till the winding-up. A transfer of the shares was made to the trustees, but was not registered. On the winding-up the liquidator placed the trustees on the list of shareholders and contributories in respect of these shares:—Held, that they were improperly placed on such list, and that an order must be made for the removal of their names. *In re The West Hartlepool Iron Company (Lim.)*; *ex parte Gray*, 45 Law J. Rep. Chanc. 342; Law Rep. 1 Ch. D. 664.

(4) *Bankrupt or liquidating shareholder.*

54.—In the winding-up of a company neither can a shareholder who has become bankrupt or gone into liquidation, nor can the trustee under such bankruptcy or liquidation who has disclaimed in accordance with the 23rd section of the Bankruptcy Act, 1869, before any call has been made in the winding-up, be placed upon the list of contributories. *In re The West of England and South Wales District Bank; ex parte Budden and Roberts*, 48 Law J. Rep. Chanc. 764; Law Rep. 12 Ch. D. 288.

(5) *Husband of female shareholder.*

55.—Mrs. P., being absolutely entitled to twenty-six shares in the W. Bank, in May, 1878, married H., having previously executed a settlement of the shares, which, however, was never registered, and did not in any way come to the knowledge of the bank. In the winding-up H.'s name was put upon the list as a contributory in his own right. On a summons to vary the certificate,—Held, that, as under the 78th section of the Companies Act, 1862, H. was liable to contribute the same sum as his wife would have been liable to contribute if she had not married, and also as, under the 75th section of the same Act, such liability created a debt, H., upon his marriage, became a debtor to the company, and not merely the husband of a debtor, and therefore that the "Married Woman's Property Act (1870) Amendment Act, 1874," had no application, and that H. had rightly been put upon the

list as a contributory in his own right, but that the more proper mode of entering his name on the list would be as a contributory under the 78th section of the Companies Act, 1862. *In re The West of England and South Wales District Bank. Hatchor's Case*, 48 Law J. Rep. Chanc. 723; Law Rep. 12 Ch. D. 284.

(6) *Executrix of person who had signed memorandum of association.*

56.—In 1863 M. signed the memorandum and articles of association of a company for fifty shares, and agreed to become a director of it. He never had any shares allotted to him, never was placed on the register of shareholders, and never acted as a director. In 1864 the directors allotted all the shares in the company to other parties. In 1868 they declared eighty-nine of those shares forfeited. In 1869 M. died; and in 1874, on the winding-up of the company, his executrix was placed on the list of contributories:—Held, that her name must be removed, with costs. *In re The Tal-y-Drews Slate Company (Lim.)*. *Mackley's Case*, 45 Law J. Rep. Chanc. 158; Law Rep. 1 Ch. D. 247.

(7) *Directors of company.*

57.—The signing of the memorandum of association is conclusive as regards the number of shares agreed to be taken, but not as regards their quality, which may be afterwards varied. *In re The New Buxton Lime Company. Duke's Case*, 45 Law J. Rep. Chanc. 389; Law Rep. 1 Ch. D. 620.

The articles of association of a company, whose capital was divided into A, or ordinary, and B, or preference shares, provided that the qualification of a director should be the holding of fifty shares. D., a director, subscribed the memorandum of association for fifty B shares, but he subsequently applied for twenty-five B and twenty-five A shares, which were allotted to him in pursuance of an arrangement which was announced in the prospectus, that the directors should take one half of their subscriptions in ordinary shares instead of in B shares exclusively; and he was registered as the holder of twenty-five B and twenty-five A shares only. In the winding-up of the company,—Held, that D. was a contributory in respect of twenty-five B and twenty-five A shares only. *Fowler's Case* (42 Law J. Rep. Chanc. 9) doubted. *Ibid.*

*Liability of directors as contributories in respect of their qualifying shares.* [See D 7, 68 supra.]

(8) *Past members.*

58.—The name of a shareholder in an English company who was resident in India and was insolvent at the time of the winding-up order, but afterwards obtained his discharge, was placed on the list of contributories, the Court holding that his liability was not proveable in the Indian insolvency proceedings. *In re The East India*

*Cotton Agency. Furdonjee's Case*, Law Rep. 3 Ch. D. 624.

59.—Section 38 of the Companies Act, 1862, applies to a company registered under 7 & 8 Vict. c. 110, and afterwards compulsorily registered under section 209 of the Companies Act, 1862, and under the winding-up of such a company, a past member is liable to be placed on the B list of contributories in respect of shares held by him within a year previous to the winding-up. *The European Society Arbitration Acts. Ramsay's Case* (App.), 46 Law J. Rep. Chanc. 411; Law Rep. 3 Ch. D. 388.

(9) *Cancellation of shares.*

60.—The deed of settlement of a company which was originally established as a life assurance company, contained a power to effect insurances against every kind of risk which might be effected according to law, and might be thereafter determined upon, to amend the provisions of the deed, to increase or diminish the amount of capital, and to alter the objects, business and constitution of the company. In exercise of this power it was resolved to undertake fire insurance and guarantee business, and for that purpose new shares, called B shares, were issued to be specially appropriated to the new business. The company being afterwards advised that the new company was *ultra vires*, the B shares were cancelled and a new fire insurance company was formed, to which the assets and liabilities of the fire department of the old company were transferred. Upon the winding-up of the old company, the Court being of opinion upon the construction of the deed of settlement, that the undertaking of the new business and the issuing of the B shares were *intra vires*.—Held (affirming the decision of Bacon, V.C.), that the B shareholders were liable to be placed on the list of contributories as past members, and that the cancellation of the shares, though valid as a compromise of all claims between the B shareholders and the company, could not affect their liability in respect of debts contracted before the cancellation. *In re The Norwich Provident Insurance Society. Bath's Case* (App.), 47 Law J. Rep. Chanc. 601; Law Rep. 8 Ch. D. 334.

*Holders of shares which have been cancelled or surrendered.* [See D 84, 85 supra.]

*Transferees of shares: void amalgamation.* [See G 2 supra.]

(10) *Fire and life insurance: distinct departments.*

61.—It is perfectly lawful for a company, such as a fire and insurance company, to establish distinct departments with distinct shares for each class of business, and to contract with its policy-holders that they should have the right of resort to the fire or life assets respectively alone; and therefore, where this is the case, upon the winding-up of the company, the present

fire members being exhausted, the liquidator is entitled to make a call in respect of fire liabilities upon a past fire member without first calling upon present life members. *In re The Norwich Provident Insurance Society*. *Bath's Case*, 48 Law J. Rep. Chanc. 411; Law Rep. 11 Ch. D. 386.

62.—A fire and life insurance company established distinct departments, with distinct shares for each class of business, and contracted with its life and fire policy holders that they should respectively have the right of resort to the fire or life assets respectively alone. In the winding-up of the company the resources of the existing fire shareholders were exhausted. The liquidator having made a call on the past fire shareholders in respect of the unsatisfied fire liabilities, although there were existing solvent life shareholders,—Held, that whatever the equities between the fire and life shareholders and their respective creditors might ultimately be *inter se*, no call could in the first instance be made on past fire shareholders until all the existing solvent life members had been exhausted. *In re The Norwich Provident Insurance Society*. *Heaketh's Case* (App.), 49 Law J. Rep. Chanc. 288; Law Rep. 13 Ch. D. 693.

(11) *Mutual insurance association : outside debts.*

63.—An unregistered mutual marine insurance association was ordered to be wound up. Eighty persons were settled on the list of contributories, and a certificate was made shewing that 500*l.* was due to outside creditors of the association, and upwards of 17,000*l.* to policy holders. Two years afterwards the debts to policy holders were expunged, on the ground that the policies were void in law. The official liquidator proposed to make a call of 135*l.* per contributory for the purpose of paying the outside debts and costs of the winding-up, which amounted to upwards of 7,000*l.*, and had been incurred principally in calculating what was due on the policies which had been declared void :—Held, that the Court was precluded by the certificate, that the outside debts were debts of the association, from entering into the question whether such debts were debts of the association or of the persons individually who ordered the particular goods or services; but *Semble*, they were debts of the association.—Held also, that the liability to contribute was equal. *The London Marine Insurance Association* (38 Law J. Rep. Chanc. 681) considered. *In re The Arthur Average Association*, 45 Law J. Rep. Chanc. 346; Law Rep. 3 Ch. D. 522.

(12) *Compromise with liquidator : application of sums received by way of compromise.*

64.—By the deed of settlement of an unregistered life assurance company it was provided that the liability of the shareholders in respect of policies should be limited to the subscribed capital. At the time of the winding-up of the

society, which happened in 1869, 9*l.* per share of the subscribed capital remained uncalled up, and in 1870 a call of this 9*l.* per share was made. In 1873 a further call of 12*l.* per share was made, it having been ascertained that a call to that amount would, with the 9*l.* per share, pay the debts of the society. Compromises were entered into by the liquidator with certain of the contributories who were unable to pay the calls in full :—Held, that where the compromise was for 9*l.* per share or less, the whole of the sum received by way of compromise was to be carried to the account of policy holders, and that where the sum received by way of compromise amounted to more than 9*l.* per share, then a sum equivalent to 9*l.* per share was to be carried to the account of the policy holders, and the residue was to be applied to the payment of the general creditors of the society. *In re The International Life Assurance Society*, 47 Law J. Rep. Chanc. 88; Law Rep. 7 Ch. D. 568.

65.—The I. Life Assurance Society was a company of which the liability to general creditors was unlimited, but its liability to policy holders was limited to the amount of the share capital. A general creditor of the company who had a charge for his debt upon the share capital having been paid his whole debt thereout,—Held, that the policy holders were not entitled to have the assets marshalled, so as to throw any portion of the burden upon the general assets in relief of the share capital. *In re The International Life Assurance Society* (App.), 45 Law J. Rep. Chanc. 766; Law Rep. 2 Ch. D. 476.

(13) *Set off.*

(i) *Of debt against calls.*

66.—In the winding-up of a limited company the rule which prevents contributories from setting off debts due to them from the company against the amount due from them for calls, applies equally whether the winding-up be compulsory or voluntary.—Observations on *The Brighton Arcade Company v. Dowling* (37 Law J. Rep. C.P. 125; Law Rep. 3 C.P. 175). *In re Whitehouse & Company*, 47 Law J. Rep. Chanc. 801; Law Rep. 9 Ch. D. 595.

The question of set-off under the Winding-up Acts considered. *Ibid.*

67.—A shareholder in an unlimited company in the course of winding-up under the order of the Court, who is also a creditor of the company, is not entitled to set off the debt due to him from the company against the calls made upon him in the winding-up.—*In re The International Life Assurance Company*. *Gibbs and West's Case* (39 Law J. Rep. Chanc. 667; Law Rep. 10 Eq. 312) not followed. *In re The West of England and South Wales District Bank; ex parte Brannwhite*, 48 Law J. Rep. Chanc. 463.

68.—The rule that a contributory cannot set off a debt due to him from the company against calls made in the winding-up, is not affected by the 10th section of the Judicature Act, 1875.

*In re The General Works Company (Lim.). Gill's Case*, 48 Law J. Rep. Chanc. 774; Law Rep. 12 Ch. D. 755.

(ii) *Of debt against assets in hands of contributory.*

69.—At the commencement of the winding-up of A., an insolvent company, some of the assets were in the hands of another company, B., which afterwards (with notice of the winding-up) applied them in payment in full of certain debts owing by A.:—Held, that B. could not set off these payments in accounting to the liquidator for the assets in its hands. *In re The United Ports and General Insurance Company; ex parte The Etna Insurance Company*, 46 Law J. Rep. Chanc. 403.

In liquidation, as in bankruptcy, there is no set-off of mutual debts and credits in respect of transactions subsequent to the commencement of the winding-up. *Ibid.*

(14) *Scottish order: calls.*

70.—Where, in the winding-up of a company by the Court of Session in Scotland, an order for a call has been made by that Court, and it has become necessary to enforce the call against contributories resident in England, the order must be made an order of the Chancery Division in England. *In re The Holliford Copper Mining Company* (Law Rep. 5 Ch. 93) followed. *In re The City of Glasgow Bank*, Law Rep. 14 Ch. D. 628.

(f) *Service.*

71.—Leave granted to serve summons under sections 100 and 165 of the Companies Act, 1862, on officers of a company in Glasgow or elsewhere in Scotland. *In re The British Imperial Corporation*, Law Rep. 5 Ch. D. 749.

72.—Service of a winding-up petition on a person authorised by the directors to accept service held sufficient, although not effected at the registered office of the company. *In re The Regent United Service Stores Association (App.)*, Law Rep. 8 Ch. D. 75.

(g) *Appeals and rehearings.*

(1) *Jurisdiction to entertain.*

73.—The European Arbitration Amendment Act, 1875 (section 3), provides that an appeal shall not lie from any determination or order given or made previous to the passing of the Act by the arbitrator, unless he expressly certifies in writing that by reason of differences between previous decisions on matters of principle it is desirable that an appeal be brought:—Held, that the Court, in the absence of such an express certificate, had no jurisdiction to entertain an appeal in respect to certain respondents to a special case, on appeal from the arbitrator, whose rights had been previously decided, but had been again reviewed by the arbitrator. *In re The European Assurance*

*Society Arbitration. The British Commercial Insurance Company v. The British Nation Life Assurance Association (App.)*, 48 Law J. Rep. Chanc. 118.

(2) *Time for.*

74.—An order was made in chambers placing D.'s name on the list of contributories. An objection to a summons by D. to have his name removed was allowed, because it was not taken out within three weeks. *In re The Elham Valley Railway Company. Dickson's Case*, 48 Law J. Rep. Chanc. 766; Law Rep. 12 Ch. D. 298.

75.—An appeal must be set down for hearing before the day named in the notice of motion, or, if the Court is not then sitting, before the next day of its sitting. *In re The National Funds Assurance Company (App.)*, 46 Law J. Rep. Chanc. 183; Law Rep. 4 Ch. D. 305.

An appeal from a winding-up order must be brought within twenty-one days from the making of the order. *Ibid.*

76.—T. had been placed on the list of contributories of a company under an order of the Judge of the Stannaries Court. On the last day, limited by Order LVIII. rule 15, for appealing, T.'s solicitor gave a proper notice of appeal. Four days afterwards T.'s solicitor, thinking that the notice of appeal was irregular, withdrew it, and two days after gave another notice of appeal. The respondent having objected that the appeal was out of time,—Held, that the above circumstances, and the fact that the respondent had never really been without notice of a *bona fide* intention to appeal, constituted special circumstances entitling the appellant to an extension of the time for appealing. *In re The Ambrose Lake Tin and Copper Company (Lim.). Clarke's Case; Taylor's Case (App.)*, 47 Law J. Rep. Chanc. 696; Law Rep. 8 Ch. D. 635, 643.

(3) *Admission of new evidence.*

77.—When a person standing in a fiduciary relation to a company is charged with a misfeasance, and a *prima facie* case is raised against him, the *onus* is on him to prove the *bona fides* of the transaction; and, as a general rule, he will not be allowed on appeal, if there is no record of the transaction or other corroborative evidence, to give further parol evidence in his own favour. He should prove his case with the utmost particularity from the outset. *In re The West Jewell Tin Mining Company. Weston's Case (App.)*, 48 Law J. Rep. Chanc. 425; Law Rep. 10 Ch. D. 579.

(h) *Discovery and production of documents.*

78.—A member of a company required to answer interrogatories is not entitled to payment of his costs previously to filing his answer. *Berkeley v. The Standard Investment Company*, 49 Law J. Rep. Chanc. 1; Law Rep. 13 Ch. D. 97.

The proper course in such a case is for the



solicitor of the company to prepare the answer and to charge the costs of preparing it in his bill of costs against the company. *Ibid.*

Decision of Fry, J. (48 Law J. Rep. Chanc. 797; Law Rep. 12 Ch. D. 295) reversed. *Ibid.*

79.—Notice to produce documents referred to in a party's pleadings or affidavits must be made in the mode and form prescribed by Order XXXI. or an equivalent form, in order to entitle the applicant to an order for inspection under Rule 17. Therefore where one party gave notice to another to produce certain documents for his inspection the following day; and upon attending the following day was refused inspection,—Held, that this refusal was not such an objection to give inspection as entitled the applicant to an order. *In re The Credit Company (Lim.)*, 48 Law J. Rep. Chanc. 221; Law Rep. 11 Ch. D. 256.

Where a company, respondent to a petition, filed an affidavit stating certain figures alleged to be taken from the books of the company,—Semble, that an application by the petitioner to inspect "the books of the company referred to in the affidavit," sufficiently described the documents of which inspection was sought. *Ibid.*

Under section 43 of the Companies Act a member is entitled to inspect the register of mortgages not only in person but also by his solicitor. *Ibid.*

(i) Stay or transfer of proceedings against company.

80.—An application to transfer an action against a company to the Judge who has made a winding-up order may be made *ex parte*. *In re The Landore Siemens Steel Company*, Law Rep. 10 Ch. D. 489.

81.—In all winding-up cases applications to stay proceedings in actions commenced against the company in liquidation should be made to that divisional Court of the Chancery Division of the High Court in which the liquidation is proceeding. *Kinchurch v. The People's Garden Company (Lim.)*, 45 Law J. Rep. C.P. 131; Law Rep. 1 C.P. D. 45; *Garbutt v. Farnous*, 45 Law J. Rep. Chanc. 130; Law Rep. 1 Ch. D. 155; and *In re The Rivers Protection and Manure Company (Lim.)*, 45 Law J. Rep. Chanc. 132; Law Rep. 1 Ch. D. 253.

But see *contra*, *Walker v. The Banagher Distillery Company (Lim.)*, 45 Law J. Rep. Q.B. 134; Law Rep. 1 Q.B. D. 129; and *In re The People's Garden Company (Lim.)*, 45 Law J. Rep. Chanc. 129; Law Rep. 1 Ch. D. 44. [But see now Order LI. r. 2a.]

82.—An action was commenced by a shareholder in a company against the company and the directors for issuing a fraudulent prospectus. Before the commencement of the action the company went into voluntary liquidation. An affidavit was filed shewing the company was insolvent. On a motion by the liquidator to restrain the action against the company because it could be of no use, and could only result in needless costs,—Held, the action was pro-

perly framed, and motion refused with costs. *Hall v. The Old Talargoch Lead Mining Company (Lim.)*, 45 Law J. Rep. Chanc. 775; Law Rep. 3 Ch. D. 749.

83.—The Court that has made an order to wind up a company under the Companies Act, 1862, has jurisdiction, under the 87th section, to restrain any action in any part of the United Kingdom against the company, and such orders, if made, may be enforced under the 122nd section in other parts of the United Kingdom. *In re The International Pulp and Paper Company*, 45 Law J. Rep. Chanc. 446; Law Rep. 3 Ch. D. 594.

84.—An action having been brought against a company in which the record was withdrawn, and a winding-up petition, which was dismissed, and also a claim which was disallowed, with subsequent winding-up, all being founded on a rescinded agreement, the rescission of which was alleged to be fraudulent, a second claim was made in the winding-up, as on a *quantum meruit*, for the services performed, and was expended (in fact) under the agreement, though the agreement itself was not mentioned in the claim:—Held (reversing the decision of Bacon, V.C.), that the last claim being on a new basis, proceedings thereunder could not be stayed until payment of the costs of the action and winding-up petition. But held, that the case of a person making successive claims as creditor in a winding-up for substantially the same matter, though under varied aspects, was different, and proceedings stayed till costs were paid of the first claim. *In re The United Kingdom Electric Telegraph Company (Lim.)*. *Allan's Executors' Claim* (App.), 45 Law J. Rep. Chanc. 366.

85.—The plaintiffs brought an action in the Queen's Bench Division against the defendant company, after a resolution to wind up the latter had been passed and confirmed, for the purpose of recovering a sum of money for goods supplied. On an application by the liquidator to the Court to stay the action, under the provisions of 36 & 37 Vict. c. 66. s. 24, sub-s. 5, it appeared that there were no funds capable of being distributed among the creditors, the assets being barely sufficient to cover the liquidator's own costs. The Court nevertheless made the order, staying the proceedings in favour of the liquidator. *Rose v. The Gardden Lodge Coal, Coke and Firebrick Company (Lim.)*, 47 Law J. Rep. Q.B. 338; Law Rep. 3 Q.B. D. 235.

86.—In the absence of special circumstances, a mortgagee, who has commenced an action against a company to realise his security, ought to have leave to proceed under section 87, unless the relief which he would get in the action is given to him in the winding-up. *In re David Lloyd & Company*. *Lloyd v. David Lloyd & Company* (App.), Law Rep. 6 Ch. D. 839.

87.—If an action is brought against a limited company in one of the common law divisions, an application under section 85 of the Companies Act, 1862, to stay any proceeding in the

action including execution on the judgment pending a winding-up petition in the Chancery Division, should be made in the division to which the action is attached, and not in the Chancery Division. *In re The Perkins Beach Lead Mining Company* (Law Rep. 7 Ch. D. 871), disapproved of. *In re The Artistic Colour Printing Company*, 49 Law J. Rep. Chanc. 526; Law Rep. 14 Ch. D. 502.

*Incumbrances on immovable property situated abroad.* [See No. 41 supra.]

*Secured creditor: garnishes order nisi not served.* [See ATTACHMENT, 12.]

(k) *Witnesses, examination of under section 115.*

88.—A liquidator and directors of a company who had been summoned under the 115th section of the Companies Act, 1862, to attend for examination, appealed to discharge the order summoning them:—Held, that the discretion of the Judge in the Court below under that section, when the matter was within the terms of the section, could not be interfered with, and the appeal was dismissed. *In re The Gold Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 650; Law Rep. 12 Ch. D. 77.

Held (per Jessel, M.R., and Baggallay, L.J.), that a witness summoned under that section had no *locus standi* for appealing against the order summoning him to attend. Where a contributory applies under that section he must give notice to the liquidator, who is *dominus litis*, and has a prior right to make such application himself. The liquidator on such application need not give notice thereof to any one. It is not necessary, on an application under this section, to make out a *prima facie* case; the probability of a case is sufficient. A witness summoned under this section differs from a witness in an ordinary litigation only in this, that the power to summon him is exercised not by the litigant, but by the Court. The meaning of the section is to assimilate the practice of winding-up to the practice in bankruptcy. Practice of the liquidator on applying under the section. *Ibid.*

89.—The examination of a witness before the examiner is a private examination at which no person has a right to be present, except the parties and their counsel, solicitors or agents. *In re The Western of Canada Oil, Land and Works Company*, 46 Law J. Rep. Chanc. 683; Law Rep. 6 Ch. D. 109.

The members of a mercantile firm were summoned to attend before the examiner and be examined on behalf of the official liquidator of a limited company, pursuant to the 115th section of the Companies Act, 1862:—Held, that the confidential clerk on commission of the firm, who appeared to be one of the parties principally concerned in the transaction under enquiry, and might have to be called as a witness, was not entitled to be present during the examination in the capacity of agent of the firm. *Ibid.*

90.—A company in liquidation had acquired by arrangement with a contributory his claim against third parties for indemnity in respect of certain shares; and was prosecuting the claim in an action with the leave of the Court. The defendants were on the application of the official liquidator summoned to give evidence under sections 115, 117, touching the matters in question in the action. *In re The Accidental and Marine Insurance Company. Morcati's Case* (37 Law J. Rep. Chanc. 56; Law Rep. 5 Eq. 22) questioned. *Massey v. Allen*, 47 Law J. Rep. Chanc. 102; Law Rep. 9 Ch. D. 164.

91.—Where a witness in a winding-up who had been several times examined by a special examiner appointed by consent under 25 & 26 Vict. c. 89, s. 115, refused to attend any further, on the ground that his evidence might be used against him in an action in which he was the defendant commenced before the appointment of the examiner:—Held, that the witness must attend. *In re The Lisbon Steam Tramways Company*, Law Rep. 2 Ch. D. 575.

(l) *Costs.*

(1) *Of petitioner.*

92.—A petition to wind up a company was presented by a judgment creditor, and the solicitor of the company having written in answer to a demand for payment that the company had no assets in this country on which to levy, he did not issue execution. The company subsequently paid the debt, and no winding-up order was made on the petition:—Held, that the company must be taken to have been unable to pay its debts under section 80 of the Companies Act, 1862, and must pay the costs of the petitioner. *In re The Flagstaff Silver Mining Company (Lim.)*, 45 Law J. Rep. Chanc. 136.

(2) *Of opposing creditor.*

93.—A creditor who had presented a winding-up petition elected to dismiss it at the hearing:—Held, that creditors who had not been served, and appeared in consequence of the advertisements to oppose a winding-up order, were entitled to their costs of appearance. *In re The Patent Cocoa Fibre Company*, 45 Law J. Rep. Chanc. 207; Law Rep. 1 Ch. D. 617.

94.—When a shareholder's winding-up petition is advertised in the usual way, creditors have a right to appear and support or oppose, and successful creditors are entitled to one set of costs. *In re The New Gas Company* (App.), Law Rep. 5 Ch. D. 703.

95.—If a creditor appears on a winding-up petition without reasonable ground, or merely to ask for his costs, he will not be allowed any costs. *In re The Hull County Bank*, Law Rep. 10 Ch. D. 130.

(3) *Of official liquidator.*

96.—An official liquidator who has failed on a summons to recover money for the company,

and has been ordered to pay the costs of the summons out of the assets of the company, will be paid such costs out of the assets in priority to the costs of winding-up. *In re The Home Investment Society*, Law Rep. 14 Ch. D. 167.

(4) *Security for costs of appeal.*

97.—A company appealed against a winding-up order, after the appointment of an official liquidator:—Held, that the company was not precluded from appealing after such appointment; but the Court desired it to be understood for the future that when an appeal against a winding-up order absolute is presented by the company itself, and no one is responsible for costs, the Court will be ready to entertain an application for security for costs. *In re The Diamond Fuel Company* (App.), 49 Law J. Rep. Chanc. 301; Law Rep. 13 Ch. D. 400.

(5) *Of respondent.*

98.—Where upon an unopposed petition for winding-up the petitioners' solicitors instructed separate counsel to appear for respondent creditors and contributories, it not appearing that there had been any reasonable assurance of opposition, these respondents were not allowed their costs. *In re The Military and General Tailoring Company*, 47 Law J. Rep. Chanc. 141.

(6) *Of winding up: compromise with contributories.*

99.—An insurance company of unlimited liability, registered under 7 & 8 Vict. c. 110, granted policies of insurance, by which the insured had no claim against the shareholders beyond the amounts unpaid on their shares. In 1868 the company was ordered to be wound up, and the whole of the unpaid capital was called up and applied in paying the debts of the company. Some of the shareholders entered into compromises with the liquidator, in manner provided by the Companies Act, 1862, s. 160, and Rules of 1862, Schedule III. Form 50. The amount received under the compromises was less than the amount remaining unpaid on the shares of the compromising contributories. A further sum being required to pay the costs of the winding-up, the liquidator took out a summons that a call might be made on the contributories, other than those who had compromised:—Held, that the whole of the sums received from contributories who had compromised were applicable in payment of the debts, and that the further sum required for payment of the costs of the winding-up was to be provided by those contributories only who had not compromised. *In re The Accidental Death Insurance Company*, 47 Law J. Rep. Chanc. 396; Law Rep. 7 Ch. D. 568.

(7) *Of action before winding up.*

100.—Where two shareholders in a company, on behalf of themselves and all other

shareholders, brought an action to impeach a contract made with the company on the ground of fraud, and before the trial the company was wound up, and the plaintiffs not having obtained leave in the winding-up to carry on the action, the action at the trial was dismissed by consent without costs:—Held, that the Court had no jurisdiction to order the plaintiffs' costs to be paid out of the assets in the winding-up, although the Judge who heard the action certified that the action was for the benefit of the company, and gave liberty to the plaintiffs to apply in the liquidation for their costs. *In re The Hull Central Drapery Company* (App.), Law Rep. 15 Ch. D. 326.

(m) *Voluntary winding-up.*

(1) *Appointment of mortgagees as receivers and managers.*

101.—A colliery company, which held its property under a lease mortgaged for its full value to the vendors, went into voluntary liquidation. The liquidator had no means of carrying on the business. Under these circumstances the Court, in order to avoid great loss to the property and the forfeiture of the lease, appointed the mortgagees receivers and managers without security and without salary. *Boyle v. The Bettres Llantwit Colliery Company (Lim.)*, 45 Law J. Rep. Chanc. 748; Law Rep. 2 Ch. D. 726.

(2) *Notice of meeting.*

102.—A notice of meeting under 25 & 26 Vict. c. 89, s. 129, sub-s. 3, must state that it is intended to propose a resolution that the company is unable by reason of its liabilities to continue its business. *In re The Silkestone Hall Colliery Company* (App.), Law Rep. 1 Ch. D. 38.

(3) *Effect of: time: jurisdiction of court.*

103.—Unless a voluntary winding-up and dissolution can be impeached for fraud the Court has no jurisdiction under 25 & 26 Vict. c. 89, s. 145, to wind up a company voluntarily wound up and dissolved, after the expiration of the three months mentioned in section 144. *In re The London and Caledonian Marine Insurance Company* (App.), Law Rep. 11 Ch. D. 140.

(4) *Continuation of, under supervision.*

104.—An order to continue the voluntary winding-up of a company, subject to the supervision of the Court, under section 147, cannot be made except on the petition of the company, a creditor or a contributory, under section 82. *In re The Pen-y-van Colliery Company*, 45 Law J. Rep. Chanc. 390; Law Rep. 6 Ch. D. 477.

A claim against a company for unliquidated damages in respect of fraudulent misrepresentations does not entitle the claimant to present a petition as a creditor for winding up the company either by the Court or under supervision. *Ibid.*

(5) *Sale or transfer of business.*

105.—Where a limited company is being wound up voluntarily, and a special resolution has been passed under section 161 of the Companies Act, 1862, for the transfer or sale of its business to another company, the requisition to the liquidators under that section by any dissentient member of the company in liquidation, "either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient," must, as well as the notice of dissent given to the liquidators, be in writing, and left at the office of the company, not later than seven days after the date of the meeting at which the special resolution was passed. *In re The Union Bank of Kingston-upon-Hull*, 49 Law J. Rep. Chanc. 264; Law Rep. 13 Ch. D. 808.

The liquidators in a voluntary winding-up may apply to the Court, under section 138 of the Companies Act, 1862, to determine any question of difficulty fairly arising in the winding-up, and any such application may be made by motion. *Ibid.*

106.—Where a company in voluntary liquidation enters into an arrangement under section 161 of the Companies Act, 1862, for the transfer of its business and assets to another company, the transaction, although it may be *ultra vires*, cannot be impeached by creditors after the expiration of the twelve months limited by the section. *In re The City and County Investment Company (Lim.)*, (App.), 49 Law J. Rep. Chanc. 195; Law Rep. 13 Ch. D. 476.

(6) *Closing of.*

107.—The 145th section of the Companies Act, 1862, which saves the right of a creditor to have a compulsory winding-up, if he is prejudiced by a voluntary winding-up, only applies to a creditor who comes to the Court before the dissolution of the company and shews that his rights are being prejudiced. After the time limited by section 145 for the final dissolution of a company, the Court has no jurisdiction to open the voluntary winding-up and make a compulsory order, except, it may be, on the ground of fraud. *See*, *quære*, whether the proper remedy in such a case for the party prejudiced by the winding-up is not an action for damages against the parties personally guilty of the fraud. *In re The Pinto Silver Mining Company (Lim.)*, (App.), 47 Law J. Rep. Chanc. 591; Law Rep. 8 Ch. D. 273; reported in Court below, 48 Law J. Rep. Chanc. 777.

*Without supervision: application to, of rule as to repudiation of shares bought under fraudulent representation.* [See D 78 *supra*.]

(7) *Examination of witness.*

108.—A voluntary liquidator who applies to the Court, under the 138th section of the Companies Act, 1862, for a summons under the 115th section to examine a person in respect of the affairs of the company, is not entitled as of

right to the summons, but must satisfy the Court that it will be just and beneficial for the purposes of the winding-up. *In re The Metropolitan Bank. Heiron's Case* (App.), 49 Law J. Rep. Chanc. 651; Law Rep. 15 Ch. D. 139.

Where a voluntary liquidator has brought an action, on behalf of the company, against an officer of the company, and has exhibited interrogatories which have been fully answered, he will not be entitled to a summons under the 115th section, for the examination of the defendant, unless he satisfy the Court that, notwithstanding the interrogatories already exhibited, he has a strong case for a further examination. *Ibid.*

*Application to, of rule as to set-off by contributories.* [See H 66 *supra*.]

## (I) SCHEME OF ARRANGEMENT UNDER COMPANIES' ARRANGEMENT ACT, 1870.

1.—Section 10 of the Judicature Act, 1875, does not incorporate the rules of bankruptcy into winding-up proceedings, except for the purpose of administering assets, and section 87 of the Bankruptcy Act, 1869, does not apply to a winding-up. Where a judgment creditor has been induced to stay his hand by the representations or prayer of a company, he will be allowed, notwithstanding the intervention of a compulsory winding-up order (whether made on the contributories, the companies, or a creditor's petition) to issue execution. The Court refused to sanction a compromise under the Companies' Arrangement Act, 1870, on the ground that a judgment creditor would be prejudiced. It is immaterial whether the sanction of the Court be given before or after the assent of the company to such a compromise. *In re Richards & Company*, 48 Law J. Rep. Chanc. 555; Law Rep. 11 Ch. D. 676.

2.—Where there is an honest arrangement between a company and its creditors under the provisions of the Companies Act, 1862, and of the Joint Stock Arrangement Act, 1870, and the transaction is beneficial for all parties, and manifestly right in substance, the Court will not be astute to find out any little technical defects, if any such there be, in the proceedings; and it is immaterial in what particular order the assents required by the Acts are given, so long as they are duly obtained by the requisite majorities. *In re Dynevor Duffryn and Neath Abbey Collieries Company (Lim.)* (App.), 48 Law J. Rep. Chanc. 314; Law Rep. 11 Ch. D. 605.

3.—Under 33 & 34 Vict. c. 104. s. 2 the sanction of three-fourths in value of the creditors of a company, present at the meeting, to a proposed arrangement is sufficient. *In re The Bessemer Steel and Ordnance Company*, Law Rep. 1 Ch. D. 251.

## COMPOSITION DEED.

1.—When an insolvent debtor makes a general arrangement with his creditors a private stipulation by one creditor for future payments by

the debtor on account of his debt, *ultra* the composition, is so far in law fraudulent that money subsequently paid thereunder can be recovered back by the debtor. *In re Lonsberg's Policy*, 47 Law J. Rep. Chanc. 178; Law Rep. 7 Ch. D. 650.

2.—A debtor having assigned certain policies as security to the defendants, afterwards executed a composition deed registered under the Bankruptcy Act, 1861, whereby his creditors released him from their debts in consideration of a payment of 10s. in the pound, and it was provided that nothing therein contained should prevent any creditor from enforcing any charge or lien on any estate and effects whatsoever, or from suing any other person than the debtor; and also that as to any debts for which any creditor held any charge or lien on the estate and effects of the debtor, such creditor should be entitled to the composition on such debt after deducting the value of such charge or lien. The defendants valued their security at 16l. and received 10s. in the pound on the balance of their debt; but the debtor having since died, they claimed to retain their debt in full out of the proceeds of their security.—Held, that the administratrix of the debtor was entitled to redeem the policies on payment of 16l. and premiums, and interest at 5l. per cent. *Bolton v. Ferro*, 49 Law J. Rep. Chanc. 569; Law Rep. 14 Ch. D. 171.

*Liability of surety.* [See BANKRUPTCY, L 29.]

*Staying proceedings: jurisdiction.* [See BANKRUPTCY, A 12.]

#### COMPOUNDING FELONY.

[See BANKRUPTCY, B 11, D 37.]

#### COMPROMISE.

1.—A judgment having been taken by consent against the defendant, the plaintiff afterwards entered into a compromise which was favourable to the defendant. On motion by the plaintiff to carry out the judgment.—Held, that a new action ought to have been brought to set aside the compromise. That objection, however, having not been taken in the Court below, the Court of Appeal set aside the compromise on the motion. *Gilbert v. Endean* (App.), Law Rep. 9 Ch. D. 269.

2.—Consent to a compromise of an action fairly come to in open Court after the plaintiff's case was opened cannot be withdrawn even before the order is passed. *Davis v. Davis*, 49 Law J. Rep. Chanc. 241; Law Rep. 13 Ch. D. 861.

3.—The plaintiff commenced an action in the Common Pleas Division to recover money from the defendant, and this action was compromised for an agreed sum. The plaintiff had also commenced an action in the Chancery Division to establish a lien in respect of the same matter on a fund in Court belonging to the defendant,

and a sum had been set apart to provide such lien.—Held, that the compromise of the Common Pleas action could be enforced on motion to pay to the defendant the agreed sum out of the fund in the Chancery Division. *Scully v. Lord Dundonald* (App.), Law Rep. 8 Ch. D. 658.

4.—Under section 24 of the Judicature Act, 1873, an agreement between the parties to an action to stay proceedings upon terms can be enforced in the action. *Edon v. Naish*, 47 Law J. Rep. Chanc. 325; Law Rep. 7 Ch. D. 781.

*By executors of debt of one of them.* [See EXECUTOR, 13, 18.]

*Retraction: intervention of Court.* [See MISTAKE, 2.]

*Trustee in bankruptcy, by.* [See BANKRUPTCY, F 58.]

*Winding-up of company, in.* [See COMPANY, H 49, 64, 99.]

#### COMPTROLLER IN BANKRUPTCY.

[See BANKRUPTCY, M 7, 16.]

#### COMPULSORY PILOTAGE.

[See SHIPPING LAW, B 1-6.]

#### CONCEALMENT.

[See FRAUD.]

*Contract of insurance: material fact.* [See MARINE INSURANCE, 2.]

*In prospectus of company.* [See COMPANY, A 9.]

*Discharge of surety.* [See PRINCIPAL AND SURETY, 1.]

*Proposal for life policy.* [See INSURANCE, 2.]

#### CONDITION.

- (A) CONDITION IN RESTRAINT OF ALIENATION.
- (B) CONDITION IN RESTRAINT OF TRADE.
- (C) CONDITION IN RESTRAINT OF MARRIAGE.
- (D) IMPOSSIBLE CONDITION.
- (E) CONDITION PRECEDENT.

(A) CONDITION IN RESTRAINT OF ALIENATION.  
*Cesser of annuity on bankruptcy.* [See ANNUITY, 3-5.]

[And see FORFEITURE, 1-3.]

*Gift over in event of Crown becoming entitled.*  
[See SETTLEMENT, 16.]

(B) CONDITION IN RESTRAINT OF TRADE.

[See COVENANT, 6-10.]

(C) CONDITION IN RESTRAINT OF MARRIAGE.  
*Second marriage of man.* [See WILL CONSTRUCTION, O 6.]

*Different rule of construction in gifts of realty and personalty.* [See WILL CONSTRUCTION, O 7.]

**(D) IMPOSSIBLE CONDITION.**

[See POWER 7; WILL CONSTRUCTION, L 7.]

**(E) CONDITION PRECEDENT.**

1.—F., being about to employ M. in a situation of trust, effected a policy with a Guarantee Company to secure himself against fraud by embezzlement of money by M. By the policy, which was for 1,000*l.*, it was declared that, "subject to the conditions herein contained, which shall be conditions precedent to the right on the part of the employer to recover under the policy," the company undertook to reimburse any pecuniary loss sustained by the employer from "the fraud or dishonesty of the employed, as should amount to embezzlement of money, as should be discovered within three months of the death, dismissal, or retirement of the employed;" but with a proviso as follows: "Provided that the employer shall if, and when, required by the company (but at the expense of the company, if a conviction be obtained), use all diligence in prosecuting the employed to conviction for any fraud or dishonesty (as aforesaid) in consequence of which a claim shall have been made under this policy, and shall, at the company's expense, give all information and assistance to enable the company to sue for and obtain reimbursement, by the employed, or by his estate, of any moneys which the company shall have become liable to pay." In an action by F., claiming under this policy a sum of money alleged to have been lost by M.'s embezzlement, the directors pleaded that they had required F. to prosecute M., but that F. had not done so. Demurrer, because it did not appear that there was any obligation for F. to prosecute M., or that the non-performance of any such obligation was a condition precedent to F.'s right to recover:—Held (reversing the judgment of the Court below, the Lord Chancellor, Lord Selborne, *dissentiente*), that the proviso did constitute a condition precedent and furnished a defence to the action. *The London Guarantee Company v. Fearnley* (H. L. Ir.), Law Rep. 5 App. Cas. 911.

*Contract for personal services: theatrical engagement.* [See CONTRACT, 30, 31.]

*Covenants to take and supply beer.* [See COVENANT, 15.]

*Return of deposit by railway company.* [See CONTRACT, 32.]

*Sale of goods: description of article: cargo.* [See SALE, 4.]

*Sale of land: time of the essence of the contract.* [See VENDOR AND PURCHASER, 16, 17.]

*Shipping contract: seaworthiness.* [See SHIPPING LAW, D 14.]

**CONDITIONAL WILL.**

[See WILL CONSTRUCTION, A 1.]

**CONDITIONS OF SALE.**

[See VENDOR AND PURCHASER, 2-9.]

**CONFIRMATION OF SALES ACT.**

1.—A petition for leave to sell land and minerals separately presented by trustees empowered to sell, with consent of tenant for life, need not be served on the remaindermen. *In re Pryse's Settled Estates* (Law Rep. 10 Eq. 581) followed. *In re Nagle's Trusts*, Law Rep. 6 Ch. D. 104.

**CONFIRMATION OF SETTLEMENT.**

[See VOLUNTARY SETTLEMENT, 13.]

**CONFLICT OF LAWS.***Damage to pier abroad: British ship.*

1.—A British ship damaged a pier affixed to the soil of Spain, and was arrested in that country. She was released on condition that the questions of negligence and damages should be tried in England, the question of liability to be determined on the same footing as if the case had been tried in Spain. A suit having been instituted against the ship in the Court of Admiralty, the answer alleged, *inter alia*, that the pier was part of the land of Spain, and that by the law of Spain in force at the time and place of the collision, the master and mariners, and not the ship or her owners, was or were liable in damages:—Held (reversing the decision of the Court below, 45 Law J. Rep. P. D. & A. 36; Law Rep. 1 P. D. 43), that so much of the answer as alleged non-liability by the law of Spain was material, and ought not to be struck out; since the law of Spain was the law by which the liability of the ship and of her owners must be determined. *The M. Mowham* (App.), 46 Law J. Rep. P. D. & A. 17; Law Rep. 1 P. D. 107.

*Status: foreign disability.*

2.—The Courts of this country will not recognise a state of disability not known to the law of this country. A French subject adjudicated a "prodigal" by a French Court, though by French law unable to sue without his "*Conseil Judiciaire*," can sue in the Courts of this country independently. *Worms v. De Valdor*, 49 Law J. Rep. Chanc. 261.

*Scottish settlement: law governing construction of settlement.*

3.—By a marriage contract dated in 1857, and made in Scotland, on the marriage of a domiciled Englishman with a domiciled Scotchwoman, real estate in England and a sum of consols were brought into settlement on the part of the husband, and property in Scotland was brought into settlement on the part of the wife. There was an absolute trust for sale and conversion of the husband's property, and investment of the proceeds, which were to be held in trust for the husband and wife successively for life, and after the decease of the

survivor in trust "for such child or children of the said intended marriage, and if more than one, in such shares and in such manner and form and to vest at such time or times, and to be subject to such powers and restrictions," as the husband and wife by deed, or the survivor, by deed or will, should appoint. The other trusts of the husband's property were in English form, and the trustees were to have "the usual powers for advancement, maintenance and accumulation, according to the law of England." The trusts declared of the wife's property were exclusively in Scotch form, the phraseology of the general clauses was mainly Scotch, and the deed was registered in the Court of Session in Scotland. The trustees named were six in number, four of whom were Scotch. There were five children of the marriage. The husband having died in 1870, the wife by deed in 1871 appointed the whole of the trust funds brought into settlement by the husband to the eldest child of the marriage:—Held, first, that, notwithstanding the general rule that the construction of a contract regarding personal estate is to be determined by the *lex loci contractus*, yet here, in accordance with the manifest intention of the parties, as evidenced by the frame of the instrument, the marriage contract must, so far as the husband's property was concerned, be construed according to English law. Held, secondly, that the power to appoint amongst children was exclusive, and the appointment of 1871 valid. *Chamberlain v. Napier*, 49 Law J. Rep. Chanc. 628; Law Rep. 15 Ch. D. 614.

*Bond executed in India: action in this country: Statutes of Limitation.* [See LIMITATIONS, STATUTE OF, 10.]

*Liability of husband for ante-nuptial debts: lex loci contractus: conflict between laws of Jersey and England.* [See HUSBAND AND WIFE, 57.]

*Will of Persian subject made in Persia: decree of Persian Court: administration with decree annexed.* [See PROBATE, 21.]

#### CONSANGUINITY.

[See DOMICIL, 5.]

#### CONSENT.

*Judgment by: mistake: varying judgment.* [See PRACTICE, B 4.]

*Withdrawal of.* [See PRACTICE, B 3.]

#### CONSERVATORS OF THAMES.

[See THAMES, 1.]

#### CONSIDERATION.

*Bill of sale, for, to be stated.* [See BILL OF SALE, 31-33.]

*Contract, for.* [See CONTRACT, 1-16.]

*Settlement, for.* [See SETTLEMENT, 5, 6; VOLUNTARY SETTLEMENT, 1-5.]

#### CONSIGNMENT.

[See CARRIER, SALE OF GOODS.]

#### CONSOLIDATION.

*Of actions.* [See PRACTICE, F.]

*Of securities.* [See MORTGAGE.]

#### CONSPIRACY.

[Members of trade unions not liable as such to indictments for conspiracy. 39 & 40 Vict. c. 22, s. 16.]

The defendants, directors and promoters of a company called the Euplion Fuel and Gas Company, Limited, were indicted for conspiring to induce the committee of the Stock Exchange, contrary to the true intent of the rules of the Stock Exchange, to order a quotation of the shares of the said company in their official list; "and thereby to induce and persuade divers liege subjects of our Lady the Queen, who should thereafter buy and sell the shares of the said company, to believe that the said company was duly formed and constituted, and had, in all respects, complied with the rules and regulations" of the Stock Exchange "so as to entitle the said company to have their shares quoted on the official list of the Stock Exchange":—Held (on appeal from the Queen's Bench Division, 45 Law J. Rep. M.C. 129; Law Rep. 1 Q.B.D. 730), that the indictment was good after verdict; as the Court would take judicial notice of the fact that the shares were intended to be bought and sold on the Stock Exchange, and it was a necessary inference from the indictment and verdict that the intention of the conspirators was to induce the public to act on the belief that the company had been duly constituted, &c., and to deal in the shares of the company; and consequently that the intention of the conspirators was to defraud and cheat the buyers and sellers of shares. *Reg. v. Aspinall* (App.) 46 Law J. Rep. M.C. 145; Law Rep. 2 Q.B.D. 48.

#### CONSTABLE.

*Detainer of goods by constable after acquittal of accused: liability of constable.* [See DETINUE.]

*Right to reward for apprehension: prisoner surrendering himself.* [See REWARD.]

#### CONSTANTINOPLE.

In a suit in the Consular Court of Turkey brought by the respondent against the wife of the appellant for a sale of a piece of land in

Prinkino, with the mill and bakery erected thereon, and for the payment of three-fourths of the proceeds of such sale into Court; it appeared—first, that the respondent was trustee in liquidation in respect of three-fourths share only in the beneficial interest in the said property, which share was subject to a mortgage; the appellant, who was no party to the suit, being entitled to the remaining one-fourth share unincumbered; second, that the defendant, having been originally a Turkish subject, had been made ostensible owner and trustee of the said property, in order to satisfy or evade the law of Turkey; but had thereafter, by her marriage with the appellant, become a British subject. The Court thereupon ordered, with costs against the defendant, on the 18th of July, 1874, that the whole of the property should be sold, and the whole of the proceeds paid into Court. In 1876, however, the respondent sold the three-fourths share thereof to C, as agent of the mortgagee, by private contract, and received the purchase-money. On the 27th of March and 13th of June, 1878, the Court granted *ex parte* applications of the respondent that the defendant be ejected from the whole of the said property, with costs, and that the mill be closed. This was done, and the seals of the Court put upon it. On the 17th and 28th of June, 1878, the Court refused applications by the appellant, first for a rule *nisi* to set aside the said orders, on the ground that he was owner of one-fourth share of the mill and sole owner of two ovens attached to the mill; that C had paid for and obtained possession of his three-fourths share; and that the respondent had ceased to have any interest in the said property. Second, for leave to appeal to Her Majesty in Council against the order of the 17th of June. Thereafter, by a series of orders, the Court refused to set free the movable property so placed under seal at the mill, or to set free the said two ovens, refused to the appellant a rule *nisi* to that effect, and refused to suspend the proceedings and reopen the mill and ovens until security for damage be given, in the latter case directing the defendant, who was no party to the application, to pay the costs. A further order *ex parte* on the application of the respondent was made that exclusive possession of the mill, bakery and ovens be given to C, and that the defendant remove certain movable property on filing an affidavit that the same belonged to her and her husband, and that he consented to such removal; in default whereof the Court, in the first instance, ordered that the same should be sold, but subsequently discharged this order on the application of the respondent, and substituted for it an order that the respondent should be at liberty to remove the movable property not belonging to him, and the defendant pay the costs:—Held, that the appellant had unquestionably suffered grievous wrong by reason of these irregular proceedings made in a suit to which he was no party. The defend-

ant could not be sued as trustee without joining her husband, and was not the representative of her husband *quoad* his beneficial interest in the property. The Court could not compel a sale nor put a purchaser into possession of more than the three-fourths share (subject to the mortgage) which was vested in the respondent. Having regard to the power of the Turkish authorities over the land, and to the fact that C was not subject to the jurisdiction of the Consular Court, no order could be made directing restoration of possession or decreeing damages, but the orders appealed against were declared to have been irregularly and improperly made, and were set aside with costs. *Pitts v. La Fontaine* (P.C.), Law Rep. 5 App. Cas. 564.

## CONSTRUCTIVE DELIVERY OF GOODS.

[See SALE, 26.]

## CONSTRUCTIVE NOTICE.

A person who agrees to accept an assignment of an under lease is not to be held to have constructive notice of the terms of the original lease, unless he has had a fair opportunity of ascertaining its terms. *Hyde v. Warden*, 47 Law J. Rep. Exch. 121; Law Rep. 3 Ex. D. 72.

[See BILL OF EXCHANGE, 26; LIGHT AND AIR, 10; SOLICITOR, 24.]

*Solicitor and client: intended misapplication of moneys.* [See TRUST, A 9.]

## CONSTRUCTIVE TOTAL LOSS.

[See MARINE INSURANCE, 18.]

## CONSTRUCTIVE TRUST.

[See TRUST.]

## CONSUMABLE ARTICLES.

*Farming implements: bequest of.* [See WILL CONSTRUCTION, I 11.]

## CONTAGIOUS DISEASES ACT.

[Further provisions respecting contagious diseases of animals. 41 & 42 Vict. c. 74.]

1.—A man who sends animals to market does not thereby impliedly represent to a purchaser that they are not, so far as he knows, suffering from infectious disease, at all events where they are sold subject to an express condition that no warranty will be given. *Ward v. Hobbs* (H.L.), 48 Law J. Rep. Q.B. 281; Law Rep. 4 App. Cas. 13, affirming the judgment of the Court of Appeal (47 Law J. Rep. Q.B. 90; Law Rep. 3 Q.B. D. 150); on appeal from the Queen's Bench Division (46 Law J. Rep. Q.B. 473; Law Rep. 2 Q.B. D. 331).

Purchasers are not within the purview of the



Contagious Diseases (Animals) Act, section 57, and cannot in consequence maintain an action upon a violation of the duty imposed by that section. *Ibid.*

Whether the owner of other animals infected in the market could recover damages for their loss—*Quære. Ibid.*

2.—By the Contagious Diseases (Animals) Act, 1869, sections 68, 69, compensation is payable by a local authority for animals slaughtered in pursuance of the Act:—Held, that no compensation was payable under these sections in respect of foreign animals stopped while afloat in an English port, and slaughtered before being landed, inasmuch as a local authority had no authority to order the slaughtering of such animals. *Nissler v. The Corporation of Hull*, 49 Law J. Rep. Q.B. 501; Law Rep. 5 Q.B.D. 325.

*Jurisdiction of justices: vessel conveying sheep from Ireland.* [See JUSTICE OF THE PEACE, 1.]

### CONTEMPT OF COURT.

1.—If the plaintiff's statement of claim in an action contains charges injuriously affecting the defendant's character, and if the plaintiff, before the hearing of the action, sends copies of the statement to persons not parties to the action, he is guilty of a contempt of Court, and will be restrained from further publishing the statement, and ordered to pay the costs of a motion to commit him. *Bowden v. Russell*, 46 Law J. Rep. Chanc. 414.

2.—One of two partners was appointed trustee under a liquidation, and, before the affairs were wound up, died. At the time of his death he was indebted to the estate in a sum of 201*l.* The surviving partner was then appointed trustee on his giving an undertaking in writing to make good any deficiency. The latter never received anything on behalf of the estate. An order of Court was made for payment of the 201*l.*, and on its being disobeyed an application was made to commit the surviving partner:—Held, that no order to commit could be made because it was not shewn that the debtor had ever had the money in his possession. *Ex parte Cuddeford; in re Hincks*, 45 Law J. Rep. Bankr. 127.

3.—Rule 179 of the Bankruptcy Rules, 1870, does not empower the Court to permit less than three days' notice to be given of a motion of committal for contempt. *In re Bryant*, Law Rep. 3 Ch. D. 810.

4.—After receiving notice by letter of the filing of a liquidation petition, and telegraphic notice of an injunction restraining a sale, a sheriff's officer and an auctioneer sold goods seized under a *fi. fa.*, and did not stop the sale until personally served with the injunction:—Held, that they had committed a contempt of Court, and must pay costs of a motion to commit. *In re Bryant*, Law Rep. 4 Ch. D. 98.

5.—An order was made in a suit for the

inspection of documents at the office of C., defendant's solicitor. An order was also made to stay the proceedings in the suit till security was given for the costs. E., plaintiff's solicitor, called on C., offered him a bond as security, and left with him a draft copy of the bond for his perusal. E. then proposed to inspect the documents; C. refused to allow him to do so, and also declined to accept the security. E. then left the office, but soon after returned, and asked for the draft bond. C. refused to give it up, and used abusive language to and assaulted E., but afterwards apologised for his conduct. On a motion to commit C. for contempt,—Held (by one of the Vice-Chancellors), that he had been guilty of a contempt within the spirit, if not the letter, of Order XLII. rule 2; and that as the motion to commit was originally sustainable, he must pay the costs of it; but upon appeal this decision was reversed. *In re Clements and The Republic of Costa Rica v. Erlanger* (App.), 46 Law J. Rep. Chanc. 375.

*Appeal from order refusing to commit.* [See PRACTICE, B 18.]

*Attachment: Extradition Act, 1870* (33 & 34 Vict. c. 52, s. 19): *offence committed before surrender.* [See EXTRADITION, 8.]

*Attachment for.* [See PRODUCTION, 20; DEBTORS ACT, 15.]

*Ecclesiastical law: respondent in contempt.* [See CHURCH, 34.]

*Revising barrister: power to order person to quit Court.* [See PARLIAMENT, 30.]

### CONTINGENT DEBT.

*Proof of, in bankruptcy.* [See BANKRUPTCY, D 2-4.]

### CONTINGENT INTEREST.

*Maintenance of infant having.* [See INFANT, 2, 3.]

*Right of action.* [See PRACTICE, U 24.]

*Whether bound by covenant to settle.* [See SETTLEMENT, 17, 20.]

### CONTINGENT REMAINDER.

[Contingent remainders created after the date of the Act to take effect as springing or shifting uses or executory devises. 40 & 41 Vict. c. 33.]

*Determination of particular estate: legal estate outstanding in mortgagee.*

1.—A testator, by his will made in 1862, devised freeholds (the legal estate in which, both at the date of the will and the time of his death, was outstanding in a mortgagee) to the use of his son for life, and, after his decease, to the use of the children of his son who should attain twenty one. The son survived the testator, and died leaving four infant children:—Held, that

the contingent remainders to the infant children were preserved from destruction by the legal estate outstanding in the mortgage. *Astley v. Mitchellwaite*, 49 Law J. Rep. Chanc. 672; Law Rep. 15 Ch. D. 59.

*Devise of real estate to trustees in fee: equitable limitations: contingent remainder: executory devise: remoteness.*

2.—The old rule of law that a limitation shall, if possible, be construed as a remainder rather than as an executory devise, applies to equitable as well as to legal limitations. A testator devised real estate to trustees, upon trust for A. for life, and after his decease upon trust to convey "to such son of B. as should first attain twenty-five, when he should have attained twenty-five." A. survived the testator, and B.'s eldest son attained twenty-five, after the death of the testator, but during the lifetime of A.:—Held, that the limitation to the son of B. was an equitable contingent remainder, which vested absolutely in him upon his attaining the prescribed age in the lifetime of A.; and that it was not void for remoteness. *In re Finch. Abbes v. Burney*, 49 Law J. Rep. Chanc. 710; reversed on appeal, 50 Law J. Rep. Chanc. 348. [See REMOTENESS, 5.]

## CONTRACT.

### (A) CONSIDERATION AND VALIDITY.

(a) *Absence or failure of consideration.*

(b) *Public policy.*

(1) *Agreement not to disclose defamatory facts.*

(2) *Contract in restraint of trade.*

(3) *Contract in fraud of third party.*

(4) *Fraud on creditors.*

(5) *Gaming or wagering contract.*

(6) *Forfeiture of deposit by servant: mutuality.*

### (B) WHEN COMPLETE.

(a) *Acceptance and offer.*

(b) *Adoption of contract.*

### (C) CONSTRUCTION.

(a) *Whether personal to contracting parties.*

(b) *Words erased.*

(c) *Contract not to remove boy from school.*

(d) *Condition precedent.*

(1) *Theatrical contract.*

(2) *Forfeiture of season ticket-holder's deposit.*

(e) *Building contract: certificate of engineer.*

(f) *Time of the essence.*

(g) *Option to avoid contract: time within which exercisable.*

(h) *"As soon as possible."*

(i) *Penalty or liquidated damages.*

(k) *Implied warranty.*

(l) *In special cases.*

### (D) EVIDENCE.

### (E) ASSIGNMENT OF CONTRACT.

### (A) CONSIDERATION AND VALIDITY.

#### (a) *Absence or failure of consideration.*

1.—Money expended on the alteration of premises, for the leasing of which an agreement has been entered into, but which is incapable of being enforced by reason of the Statute of Frauds may be recovered back as on a failure of consideration. *Pulbrook v. Lames*, 45 Law J. Rep. Q.B. 178; Law Rep. 1 Q.B. D. 284.

The plaintiff, by letter, proposed to take a lease for seven, fourteen or twenty-one years of one of defendant's houses, conditionally on certain alterations being made. A correspondence ensued between the parties, and it was ultimately agreed that the alterations should be carried out, the plaintiff undertaking to contribute a sum of money towards them. By the defendant's consent some of the alterations were executed by the plaintiff's workmen. Eventually the plaintiff was unable, owing to the defendant's fault, to take the house:—Held, that though he was unable to recover damages occasioned through not having a lease granted, by reason of the letters not disclosing an agreement such as to satisfy the Statute of Frauds, he was, nevertheless, entitled to recover on a *quantum meruit* for the loss incurred in making the alterations. *Hodgson v. Johnson* (1 E. B. & E. 185; 28 Law J. Rep. Q.B. 88), commented on. *Ibid.*

2.—The plaintiff, tenant from year to year of premises, sold the goodwill of a business carried on there to the defendants under an agreement, which was to be void unless free and undisturbed possession should be guaranteed to them. Subsequently they promised to pay the plaintiff 100*l.* if he procured them to be accepted as tenants by the landlord. While the plaintiff was negotiating with the landlord, the defendants transferred their contract of sale of the goodwill to W.; who entered into possession, and was accepted by the landlord. Upon action to recover the 100*l.*,—Held, that the defendants, having, by the voluntary act of their sale to W., disabled themselves from receiving the benefit for which they had agreed to pay, were liable to pay the 100*l.* to the plaintiff, unless they could prove that the plaintiff could not have succeeded in getting them accepted as tenants if they had entered into possession as contemplated in the agreement. *Bradley v. Benjamin*, 46 Law J. Rep. Q.B. 590.

*Action by manager of mutual insurance society against member for contributions: absence of consideration.* [See ACTION, 3.]

*Bondholders: abortive scheme.* [See BOND, 2.]

*Implied, not to deviate.* [See SHIPPING LAW, D 10.]

*Impossible: charterparty: refusal of foreign power to allow ship to load.* [See SHIPPING LAW, D 6.]

*Nudum pactum: agreement by stranger to settle property on marriage.* [See SETTLEMENT, 3.]

*Promise to pay debt barred by bankruptcy.* [See BANKRUPTCY, H 2.]

(b) *Public policy.*

(1) *Agreement not to disclose defamatory facts.*

3.—Action against an executor on a money bond made by his testator. Equitable plea, that the plaintiff had seduced and committed adultery with the testator's wife, and after the making of the bond and before suit the plaintiff promised the testator that if the testator should not and would not expose and make public the conduct of the plaintiff with regard to the seduction and adultery, he, the plaintiff, would not enforce payment of the penal sum in the bond, or any part thereof, or any money thereby secured, or sue for the same. Averment, that in pursuance and performance of the agreement, the testator did not during his lifetime expose or make public the conduct of the plaintiff with regard to the seduction and adultery, but relying upon the promise of the plaintiff, faithfully performed his part of the agreement, nor had the defendant, since the death of the testator and while executor, exposed or made public the conduct of the plaintiff. On demurrer to the plea,—Held, that the plea was bad. *Brown v. Brins*, 45 Law J. Rep. Exch 129; Law Rep. 1 Ex. D. 5.

(2) *Contract in restraint of trade.*

4.—In determining whether a contract is a "hard bargain" the Court will not (if there be valuable consideration) consider whether the consideration is sufficient, but whether one party has taken an unfair advantage of the position of the other party. *Middleton v. Brown* (App.), 47 Law J. Rep. Chanc. 411.

In consideration of A. employing B. at a weekly salary of 21s. to go about London and sell oil for him, B. agreed that he would not for twelve calendar months after the determination of the agreement, which was determinable on a week's notice on either side, sell oil within a radius of eight miles from the General Post Office. After a year's employment B. determined the agreement, and then commenced selling oil on his own account within the prohibited area:—Held, that the agreement not being a "hard bargain," and being for valuable consideration, A. was entitled to an injunction. *Ibid.*

5.—Certain persons carrying on the business of stevedores at Melbourne agreed to distribute their business at that port in certain proportions amongst themselves, and covenanted with each other that none of them would undertake, or be in any way concerned in the stevedoring of any ship otherwise than according to such agreement:—Held, that such covenant was a general restraint of trade, and void. *Collins v. Locke*, 48 Law J. Rep. P.C. 68; Law Rep. 4 App. Cas. 674.

6.—A contract in restraint of trade, though unlimited as to space, is not void, if such uni-

versality is reasonably requisite for the protection of the contractee. The Court refused to enforce a foreign judgment on a contract against a defendant who was not a subject of the country where the judgment was obtained, nor was resident in that country when the action in which it was obtained was begun, nor in any way had submitted to the jurisdiction of the Courts of that country. *Rousillon v. Rousillon*, 49 Law J. Rep. Chanc. 338; Law Rep. 14 Ch. D. 351.

The rule that a contract in restraint of trade, unless confined within what is necessary for the reasonable protection of the contractee, is void, is applicable to contracts made abroad and between aliens. *Ibid.*

(3) *Contract in fraud of third party.*

7.—An agreement made with the purpose of doing something which is calculated to defraud or injure a third party is illegal and void as between the parties to it; and it makes no difference that no damage has in fact been sustained by such third party. *Harrington v. The Victoria Graving Dock Company*, 47 Law J. Rep. Q.B. 594; Law Rep. 3 Q.B. D. 549.

(4) *Fraud on creditors.*

8.—Declaration alleged that in consideration that the plaintiff would execute to the defendants, who were creditors of the plaintiff, an assignment of all his estate and effects upon trust for the equal benefit of all his creditors, the defendants promised the plaintiff, upon the realisation of the said estate and effects, to return and pay to the plaintiff 50l. from the proceeds thereof. The declaration also averred the execution of such assignment by the plaintiff and a realisation by the defendants of the said estate and effects, and assigned for breach the non-payment of the 50l.:—Held, that the declaration disclosed a transaction which was a fraud on the other creditors of the plaintiff who were not parties to it, and that it was therefore bad even after verdict. *Blacklock v. Dobie*, 45 Law J. Rep. C.P. 498; Law Rep. 1 C.P. D. 265.

*Illegal purpose: recovery back of property.* [See FRAUD, 5.]

(5) *Gaming or wagering contract.*

9.—An agreement between a principal and his agent that the agent shall employ moneys of the principal in betting on horse races, and pay over the winnings therefrom to his principal, is not a contract "by way of gaming or wagering" rendered void by 8 & 9 Vict. c. 109. s. 18, nor is it illegal. *Beeston v. Beeston*, 45 Law J. Rep. Exch. 230; Law Rep. 1 Ex. D. 8.

10.—Where the loser of an illegal wager repudiates it and demands his deposit back at any time before the stakes have been paid over by the stakeholder, the authority of the latter is determined; and the loser may recover his own stake as money had and received by the

stakeholder to his use. *Hampden v. Walsh*, 45 Law J. Rep. Q.B. 238; Law Rep. 1 Q.B. D. 189.

The plaintiff and W. each deposited 500*l.* in the hands of the defendant, as stakeholder, upon an agreement that if W., before a certain date, proved the convexity or curvature to and fro of any canal, river or lake, by actual measurement and demonstration to the satisfaction of certain referees he should receive both sums, but that if he failed, then the plaintiff should receive both. The experiment was made, and the referees decided in favour of W.:—Held, that the agreement was a wager, and consequently null and void, within 8 & 9 Vict. c. 109. s. 18. *Ibid.*

11.—The deposit of a sum of money by two persons in the hands of a third, to abide the event of a lawful game between the two, is a wager, and not “a subscription or contribution to a prize” within 8 & 9 Vict. c. 109. s. 18, and such a deposit may be recovered by the depositor from the stakeholder, if demanded, before it is paid over to the winner—*Batty v. Marriott* (17 Law J. Rep. C.P. 215) overruled. *Diggle v. Higgs* (App.), 46 Law J. Rep. Exch. 721; Law Rep. 2 Ex. D. 422.

12.—A contract, by which the plaintiff was to lay out 2*l.* in betting on a horse for a particular steepchase, at the odds of twenty-five to one, so that if the defendant backed the horse and the horse won, the plaintiff was to have 50*l.* from the defendant out of the defendant's winnings, but if the horse lost, the plaintiff was to pay the defendant 2*l.*, is a contract by way of wagering within 8 & 9 Vict. c. 109. s. 18. Therefore where, after making such a contract, the defendant backed the horse and won, the plaintiff could not maintain an action on it for any of the winnings. *Higginson v. Simpson*, 46 Law J. Rep. C.P. 192; Law Rep. 2 C.P. D. 76.

13.—Where a speculator employs a broker on the Stock Exchange to effect sales and purchases of stock according to the rules of the Stock Exchange for delivery on a future day, with the intention that he shall not be called upon actually to deliver or accept such stock as may be sold or purchased, but only to pay or receive, as the case may be, the difference between the price of the stock at the day of the sale and the price on the day named for delivery, the contract between the speculator and the broker is not a “contract by way of gaming or wagering,” within the meaning of 8 & 9 Vict. c. 109. s. 18. *Grisewood v. Blane* (11 Com. B. Rep. 538; 21 Law J. Rep. C.P. 46) explained. *Thacker v. Hardy*, *Same v. Wheatley* (App.), 48 Law J. Rep. Q.B. 289; Law Rep. 4 Q.B. D. 685.

14.—A deposit of money by two persons on an agreement that it shall be paid if a given event occurs, is a simple wager, and the deposit may be demanded back before the event occurs. A wager is not within the proviso in 8 & 9 Vict. c. 109. s. 18, as to contributions to lawful pastimes. *Batson v. Newman* (App.), Law Rep. 1 C.P. D. 573.

15.—The 14 Vict. No. 9, provides that all contracts by way of wagering shall be void, and that no suit shall be brought to recover money deposited to abide the event of a wager:—Held, that a contract to run one horse against another is a wagering contract within the statute, but that a party who revokes the authority of a stakeholder before the event may recover the deposit. *Trimble v. Hill*, 49 Law J. Rep. P.C. 49; Law Rep. 5 App. Cas. 342.

Where the provisions of a Colonial statute are identical with those of an Imperial statute, the Colonial Courts should follow the decisions of Courts of Appeal on the Imperial statute. *Ibid.*

*Association illegal under Lottery Acts.* [See LOTTERY ACTS.]

*Wagering contract: “differences” on Stock Exchange.* [See BROKER, 3.]

(6) *Forfeiture of deposit by servant: mutuality.*

16.—A conductor, at the time of entering the employ of a tramway company, deposited with them the sum of 5*l.*, which, together with any wages due, was agreed to be forfeited in case of any breach by him of the company's rules. It was further agreed that the company's manager was to be the sole judge of whether the appellants were entitled to retain the whole of the deposit money and wages due, and that his certificate of the cause of retention should be binding and conclusive evidence between the parties in all Courts of justice and before all stipendiary magistrates, and should bar the conductor of all right to recover under any circumstances the moneys so certified to be retained. After three months' service the respondent was discharged from the appellants' employ, and the deposit money as well as wages due was certified by their manager to be forfeited for non-observance of certain rules:—Held, that, in the absence of fraud, such certificate was binding, there being nothing in the agreement that was illegal or void. *The London Tramways Company (Lim.) v. Bailey*, 47 Law J. Rep. M.C. 8; Law Rep. 3 Q.B. D. 217.

(B) WHEN COMPLETE.

(a) *Acceptance and offer.*

17.—The acceptance of a tender with an intimation that a formal contract shall be subsequently prepared, is binding if the intention of the parties was to enter into an agreement, and the preparation of the contract was merely for the purpose of formally expressing the antecedent agreement. *Lewis v. Brass* (App.), Law Rep. 3 Q.B. D. 667.

18.—The plaintiff was in treaty with the defendant for the purchase of certain land, and the defendant suggested that the purchase-money should be paid by instalments, in which suggestion the plaintiff acquiesced. The defendant afterwards by letter offered the land to the plaintiff for 37,500*l.* The plaintiff's agent wrote

a letter accepting the offer, "subject to the title being approved by our solicitors." Subsequent negotiations took place as to the payment of the purchase-money by instalments, not resulting in any agreement binding under the Statute of Frauds. The plaintiff having brought an action for specific performance,—Held (on appeal from the Master of the Rolls, 47 Law J. Rep. Chanc. 519; Law Rep. 8 Ch. D. 670), that the words "subject to the title being approved by our solicitors" was a new term introduced by B., which not having been acceded to by A., there was no concluded contract. *Hussey v. Payne* (App.), 47 Law J. Rep. Chanc. 751.

Held also (per Cotton, L.J.), that where such a term is assented to, it makes the solicitor the Judge whether or no a proper title is deduced, and, if he acts *bona fide* and reasonably, the Court will not interfere, although his objections to the title may not be well founded in law. *Ibid.*

Held (in the House of Lords, on appeal from the Court of Appeal), that, though the two letters, if they had stood alone, would have been sufficient evidence of a concluded contract under the Statute of Frauds, they must be read in connection with the other correspondence and negotiations, whereby it appeared that the letters did not contain any agreement as to one important matter, namely, the mode of paying the purchase-money. Per Lord Selborne.—The words used in *Jervis v. Berridge* (42 Law J. Rep. Chanc. 518; Law Rep. 8 Chanc. 351), that the Statute of Frauds "is a weapon of defence, not offence, and . . . does not make any signed instrument a valid contract by reason of the signature, if it is not such according to the good faith and real intention of the parties" approved. *Hussey v. Payne* (H.L.), 48 Law J. Rep. Chanc. 846; Law Rep. 4 App. Cas. 311.

Seemingly, that the words, "subject to the title being approved by our solicitors," meant only, "subject to a good title being made," and were not a new term which required acceptance by the plaintiff. *Ibid.*

19.—The defendants by letter agreed to take on lease property on terms mentioned, "provided the terms of the draft lease are reasonable in our estimation":—Held, that some terms of the draft lease sent being unreasonable, the defendants were at liberty to decline the contract, without specifying to which particular terms they objected; and an action for performance by the lessor, in which he offered to withdraw certain terms mentioned in the defendants' pleadings as unreasonable was dismissed. The plaintiff answering the above letter, said that the terms of the lease would be of the usual character of such letting. The defendants in replying did not notice this; but said, "We do not wish it to be known that we have taken property on lease":—Held, that the defendants had not accepted the terms as altered by the plaintiff, nor bound themselves by admission to any agreement beyond that contained in their first letter. *Hussey v. Payne*

(see last case) distinguished. *Wilcox v. Redhead*, 49 Law J. Rep. Chanc. 539.

20.—Where an offer in writing is accepted in writing, the mere reference in the document accepting the offer to the preparation of a more formal contract does not amount to the introduction of a new term. *Bonnewell v. Jenkins* (App.), 47 Law J. Rep. Chanc. 758; Law Rep. 8 Ch. D. 70.

21.—Where an offer is made by a letter which expressly or impliedly authorises the sending of an acceptance of such offer by post, and a letter of acceptance is duly addressed and posted, the contract is complete, even though the letter of acceptance is never received by the offeror. So held (affirming the decision below, 48 Law J. Rep. Exch. 219) by Baggallay, L.J., and Thesiger, L.J.; *dissentiente* Bramwell, L.J. *The Household Fire and Carriage Accident Insurance Company (Lim.) v. Grant* (App.), 48 Law J. Rep. Exch. 577; Law Rep. 4 Ex. D. 216.

22.—An offer in writing for the sale of real estate, giving time for the acceptance of the offer, cannot be converted into a binding contract, if at any time before acceptance the person to whom the offer is made becomes aware of its withdrawal, although formal notice of such withdrawal may not be given to him. *Dickinson v. Dodds* (App.), 45 Law J. Rep. Chanc. 777; Law Rep. 2 Ch. D. 463.

23.—Though an offer of sale may be withdrawn before it has been accepted, the withdrawal must be communicated to the party to whom the offer has been made before such acceptance. *Byrne & Company v. Leon van Tienhoven & Company*, 49 Law J. Rep. C.P. 316; Law Rep. 4 C.P. D. 344.

Where an offer of sale is made and accepted by letters sent through the post, the withdrawal takes effect only when the letter containing it has been received, and not from the moment it is posted, unless the party to whom the offer is made has given the other authority to notify his withdrawal by letter so posted. *Ibid.*

If there is a continued refusal by a party to perform his contract, the neglect of the other party to treat the first refusal as a breach will not prevent his suing for a breach. *Ibid.*

24.—Negotiations having been going on for sale by the defendant to the plaintiffs of a quantity of iron, the defendant wrote saying that he "would sell now for 40s. net cash, open till Monday." On the Monday morning the plaintiffs telegraphed inquiring whether the defendant would accept 40s. for delivery over two months. The defendant did not reply, and about mid-day the plaintiffs succeeded in selling on the defendant's original terms, and telegraphed that they had done so. The defendant had himself in the course of the morning sold the iron to other persons, but his telegram announcing this reached the plaintiffs after the latter had dispatched their telegram to defendant. On action brought for non-delivery of the iron to the plaintiffs:—Held (by Lush, J.,

on further consideration), that, the defendant's offer being a continuing one throughout Monday, the plaintiffs were authorised by it to sell at any time during the day until notice of its revocation reached them. The revocation having no effect until it was communicated, the plaintiffs were entitled to require delivery of the iron. *Cooke v. Ouley* (3 Term Rep. 653) discussed. *Byrne & Company v. Leon van Nienhoven & Company* (see last case) followed. *Stevenson, Jacques & Company v. McLean*, 49 Law J. Rep. Q.B. 701; Law Rep. 5 Q.B. D. 346.

(b) *Adoption of contract.*

25.—The agent of A. submitted to B. the terms of a proposed agreement to be entered into by means of a formal contract. B. made some alterations and filled in some blanks, and wrote at the bottom "approved," and signed his own name (not the signature of his firm) and returned the document to the agent of A. The terms were acted upon, and in the course of correspondence the document was referred to as "the contract."—Held, that although the mere assent to the proposed terms was not binding, yet the acting upon those terms was sufficient to shew the adoption of the document as altered and approved; and, consequently, that there was a binding contract. *Brogden v. The Metropolitan Railway Company* (H.L.), Law Rep. 2 App. Cas. 666.

(C) CONSTRUCTION.

(a) *Whether personal to contracting parties.*

26.—A firm of publishers agreed to publish a work at their own risk, and divide the net profits with the authors.—Held, that the agreement was personal, and put an end to by a complete change in the members of the partnership. *Hole v. Bradbury*, 48 Law J. Rep. Chanc. 673; Law Rep. 12 Ch. D. 886.

Sketches were drawn by an author on blocks, which were afterwards engraved. The cost of the blocks and of engravings was part of costs incurred at the publishers' risk, and deducted from gross profits, under an agreement to publish.—Held, that, on the termination of the agreement, the blocks belonged to the author. *Ibid.*

Books piratically printed before registration of the proprietor of the copyright do not become the property of the proprietor on registration. *Ibid.*

[But see COPYRIGHT, 4.]

27.—The defendants entered into an agreement with the P. Company for the hire of certain railway waggons for a term of seven years. The agreement contained a clause by which the P. Company bound themselves during the term to keep the waggons in good and substantial repair and working order. Some eighteen months afterwards the P. Company went into liquidation, and the contract between them and the defendants was assigned to the plaintiffs, who took over from the P. Company

the repairing stations previously used for the repair of the waggons let to the defendants and also the staff of workmen employed in executing such repairs. In an action brought by the plaintiffs to recover from the defendants rent due for the hire of the waggons, the defendants disputed their liability on the grounds, first, that the P. Company had, by going into liquidation, incapacitated themselves from performing the contract; and, secondly, that there was no privity of contract between them and the plaintiffs whose services, in substitution for those to be performed by the P. Company under the contract, they, the defendants, were not bound to accept.—Held, that, whatever might be the position of the parties on the dissolution of the company, the liquidator, pending the winding-up, had power to continue the performance of the contract. Held also (distinguishing *Robson v. Drummond*, 2 B. & Ald. 308), that, as personal performance was not of the essence of the contract, the repair of the waggons undertaken and done by the plaintiffs under their contract with the P. Company was a sufficient performance by the latter of their engagement to repair under their contract with the defendants. *The British Waggon Company (Lim.) v. Lea & Company*, 49 Law J. Rep. Q.B. 321; Law Rep. 5 Q.B. D. 149.

(b) *Words erased.*

28.—A specification, forming part of a contract by a firm of shipbuilders to lengthen and repair an iron steamship with a view to her being classed 100 A 1 at Lloyds, contained the following words: "Iron work:—the plating of the hull to be carefully overhauled and repaired, but if any new plating is required, the same to be paid for extra," fourteen words erased signed A. and J. I. D. G. "Deck beams, ties, diagonal ties, main and spar deck stringers, and all iron work to be in accordance with Lloyds' rules for classification"—Held, that the shipbuilders were bound to supply without any extra charge any new plates required to enable the vessel to be classed as above, and that neither correspondence before the contract was signed, nor the initialled erased words could be taken into consideration to interpret the intention of the parties. *Inglis v. Buttery*, (H. L. Sc.), Law Rep. 3 App. Cas. 552.

(c) *Contract not to remove boy from school.*

29.—The defendant sent his son to the plaintiff's school, on the terms that when he removed him from the school he would either give the plaintiff a term's notice or pay him an equivalent in money. To an action against the defendant for removing his son without giving such notice or paying an equivalent, it was held a good defence to shew that the removal was only a temporary one, whilst the son was unable, from illness, to return to the school. *Simeon v. Watson*, 46 Law J. Rep. C.P. 679.

*(d) Condition precedent.**(1) Theatrical contract.*

30.—An engagement was entered into by which the defendants engaged the plaintiff to sing and play the principal part in a new opera, "commencing on or about the 14th of November, at a weekly salary of 11*l.*, and to continue on at that sum for a period of three months, providing the opera shall run for that period. The engagement to be subject to the ordinary rules and regulations of the theatre." The piece was announced for the 28th of November. The plaintiff attended rehearsals till the 23rd of November, when she was taken ill. On the 25th, finding that she would probably be unable to appear on the 28th, the defendants engaged L. on the terms that she should be ready, and, if the plaintiff could not, should sing on the opening night, and thenceforward till the 25th of December, at 15*l.* per week. The plaintiff's illness continued, and L. entered upon and fulfilled her engagement. On the 4th of December, the plaintiff, having recovered, offered to take her place, but was refused, and sued the defendants for a breach of contract. The jury found that the non-attendance of the plaintiff on the opening night was not of such material consequence to the defendants as to entitle them to rescind the contract, but that it was of such consequence as to render it reasonable for them to employ another artiste, and that the employment of L. as made was reasonable:—Held, that the latter finding was to the effect that no substitute capable of performing the part adequately could be obtained except on the terms that she should be permanently engaged at higher pay than the plaintiff; and that being so, it followed as a matter of law that the failure on the plaintiff's part to appear on the opening night went to the very root of the contract, and discharged the defendant. *Poussard v. Spiers*, 45 Law J. Rep. Q.B. 621; Law Rep. 1 Q.B. D. 410.

31.—An agreement between G., director of an opera, and B., a dramatic singer, contained clauses to the following effect (among others). The engagement was to begin on the 30th of March, 1875, and end on the 13th of July. B. was not to sing out of the theatre in the United Kingdom from the 1st of January to the 31st of December, 1875, without the written permission of G. B. agreed to be in London without fail at least six days before the commencement of the engagement for the purpose of rehearsals. B. performed the condition relating to not singing in the United Kingdom after the 1st of January, 1875, but, owing to temporary illness, failed to arrive in England until the 28th of March. G. thereupon refused to employ him, and put an end to the agreement. In an action by B. against G. for refusing to employ him,—Held, that G. was not justified in so refusing, as under all the circumstances of the agreement the clause binding B. to be in London six days before the 30th of March, was not a condition

precedent going to the root of the contract, but only an independent agreement the breach of which might be compensated for by damages. *Bettini v. Gye*, 45 Law J. Rep. Q.B. 209; Law Rep. 1 Q.B. D. 183.

*(2) Forfeiture of season ticket-holder's deposit.*

32.—Upon purchasing a passenger's season ticket from the defendants, the plaintiff agreed to be bound by certain conditions, of which one was that all benefit of the ticket, including a deposit of ten shillings paid with the price, should be forfeited on breach of any of the conditions; and another condition was that the ticket should be delivered up on the day after expiry. The plaintiff did not deliver up the ticket on the day after expiry, but delivered it up within a time which was found upon the trial to be a reasonable time. The defendants refused to return the deposit:—Held, that the defendants were justified, on the ground that compliance by the plaintiff with the stipulations of the contract was a condition precedent to his right to a return of the deposit. *Cooper v. The London, Brighton and South Coast Railway Company*, 48 Law J. Rep. Exch. 434; Law Rep. 4 Ex. D. 88.

*(c) Building contract : certificate of engineer.*

33.—A clause in a contract to construct iron buildings for a lump sum, provided that no alterations or additions should be made without the written order of the engineer of the employer, and no allegation of knowledge of, or acquiescence in any alterations or additions on the part of the employers, their engineers or inspectors, should be accepted or available as equivalent to the certificate of the engineer, or as in any way superseding the necessity of such certificate as the sole warrant for additions or alterations. The contractors, with the consent of the engineer, erected certain girders of a heavier weight than according to specification, the actual weights being entered in the engineer's certificates from time to time, authorising interim payments:—Held, in an action on the completion of the work, to recover for the extra weight of metal, that the certificates of the engineer were not written orders, and that the action would not lie. *The Tharsis Sulphur and Copper Company v. McElroy* (H.L. Sc.), Law Rep. 3 App. Cas. 1040.

*(f) Time of the essence.*

34.—A chartered B.'s ship "for twelve months, for as many consecutive voyages as the said ship can enter upon after the completion of the present voyage." On completion of the voyage, and when it was ready to load, the ship was stopped by the surveyor of the Board of Trade, who required certain repairs to be done to her. A. at once gave notice to B. that he should cancel the charter, on account of the ship not being tight, staunch, &c., at the time when he was ready to load as agreed by the

charter. B. did the repairs, which lasted two months, and then tendered the ship to A., who refused her:—Held (on appeal from the Queen's Bench Division, 45 Law J. Rep. Q.B. 756, by Kelly, C.B., Mellish, L.J. and Amphlett, J.A.), that A. was justified in his refusal; that the delay having occurred in reference to a time charter, and not for a chartered voyage, and time being of the essence of such a contract, the inability of B. to give A. the vessel at the beginning of the time agreed for entitled the latter to cancel the charter. And per Brett, J.A., that time was not of the essence of the contract, and that it was not a condition precedent that the ship should be fit for sea at the beginning of the time, but that under the circumstances the ship had been so delayed that a proper performance of the contract was impossible, and therefore A. was justified in his refusal. *Tully v. Howling* (App.), 46 Law J. Rep. Q.B. 388; Law Rep. 2 Q.B. D. 182.

[And see VENDOR AND PURCHASER, 16, 17.]

(g) *Option to avoid contract: time within which exercisable.*

35.—The plaintiffs entered into a contract with the defendants, by which the plaintiffs contracted to execute certain works according to a specification, which were required for constructing a dock and works for the defendants, and by which the works were to be completed on or before the 31st of August, 1873. The contract provided that if the plaintiffs should not complete the works within that period the defendants were empowered, without previous notice, to take the works out of the plaintiffs' hands, and to employ other contractors or workmen to complete the work, and that the plaintiffs should then be only entitled to such sums as should have accrued due at the time of the works being taken out of their hands, and all expenses incurred by so doing should be deducted from the money due to the plaintiffs, or should be recoverable as damages. The contract also provided that should the defendants' engineer be at any time dissatisfied with the mode of proceeding, or the rate of progress of the works, he was to have power to procure and make use of labour and materials from the money then due to the plaintiffs; but such power was not to relieve the plaintiffs from their obligation to proceed in the execution of, and to complete the works with requisite expedition; and the contract further contained a clause by which it was stipulated that should the plaintiffs fail to proceed in the execution of the works at the rate of progress required by the defendants' engineer, the contract should, at the option of the defendants, be considered void, as far as related to the works to be done, and all sums that might be due to the plaintiffs, together with all materials and implements in their possession, should be forfeited to the defendants:—Held, that this last clause could only be enforced within the time fixed for the completion of the works, and that after that

time the defendants could not avail themselves of it to avoid the contract, and forfeit the money due to the plaintiffs with the materials and implements. *Walker v. The London and North Western Railway Company*, 45 Law J. Rep. C.P. 787; Law Rep. 1 C.P. D. 518.

[And see No. 24 supra.]

(h) *"As soon as possible."*

36.—Contract by the plaintiffs with J. to construct a machine for him within two months. The defendants, after notice of this contract, contracted to supply the plaintiffs with part of the machine "as soon as possible." The defendants not having supplied their part until after the expiration of the two months, J. refused to accept the machine. Thereupon the plaintiffs sued the defendants for damages and for loss of the profits which they would have made by the performance of the contract:—Held, that the plaintiffs were entitled to recover. *The Hydraulic Engineering Company v. McHaffie* (App.), Law Rep. 4 Q.B. 670.

(i) *Penalty or liquidated damages.*

37.—A building contract contained a proviso that in case the contract should not be in all things duly performed by the contractors they should pay 1,000l. as liquidated damages:—Held (reversing the decision of the Chief Judge, 46 Law J. Rep. Bankr. 6), that this was a penalty and not liquidated damages. *In re Newman; ex parte Capper* (App.), 46 Law J. Rep. Bankr. 57; Law Rep. 4 Ch. D. 724.

(k) *Implied warranty.*

38.—The plaintiff having inspected certain plans and specifications which had been prepared by an engineer for the defendants, contracted with the latter to build a bridge according thereto. The work was begun, but the mode of erection prescribed by the plans and specifications proved defective, and an alteration was necessarily made under the direction of the engineer, which occasioned great delay in the execution of the work, in consequence of which the plaintiff sustained considerable damage. In an action against the defendants for damages as for a breach of warranty, —Held (affirming the judgment of the Exchequer Chamber, 44 Law J. Rep. Exch. 62), that there was no implied warranty on the part of the defendants, that the work could be done in the mode prescribed by the plans and specifications, and that the plaintiff was not therefore entitled to recover. *Thorn v. Mayor and Corporation of London* (H.L.), 45 Law J. Rep. Exch. 62; Law Rep. 1 App. Cas. 120.

*On sale of vein of coal.* [See MINE, 15.]

*Services incidental to the business of a carrier.*  
[See RAILWAY, 25.]

(D) EVIDENCE.

*Evidence to vary.* [See No. 28 supra, and SHIPPING LAW, F 5.]



(E) ASSIGNMENT OF CONTRACT.

[See No. 27 supra.]

*Concluded agreement: agent: acceptance: repudiation.* [See PRINCIPAL AND AGENT, 4.]

*Contract or trust: investment company and depositor of money for investment.* [See COMPANY, D 28.]

*Guaranty: whether extending to past debts.* [See PRINCIPAL AND SURETY, 3.]

*Guaranty whether joint or several.* [See PRINCIPAL AND SURETY, 2.]

*Misrepresentation as to tenure of land.* [See DAMAGES, 24.]

CONTRIBUTION.

*Right of, as between co-sureties.* [See INSURANCE, 14.]

*Shipowners, by, to salvage.* [See SHIPPING LAW, T 5.]

*To repairs, out of highway rate.* [See HIGHWAY, 3-6.]

CONTRIBUTORY.

[See COMPANY, H 51-70.]

CONTRIBUTORY NEGLIGENCE.

[See NEGLIGENCE, 23, 24.]

CONVERSION.

A fund in Court, the proceeds of the sale of part of a settled estate, was, under the trusts of the settlement, liable to be laid out in land to be settled to certain uses, all of which were exhausted except a legal jointure. On a petition that the fund might be paid out to the heir-at-law of the person entitled, subject to the jointure,—Held, as between his real and personal representatives, that the equity of the jointress to have the fund re-invested in land was sufficient to cause it to retain its character as real estate. *Walrond v. Rosslyn. Walrond v. Fulford*, 48 Law J. Rep. Chanc. 602; Law Rep. 11 Ch. D. 640.

*Infants' realty, purchase of, by railway company.* [See LANDS CLAUSES ACT, 17.]

*Partition action, effect of decree in.* [See PARTITION, 20, 21.]

*Property specifically bequeathed, of: effect of.* [See LEGACY, 16-22.]

*Stolen cheque with forged indorsement: negligence.* [See BILL OF EXCHANGE, 5.]

*What amounts to conversion of property in goods.* [See TROVER, 2-4.]

CONVEYANCING COUNSEL.

*As between vendor and purchaser, is counsel of vendor.* [See VENDOR AND PURCHASER, 3.]

DIGEST, 1875-1880.

CONVICTION.

*Accessory after the fact.* [See MURDER.]

*Charging previous conviction in indictment.* [See FALSE PRETENCE, 3.]

*Conviction for assault, a bar to an action for same; 24 & 25 Vict. c. 100. s. 45.* [See ASSAULT.]

*Deaf and dumb prisoner.* [See TRIAL.]

*Effect of: restoration of property.* [See SALE, 15.]

*Quashing, on point of form.* [See MANDAMUS, 1.]

COPROLITES.

*Right of lord of manor.* [See COPYHOLD, 2.]

COPYHOLDS.

(A) CUSTOM: DEVISE.

(B) RIGHTS OF LORD AND COPYHOLDERS.

(C) ENFRANCHISEMENT.

(A) CUSTOM: DEVISE.

1.—Where by the custom of a manor every tenant held for life with power to nominate his successor, and a tenant devised his copyholds to trustees and their heirs to the use of his grandson for life, with remainder to the use of the children of his grandson as tenants in common with remainders over,—Held (notwithstanding a codicil referring to the customs of the manor), that the trustees took the legal estate, and that the limitation of successive equitable estates was good. *Allen v. Benney* (App.), Law Rep. 7 Ch. D. 453.

(B) RIGHTS OF LORD AND COPYHOLDERS.

2.—An encroachment made by a copyholder on the waste adjoining his tenement is of copyhold tenure. *The Attorney-General v. Tomline*, 46 Law J. Rep. Chanc. 654; Law Rep. 5 Ch. D. 750.

Copyholds were held in trust for the Crown. An officer of the Crown held an adjoining piece of the waste under a licence from the lord. On the expiration of this licence the Crown took possession of the licensed parcel and held it for more than twenty years:—Held, that this parcel was copyhold, vested in the trustee for the time being for the Crown. *Ibid.*

The lord of a manor is presumptively entitled to minerals, including coprolites. *Ibid.*

Copyhold land was let to a tenant from year to year:—Held, that digging for coprolites by the lord was damage to the reversion which the reversioner was entitled to restrain. *Ibid.*

A lord having entered on copyholds and dug for coprolites,—Held, that the copyholder was entitled to the net price of the coprolites, less such sum as would have induced some one to do the work of getting them. *Ibid.*

B B

3.—In an ordinary estate of copyhold the property in the trees and minerals is in the lord, the possession in the copyholder. If a stranger or the copyholder cut trees or take minerals, the lord can bring trover; if a stranger or the lord cut trees or take minerals, the copyholder can maintain trespass. *Eardley v. Granville*, 45 Law J. Rep. Chanc. 669; Law Rep. 3 Ch. D. 826.

When the trees are cut or the minerals taken, the copyholder becomes entitled to the possession of the space where the trees or minerals were, and is entitled to use it at his will and pleasure. *Ibid*.

On the other hand, if a freeholder grants lands excepting mines, he severs his estate vertically—that is, he grants out his estate in parallel vertical layer, and the grantee only gets the parallel layer granted to him. The freeholder retains the reserved stratum as part of his ownership, and whether or not he takes the minerals out of the stratum, such stratum still belongs to him as part of the vertical section of the land. *Ibid*.

G. was lessee of manorial mines, with right to work them and enter on the surface of the copyhold; these mines were worked from deep pits. Between the deep pits and the North Staffordshire Railway lay first, copyhold of A.; next, freehold of S.; next, freehold of A. G. took a lease of the S. mines and, ten days after, a lease of part of A.'s freehold, for the purpose of completing a railway then in course of construction over A.'s copyhold from the deep pits to the North Staffordshire Railway. This lease provided for the carriage over A.'s freehold by G. of the produce of mines belonging to or occupied by G. or belonging to S. Shortly afterwards, G. drove a cut from the S. mines under A.'s copyhold to the deep pits, and so carried the S. minerals to the deep pits, and thence by the railway over A.'s copyhold to the North Staffordshire Railway:—Held, that A.'s successors in title were entitled to an injunction to restrain G. from carrying the S. minerals under or over A.'s copyhold, and that there had been no acquiescence on A.'s part to disentitle them. *Ibid*.

#### (c) Enfranchisement.

4.—The Copyhold Act, 1852 (15 & 16 Vict. c. 51. s. 1), after giving power to the lord or tenant of any manor, admitted on or after the 1st of July, 1853, to compel enfranchisement, provides, "that if from any cause such enfranchisement shall not take place until some event shall have happened which may require a second or subsequent admittance, such second or subsequent admittance shall be made with all the rights incident thereto:—Held, that the death of the tenant, or the devolution of his title during proceedings for enfranchisement, would be such an "event" as is there contemplated. *Myers v. Hodgson*, 45 Law J. Rep. C.P. 603; Law Rep. 1 C.P. D. 609.

The plaintiff, lord of the manor, had, at the

instance of B., a tenant in fee of copyhold tenements of the manor, entered into proceedings pursuant to the Copyhold Amendment Act (21 & 22 Vict. c. 94. s. 8), for the compulsory enfranchisement of the said tenements. Pending the proceedings and before completion B. died, and the defendants, as devisees in fee of the said tenements, claimed to have the enfranchisement completed:—Held, that the defendants must first be admitted, and pay the customary fine incident thereto, pursuant to 15 & 16 Vict. c. 51. s. 1, and that the proceedings were not abated by the death of B. *Ibid*.

#### COPYRIGHT.

- (A) REGISTRATION.
- (B) TITLE OF BOOK.
- (C) INFRINGEMENT.
- (D) ASSIGNMENT.
- (E) DRAMATIC COPYRIGHT.
- (F) MUSICAL COMPOSITIONS.
- (G) COPYRIGHT OF DESIGNS.

##### (A) REGISTRATION.

1.—A publisher, before publication, entered at Stationers' Hall the intended date of publication of the first number of a magazine, which was also the actual date:—Held, an insufficient compliance with the provisions of the Copyright Act (5 & 6 Vict. c. 45. s. 13), and that he had acquired no copyright in a tale appearing in such magazine under section 18. *Henderson v. Maxwell*, 46 Law J. Rep. Chanc. 891; Law Rep. 5 Ch. D. 892.

##### (B) TITLE OF BOOK.

2.—The plaintiff was the registered proprietor under the Copyright Act of a directory entitled "The Post-Office Directory of the West Riding of Yorkshire," which included the town of Bradford; and since 1852 had published directories for numerous other county districts, which were all entitled "Post-office" directories. The defendants published a directory for the town of Bradford, entitled "The Bradford Post-Office Directory," which bore no similarity to the work of the plaintiff in price or appearance. The plaintiff claimed to restrain the defendants from using the word "Post-office" as part of the title of their directory. The evidence failed to shew that the word "Post-office" was known to any portion of the public as a synonym for "Kelly":—Held (affirming the decision of Bacon, V.C., 48 Law J. Rep. Chanc. 569), that the plaintiff had no right to the exclusive use of the word "Post-office" as part of the title of his directories. Decision of Bacon, V.C., affirmed. *Kelly v. Byles* (App.), 49 Law J. Rep. Chanc. 181; Law Rep. 13 Ch. D. 682.

3.—The title of a book is part of the book, and is as much a subject of copyright as the book itself. *Weldon v. Dickie*, 48 Law J. Rep. Chanc. 201; Law Rep. 10 Ch. D. 147.

The proprietor of copyright in a book does not lose his right to republish the book, at any time during the continuance of the copyright, although the book may have been out of print for several years. *Ibid.*

#### (C) INFRINGEMENT.

4.—Books piratically printed before registration of the proprietor of the copyright become his property after registration. *Hole v. Bradbury* (48 Law J. Rep. Chanc. 673; Law Rep. 12 Ch. D. 886) not followed. *Isaacs v. Fiddemann*, 49 Law J. Rep. Chanc. 412.

5.—The entry at Stationers' Hall of the first number of a periodical, pursuant to the 19th section of 5 & 6 Vict. c. 43, enables the proprietor thereof to maintain an action to restrain the publication in a separate form of a serial tale that has appeared in subsequent numbers of the periodical; and he need not register the tale in a separate form as a condition precedent to suing. *Henderson v. Maxwell*, 46 Law J. Rep. Chanc. 59; Law Rep. 4 Ch. D. 163.

6.—The plaintiffs, the owners of an English copyright magazine, received by post a copy of the April number of an American publication containing piracies of their work. On the 14th of April the plaintiffs gave the defendants, who were the agents in England of the American publishers, notice not to distribute the work. On the same day the defendants replied warning the plaintiffs they would be liable in damages to the American publishers if they stopped the sale. Subsequently, on the 14th, the plaintiffs wrote back to say that if the defendants distributed the work they must put the matter in the hands of their solicitors. On the 15th of April, about 1.30 p.m., the defendants received a parcel of copies of the pirated work, and at once, as they alleged, on seeing the piracy, determined not to sell or distribute any of the copies. About 3 p.m. on the 15th, without any further notice from the plaintiffs, they were served with a writ, a notice of motion, and an *ex parte* injunction in terms of the writ restraining them from importing for sale, and from selling and retaining in their possession for sale any copies of the April number. On the motion coming on the defendants gave an undertaking until the trial. The plaintiffs moved for judgment on a defence setting out the above facts:—Held, first, that the defendants had committed the offence of "importing for sale" within the meaning of section 17 of the Copyright Act, 1842, and that no notice was necessary on the plaintiffs' part to entitle them to an injunction, and that persons importing for sale pirated works did so at their peril; second, that as the defendants had retained the pirated copies in their possession, they had "knowingly had the same in their possession for sale," and had committed that offence also under the section; and third, that the plaintiffs were entitled to an injunction on both grounds, and to the costs of the action.

*Cooper v. Whittingham*, 49 Law J. Rep. Chanc. 752; Law Rep. 15 Ch. D. 501.

Under the 17th section of the Copyright Act, 1842, there is a distinction between "importing for sale" and "selling, publishing or exposing for sale," and in the latter cases knowledge of the piracy is essential to create an offence. *Ibid.*

A plaintiff coming to enforce a legal right, and who is guilty of no misconduct, is entitled to the costs of his action as a matter of course, and the Court in such a case has no discretion to deprive him thereof. *Ibid.*

Where a new offence is created by statute, and a penalty imposed for such offence, a person is not thereby deprived of his equitable right by injunction to stop the commission or repetition of the offence. *Ibid.*

#### (D) ASSIGNMENT.

7.—The assignment of a copyright under the 5 & 6 Vict. c. 45 is not valid unless it be in writing. *Layland v. Stewart*, 46 Law J. Rep. Chanc. 103; Law Rep. 4 Ch. D. 419.

#### (E) DRAMATIC COPYRIGHT.

8.—To support an action for infringement of dramatic copyright under 3 & 4 Will. 4. c. 15. s. 2, it must be proved that the defendant has taken a substantial and material part of the plaintiff's production. *Chatterton v. Cave* (H.L.), 47 Law J. Rep. C.P. 545; Law Rep. 3 App. Cas. 483 (affirming the Court of Appeal, 46 Law J. Rep. C.P. 97; Law Rep. 2 C.P. D. 43).

Where by agreement the jury were discharged and the cause submitted to the decision of the Judge,—Held, that on a motion for a new trial or to take a verdict for the plaintiffs, it was competent for the Judge to explain to the Court the reasons and precise meaning of his finding. *Ibid.*

#### (F) MUSICAL COMPOSITIONS.

9.—The plaintiff, the author of a drama, entered into the following agreement with R. & E.: "Received of Messrs. R. & E. the sum of 75*l.* in part payment of 150*l.* for the London right of a piece to be called 'Ticket of Leave,' the residue to be paid at 2*l.* per night after the first twenty-five nights of the representation of the same." In an action against the defendant for representing the piece without licence, the Judge at the trial having held that the term "London right" meant the whole of the plaintiff's right of representation in London, and that the licence was to R. & E. and their assigns,—Held, that the plaintiff could bring no action for penalties under 3 & 4 Will. 4. c. 15, in respect of representations in London, except as trustee for R. & E. or their assigns. *Taylor v. Neville* (App.), 47 Law J. Rep. Q.B. 254.

10.—The plaintiffs and L. were the duly registered proprietors of, and were entitled in equal moieties to the copyright in an opera,

L., without the consent of the plaintiffs, granted the defendant a licence to represent the same. In an action by the plaintiffs to restrain the defendant from representing the opera and for damages,—Held, that section 1 of the 3 Will. 4. c. 15, gave the sole right of representation to the "author" or his "assignee," which words, by section 4, were to be read "authors" or "assignees;" that according to section 2 one co-owner of the copyright could not grant a licence, and that any representation without the consent of all the "proprieters" was unlawful. Held also, that the plaintiffs could maintain the action without making L. a party, and that as they were interested to the extent of one-half in the copyright they were entitled to recover from the defendant one-half the minimum statutory penalty of 2l. a night for each representation. *Powell v. Head*, 48 Law J. Rep. Chanc. 731; Law Rep. 12 Ch. D. 686.

11.—The representation of a drama is publication within the meaning of section 19 of the International Copyright Act, which deprives the author of (amongst other things) any dramatic piece of any copyright therein if the piece has been first "published" abroad; and the provisions of that section apply to all cases of copyright under that or any previous Acts. *Boucioault v. Chatterton* (App.), 46 Law J. Rep. Chanc. 305; Law Rep. 5 Ch. D. 267.

12.—An opera was composed by O. and represented in France, and a pianoforte arrangement by S. was published immediately afterwards. In registering the opera under the International Copyright Act, the name of the opera and its composer and the correct date of its first composition were given, but in addition the date of the publication of the pianoforte arrangement, in which no copyright was claimed, was given, and that arrangement was deposited at the time of registration, but not the score of the opera itself, which had not been printed. In a suit by B., the assignee of O., to restrain an infringement by X. of his exclusive right of representing the opera,—Held (affirming the judgment of the Court of Appeal, 47 Law J. Rep. Chanc. 186; Law Rep. 7 Ch. D. 301; and reversing the decision of one of the Vice-Chancellors, 46 Law J. Rep. Chanc. 726; *nom. Boosey v. Fairlie*), that what was intended to be registered was the music of the opera, not the arrangement for the piano. Held also, that the printing and publishing of an arrangement containing the harmony and tune of a musical composition may amount to such a printing of the composition as to oblige the composer to notice it in registering the composition under 7 & 8 Vict. c. 12, and to deposit a copy of it at Stationers' Hall; but that it was unnecessary to decide whether the printing of the arrangement by S. was or was not such a printing of the opera by O.; for that the entry relating to the arrangement, if erroneous and bad, would not vitiate the good entry relating to the opera. *Fairlie v. Boosey* (H.L.), 48 Law J. Rep. Chanc. 697; Law Rep. 4 App. Cas. 711.

13.—The statute 5 & 6 Vict. c. 45. s. 20 applies the provisions of 3 & 4 Will. 4. c. 15. s. 1 to musical compositions, and 5 & 6 Vict. c. 45 applies therefore to the right of performing musical compositions published within ten years before the passing of that Act. C. assigned by deed in 1843 to D. his copyright in certain songs which had been composed by him in 1836 and registered in 1841, and also the sole liberty of printing and publishing the same, "together with the sole and exclusive privilege of vending the same and all other his estate, right and title, interest, property, contingent possibility, benefit, claim and demand whatsoever, both at law and in equity," in those compositions.—Held, that after the 5 & 6 Vict. c. 45, the author had two distinct rights in these songs, the copyright and the sole right of representation or performing, and these words in the deed passed both the copyright and the sole liberty of performing the songs. C. afterwards assigned to A. the exclusive right of performing the same songs, and A. made entries on the register at Stationers' Hall, representing himself as proprietor, under that assignment, of that right. H., claiming title under the earlier assignment to D., moved to expunge these entries.—Held (affirming the judgment of the Queen's Bench Division, 48 Law J. Rep. Q.B. 99; Law Rep. 4 Q.B. D. 91), that H. was a person "aggrieved" within the meaning of section 14 of 5 & 6 Vict. c. 45, and that the entries must be expunged. *Ex parte Hutchinsons and Romer; in re the songs "Kathleen Macvourneen" and "Dormot Astore"* (App.), 48 Law J. Rep. Q.B. 505; Law Rep. 4 Q.B. D. 483.

#### (G) COPYRIGHT OF DESIGNS.

14.—An engraving copied from a photograph of a well-known public man, which has been publicly sold, cannot be protected as a new and original design, although merely used as a pattern for a particular article, such as a dinner service. *Adams v. Clementson*, Law Rep. 12 Ch. D. 714.

15.—The Act 25 & 26 Vict. c. 68 provides for registration of proprietorship and assignments of copyright in paintings, and enacts that no proprietor of any such copyright shall be entitled to the benefit of the Act until registration, and no action shall be sustainable, nor any penalty be recoverable, in respect of anything done before registration. *Semble*, a registered proprietor cannot sue for offences under the Act committed when an earlier proprietor was on the register. *Dupuy v. Dilke*, 48 Law J. Rep. Chanc. 682.

In an action under the above Act seeking penalties, an injunction and other relief in respect of unlawful repetitions of a picture, the main object of the suit being the recovery of penalties,—Held, that the plaintiffs ought not to be permitted, upon the facts appearing at the trial, to raise a claim for relief under the same statute in respect of unlawful sales, that case not being made by their pleadings. *Ibid*.

16.—The statutes 8 Geo. 2. c. 13 (known as the Hogarth Act) and 7 Geo. 3. c. 38, which give copyright in engravings, give no copyright in the subject engraved, but were intended only to protect the meritorious labour of the engraver expended upon the execution of the engraving. Therefore, to copy or reproduce the subject engraved by a method (such as lithography) which does not involve the making use of the engraver's labour (although a copy of the engraving be used as the vehicle of the subject) is no infringement of the copyright in the engraving. A. was the owner of a copyright in an engraving after an original oil painting, which itself was not protected. B. published a chromo-lithographed pattern, for working the subject of the original picture in Berlin woolwork. This pattern was obtained by copying the engraving. A. warned a vendor of B.'s pattern, by printed circular, that to sell unauthorised copies of the subject referred to was an infringement of his copyright. B. brought an action against A. for slandering his title to the woolwork pattern and for consequential damages. The damage actually traced to A.'s circular was very trifling:—Held (reversing the decision of Bacon, V.C.), that the woolwork pattern was no infringement of the copyright in the engraving, and that the action would have been maintainable if any real or substantial damage had been proved. *Dicks v. Brooks* (App.), 49 Law J. Rep. Chanc. 812; Law Rep. 15 Ch. D. 22.

17.—When the owner of the copyright of a painting assigns the copyright for the purpose of producing an engraving of one size, the right of producing copies of the painting in other ways, or by engravings of other sizes, remains in him, and can be assigned by him to any other person. And if the assignee of the right of copying a painting in a particular way alleges that some other publication is an infringement of his copyright, the *onus* is on him to shew that that publication has been taken from his copy, and not from the original painting. Registration of the proprietorship of the copyright of a painting is only *prima facie* evidence of title, and may be rebutted by the terms of the assignment of the copyright to the person who has made the registration. *Lucas v. Cooke*, Law Rep. 13 Ch. D. 872.

18.—5 & 6 Vict. c. 100. s. 3 protects the right to apply the design to articles of manufacture, and not the exclusive right of sale by a person not having a right so to apply the design. *Jewitt v. Eckhardt*, Law Rep. 8 Ch. D. 404.

Any assignment of, or licence to use, a design must be in writing; and, semble, a licence cannot be granted before registration. *Ibid.*

#### CORNWALL, DUCHY OF.

1.—T. C. died in Cornwall, intestate, without known relations. The Court granted letters of administration of his estate for the use of His Royal Highness the Prince of Wales as Duke of Cornwall; but, semble, without prejudice, to

the rights of the Crown. The Court also dispensed with sureties to the administration bond. *The Solicitor of the Duchy of Cornwall v. Thomas Canning*, Law Rep. 5 P. D. 114.

2.—By the charter of 11 Edw. 3 and the Act 21 & 22 Vict. c. 109, the Duke of Cornwall became entitled to all the rights of the Crown in the foreshore of the whole county. *The Mayor, &c., of Penryn v. Holm*, 46 Law J. Rep. Exch. 506; Law Rep. 2 Ex. D. 328.

#### CORONER.

When material evidence has been rejected at a coroner's inquest, and the jury have brought in an inconclusive verdict, and fresh evidence which will throw light upon the enquiry is forthcoming, the Court will quash the inquisition, and send it down to the coroner to hold a fresh enquiry before a fresh jury. *Reg. v. Carter*, 45 Law J. Rep. Q.B. 711.

Such fresh enquiry must be held *super visum corporis*. *Ibid.*

#### CORPORATION.

[See MUNICIPAL CORPORATION.]

*Contract by, not under seal.* [See PUBLIC HEALTH ACT, 9.]

*Discovery by.* [See PRACTICE, E E 6.]

*Foreign attachment against.* [See ATTACHMENT, 13.]

*Penalty, cannot sue for.* [See PENALTY, 1.]

*Writ specially indorsed: signing final judgment: affidavit by officer of corporation not sufficient.* [See PRACTICE, I I 6.]

#### CORRUPT PRACTICES (MUNICIPAL ELECTIONS) ACT, 1872.

[See MUNICIPAL CORPORATION, 11.]

#### COST BOOK MINING COMPANY.

[See COMPANY, D 96, E 6.]

#### COSTS.

(A) COSTS OF PLAINTIFF: ORDER LV.

(a) Costs "following event."

(b) In action of slander.

(c) Depriving successful party of costs.

(d) Ordering successful plaintiff to pay costs.

(e) *County Courts Act, 1867: "contract" or "tort."*

(B) JURISDICTION TO AWARD OR DISALLOW COSTS.

(a) Judge in chambers, power of.

(b) Master or district registrar, power of.

(c) Probate Court: costs out of real estate.

(d) Reference under Common Law Procedure Act: order of reference silent as to costs.

- (e) *Interlocutory proceedings: power to alter judgment.*
- (C) IN PARTICULAR CASES.
- (a) *Allegations of fraud.*
  - (b) *Demurrer.*
  - (c) *Defence, amendment of.*
  - (d) *Confessing defence.*
  - (e) *Swearing defendants.*
  - (f) *Counter-claim.*
  - (g) *Third parties.*
  - (h) *Plea of plaintiff's bankruptcy.*
  - (i) *Motions.*
  - (k) *Petition.*
  - (l) *Test action.*
  - (m) *Payment into court.*
  - (n) *Refusal to take evidence by affidavit.*
  - (o) *Writ of attachment.*
  - (p) *Neglect to lodge case from justices.*
  - (q) *Collision of ships.*
  - (r) *Administration actions.*
  - (s) *Foreclosure and redemption actions.*
  - (t) *Admiralty, divorce and probate actions.*
  - (u) *Of appeal.*
- (D) OF PARTIES IN PARTICULAR CAPACITY.
- (E) SECURITY FOR COSTS.
- (a) *When ordered.*
    - (1) *Old suit.*
    - (2) *Insolvency or liquidation of plaintiff.*
    - (3) *Parties out of jurisdiction.*
    - (4) *Next friend.*
    - (5) *Amendments raising fresh case.*
    - (6) *Appeal.*
  - (b) *Amount and nature of security.*
  - (c) *Failure to give security.*
- (F) TAXATION OF COSTS.
- (a) *Right to taxation.*
    - (1) *Discharged bankrupt: "party interested."*
    - (2) *Taxation after payment.*
    - (3) *Order of Court of Appeal.*
    - (4) *Series of bills.*
    - (b) *Duty of taxing-master.*
    - (c) *Scale of taxation.*
    - (d) *Apportionment of costs.*
    - (e) *Costs of the day.*
    - (f) *Solicitor and client costs.*
    - (g) *Allowances on taxation.*
      - (1) *Attendances: diagrams: fees.*
      - (2) *Refreshers to counsel.*
      - (3) *Shorthand notes.*
      - (4) *Witnesses.*

#### (A) COSTS OF PLAINTIFF: ORDER LV.

##### (a) *Costs "following event."*

1.—The "costs" referred to in the proviso in Order LV. are the costs of all proceedings incident to the litigation, and where a nonsuit had been set aside and a new trial granted, and on the second trial judgment had been given for the plaintiff,—Held, that the costs of the first trial were included in the costs which must "follow the event" of the second trial.

*Green v. Wright* (App.), 46 Law J. Rep. C.P. 427; Law Rep. 2 C.P. D. 354.

2.—Where in an action tried by a jury the plaintiff proves a claim, and the defendant proves a counter-claim of less amount, the plaintiff recovers judgment for the balance only; and if no order as to costs is made, the plaintiff's right to costs under Order LV. and the County Court Act, 1867, must be decided with reference to the balance. *Staples v. Young*, Law Rep. 2 Ex. D. 324.

3.—In an action brought to recover damages for, first, malicious proceedings in bankruptcy; second, libel and slander; third, trespass and conspiracy, and tried with a jury, the plaintiff obtained a verdict and judgment, with a farthing damages upon the claim for libel, and the defendants obtained a verdict and judgment upon the other issues. Without any order having been made giving to the defendants any costs, a Master taxed in favour of the defendants the costs of the issues upon which they had succeeded:—Held (by the Exchequer Division and by the Court of Appeal, affirming the judgment of the Exchequer Division, upon motion to review the taxation), that the defendants were entitled to those costs, and that the taxation was right. *Myers v. Defries* (App.), 49 Law J. Rep. Exch. 266; Law Rep. 5 Ex. D. 15, 81.

4.—Where the plaintiff recovers a verdict, and a new trial is ordered on the ground of excessive damages, in which new trial the plaintiff again obtains a verdict in his favour, the second verdict is the "event," within the meaning of Order LV., which the costs of the whole action are to follow, including the costs of the abortive first trial. *Field v. The Great Northern Railway Company*, 47 Law J. Rep. Exch. 662; Law Rep. 3 Ex. D. 261.

5.—Where a plaintiff establishes his claim in an action for a sum over 20*l.*, although the amount for which he obtains judgment may be reduced by a defendant's counter-claim to less than that amount, the plaintiff is entitled to his costs in the High Court, as section 67 of the Judicature Act, 1873, does not apply to such a case. Where a defendant establishes his counter-claim (which is either wholly or in part for unliquidated damages) for any sum, although it may be less than the claim the plaintiff has established, he is entitled to the costs of his counter-claim. The plaintiff claimed 10*l.* for rent, 100*l.* damages for breach of covenant and 30*l.* damages for the conversion of goods by the defendant. By his counter-claim the defendant sought to recover 100*l.* for breach of covenant and 5*l.* balance of rent due from the plaintiff to the defendant. At the trial the claim and counter-claim were referred to an arbitrator, "the costs of the action to abide the event of the award or certificate; the costs of the reference to be in the discretion of the arbitrator," to whom power was also given to give judgment. The arbitrator made his award in favour of the plaintiff for 15*l.*, and directed

that the defendant should pay the plaintiff's costs of the reference and should bear the costs of the award; but he gave no certificate under section 5 of the County Courts Act, 1867, so as to entitle the plaintiff to the costs of the action. Upon an application to the Queen's Bench Division, the case was sent back to the arbitrator to find separately upon the claim and counter-claim. He thereupon found that the plaintiff was entitled to 35*l.* in respect of his claim, and that the defendant was entitled to 20*l.* upon his counter-claim, leaving a balance of 15*l.* due to the plaintiff, in respect of which he confirmed his award. The plaintiff obtained from a Judge at chambers an order allowing him the costs of the action. The defendant applied to set aside the order:—Held, that the order was good, as, according to the findings of the arbitrator, the plaintiff had "recovered" 35*l.* in the action. Held also (Field, J., dissenting), that as the defendant had succeeded in establishing his counter-claim (which was not a mere set-off or claim for liquidated damages), he must be held to have recovered in his action, and therefore that he was entitled to have the costs of his counter-claim. *Staples v. Young* (Law Rep. 2 Ex. D. 324; No. 2 supra) dissented from. *Chatfield v. Sedgwick* (Law Rep. 4 C.P. D. 459; No. 30 infra) distinguished. *Stooke v. Taylor*, 49 Law J. Rep. Q.B. 857; Law Rep. 5 Q.B. D. 569.

(b) *In action of slander.*

6.—By Order LV. of the Judicature Act, 1875, costs in an action tried by a jury are, subject to the provisions of the Act, to follow the event, unless upon application made at the trial, for good cause shewn, the Judge before whom such action or issue is tried, or the Court, shall otherwise order. In an action for libel tried by a jury, the plaintiff obtained a verdict with nominal costs, the Judge at the trial declining to certify for costs:—Held, in the absence of any provision to the contrary in the above Act, that the plaintiff was entitled to his costs. *Parsons v. Tinsling*, 46 Law J. Rep. C.P. 230; Law Rep. 2 C.P. D. 119.

Semble, all previous statutes regulating costs, except such as may be preserved by the Judicature Act, 1875, are repealed by that Act. *Ibid.*

7.—Where in an action for slander tried by a jury the plaintiff obtained a verdict with nominal damages, the Judge at the trial refusing to certify for costs,—Held (reversing the decision of the Court of Appeal, 46 Law J. Rep. Exch. 545; Law Rep. 2 Ex. D. 349), that the plaintiff was entitled to his full costs. *Parsons v. Tinsling* (see last case) approved. *Garnett v. Bradley* (H.L.), 48 Law J. Rep. Exch. 186; Law Rep. 3 App. Cas. 944.

(c) *Depriving successful party of costs.*

8.—In a cause tried at the assizes by a Judge and jury an application to deprive the successful party of costs was made an hour after verdict, and while another cause was proceeding:

—Held, that the application was not too late under Order LV., which requires the application to be made at the trial. *Kynaston v. Mackinder* (App.), 47 Law J. Rep. Q.B. 76.

9.—Order LV. provides that "where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial, for good cause shewn, the Judge before whom such action or issue is tried, or the Court, shall otherwise order":—Held, that where no application has been made to the Judge at the trial to deprive a successful plaintiff of his costs, it is nevertheless competent to the defendant to come to the Divisional Court, which has jurisdiction, for good cause shewn, to make an order that costs shall not follow the event. But such application to the Court must be made promptly. *Boney v. Bell*; *Brooks v. Israel*; *North v. Bilton*; *Siddons v. Lawrence*. Affirmed on appeal. *Myers v. Defries*; *Siddons v. Lawrence* (App.), 48 Law J. Rep. Exch. 446; Law Rep. 4 Ex. D. 176.

10.—In an action tried by a jury the Judge before whom such action is tried has power of his own motion to make an order at the trial depriving a successful plaintiff of costs under Order LV., and no application is necessary in order to give him jurisdiction to exercise such power. *Baker v. Oakes* (46 Law J. Rep. Q.B. 246; Law Rep. 2 Q.B. D. 171; No. 19 infra) discussed. *Turner v. Heyland*, 48 Law J. Rep. C.P. 535; Law Rep. 4 C.P. D. 432.

11.—A plaintiff, after a trial with a jury, recovered 12*l.* in an action founded on tort. The Judge, counsel for the plaintiff and the defendant being present, said that he should consider whether he ought not to deprive the plaintiff of his costs. The counsel for the plaintiff argued against the making of such an order; the counsel for the defendant did not address the Judge. The order was made:—Held (affirming the decision of the Common Pleas Division), that the order depriving the plaintiff of his costs ought not to be rescinded, for that there had been a substantial compliance with the requirements of Order LV. rule 1. *Collins v. Welch* (App.), 49 Law J. Rep. C.P. 260; Law Rep. 6 C.P. D. 29.

12.—In exercising his discretion to deprive a successful party of his costs under Order LV., the Judge is not confined to the consideration of the conduct of the party in the course of the litigation, but may consider his conduct previous to and conducing to the action. He must, however, assume the truth of the facts found by the jury. *Harnett v. Wise* (App.), Law Rep. 5 Ex. D. 307.

(d) *Ordering successful plaintiff to pay costs.*

13.—The power of a Judge over the costs of an action tried by a jury is, under the proviso at the end of Order LV., as extensive as that given to the Court by the general rule at the beginning of the same Order. *Harris v. Petherick* (App.), 48 Law J. Rep. Q.B. 521; Law Rep. 4 Q.B. D. 611.

A plaintiff who was nonsuited in an action, in which he claimed on two causes of action two separate sums of 85*l.* and 6*s.* respectively, obtained a rule for a new trial, no order being made as to costs. On the second trial the verdict was for the plaintiff for the smaller sum of six shillings, and for the defendant as to the claim for the larger sum. The Judge before whom the second trial was held ordered the plaintiff to pay the costs of both trials:—Held (affirming the judgment of the Queen's Bench Division), that it was competent for the Judge to make the order. *Ibid.*

(c) *County Courts Act, 1867: "contract" or "tort."*

14.—Action by the plaintiffs alleging that they caused to be delivered to the defendants as common carriers a parcel of goods for carriage from S. to D., and that the goods were lost by the careless conduct of the defendants. The defendants having paid a sum of 12*l.* 3*s.* 4*d.* into Court, which was accepted by the plaintiffs,—Held, that the action was founded on contract, and that the plaintiffs were not entitled to costs. *Fleming v. The Manchester, Sheffield and Lincolnshire Railway Company (App.)*, Law Rep. 4 Q.B. D. 81.

15.—In an action against carriers for loss of goods by delivery to an insolvent purchaser contrary to notice given by the plaintiff, in exercise of the right of stoppage *in transitu*, the plaintiff recovered 12*l.* Upon objection that the plaintiff was disentitled to costs by the County Courts Act, 1867, s. 5,—Held, that this was an action "founded on tort" within the meaning of the section, and that the plaintiff was therefore entitled to costs. *Pontifex v. The Midland Railway Company*, 47 Law J. Rep. Q.B. 28; Law Rep. 3 Q.B. D. 23.

16.—Detinue is an action of tort within the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 5. *Bryant v. Herbert*, 47 Law J. Rep. C.P. 670; Law Rep. 3 C.P. D. 389.

The plaintiffs delivered to the defendant a picture in order that the defendant might determine whether it was a genuine picture painted by himself or not. The defendant having come to the conclusion that the picture was not genuine, refused to give it back to the plaintiffs except upon conditions to which the plaintiffs would not agree. In an action brought for the wrongful detention of the picture, the plaintiffs obtained a verdict for 10*l.*, the value of the picture, and 1*s.* as damages for its detention. The Judge at the trial refused to make any order for the delivery up of the picture, and made no order as to costs:—Held (reversing the decision below, 47 Law J. Rep. C.P. 354; Law Rep. 3 C.P. D. 189), that the plaintiffs were not deprived of their costs by 30 & 31 Vict. c. 142, s. 5. *Ibid.*

17.—Where the plaintiff's claim exceeds 50*l.*, and he recovers a sum exceeding 20*l.*, he will not be deprived of his costs under section 5 of the County Courts Act, 1867, on the ground that

the defendant has succeeded on a set-off and counter-claim so as to reduce the amount actually recovered as the balance to less than 20*l.* Section 67 of the Judicature Act of 1873 has no application to such a case. *Potter v. Chambers*, 48 Law J. Rep. C.P. 274; Law Rep. 4 C.P. D. 69.

18.—The plaintiffs claimed on a balance of accounts a sum exceeding 50*l.* The defendants denied their indebtedness and claimed by set-off and counter-claim a balance against the plaintiffs of more than 50*l.* on account of goods sold and delivered. The cause having been referred, the arbitrator found that the defendants were indebted to the plaintiffs in a sum exceeding 50*l.*, and also that the plaintiffs were indebted to the defendants in a sum exceeding 50*l.*, but that, on the whole account, there was a balance due from the defendants of 11*l.* 10*s.* 3*d.*:—Held, that each was entitled to the costs of the issues on which they succeeded, and that the plaintiffs were entitled to the costs of the action. (Hawkins, J. *dubitante*.) *Neale v. Clarke*, Law Rep. 4 Ex. D. 286; and see *Cole Marchant & Company v. Firth*, Law Rep. 4 Ex. D. 301 *n.*

*Reference by consent: award under 20*l.* in action of contract.* [See ARBITRATION, 24.]

(B) JURISDICTION TO AWARD OR DISALLOW COSTS.

(a) *Judge in chambers, power of.*

19.—A Judge at chambers has no power to make an order as to costs under Order LV., nor to extend the time for making such order under Order LVII. rule 6, so as to enable the Judge who tried the cause to make such order at any time after the trial. If no application has been made to the Judge at the trial, the only way of obtaining such an order is by a substantive application to a Divisional Court. *Baker v. Oakes (App.)*, 46 Law J. Rep. Q.B. 246; Law Rep. 2 Q.B. D. 171.

The expression, "the Court or a Judge," in the Rules and Orders, invariably means a Divisional Court or a Judge at chambers. *Ibid.*

Section 39 of the Judicature Act, 1873, merely confers on the Judges of the Supreme Court the power to exercise in chambers such of the functions of the Court as were exercised in chambers by the Judges before the Act. *Ibid.*

20.—The combined effect of the Judicature Acts and Rules of the Supreme Court, 1875, Order LV. rule 1, is to give the High Court a general discretion as to costs in all cases not specially excepted by the Acts, and consequently, excepting in such cases, the Court is no longer bound by any provision or omission as to costs in any Act prior to the Judicature Act, 1875. *Ex parte The Mercers Company*, 48 Law J. Rep. Chanc. 384; Law Rep. 10 Ch. D. 481.

(b) *Master or district registrar, power of.*

21.—The enactment in section 49 of the Judicature Act, 1873, that no order by the High



Court or any Judge thereof as to costs only which by law are left to the discretion of the Court shall be subject to any appeal, does not apply to the order of a Master or district Registrar, and therefore a Judge of such Court has power to vary as to costs an order of a district Registrar, dismissing the action without costs. *Forster v. Edwards*, 48 Law J. Rep. Q.B. 767.

(c) *Probate Court: costs out of real estate.*

22.—A will was proved by A., who acted as executor for some months. Then the Probate Court, and the House of Lords, on appeal from the Probate Court, decreed probate to B. instead, and directed all the costs to be paid "out of the estate." There was very little personal estate but considerable real estate. B. filed a bill for the administration of the real and personal estate of the testator in order to obtain payment of his costs:—Held, that the Probate Court, not having jurisdiction over real estate, could not, neither could the House of Lords, on appeal from the Probate Court, make an order for payment of the costs out of the real estate. B. therefore was not entitled to a decree for the administration of the real estate, but, as he had acted for sometime as executor, he was entitled to a decree for the administration of the personal estate. *Charter v. Charter*, 45 Law J. Rep. Chanc. 705

(d) *Reference under Common Law Procedure Act: order of reference silent as to costs.*

23.—Where an action had been by consent of the parties at the trial referred as a matter of account to a Master under the Common Law Procedure Act, 1854, the order of reference being silent as to costs,—Held, that as the proceedings were intentionally taken under the Common Law Procedure Act, and not under the Judicature Act, Order LV. of the Rules of Court, Judicature Act, 1875, did not apply, and the Court had no jurisdiction to make any order as to costs. *Wimhurst, Hollick & Company v. The Barrow Ship Building Company (Lim.)*, 46 Law J. Rep. Q.B. 477; Law Rep. 2 Q.B. D. 335.

(e) *Interlocutory proceedings: power to alter judgment.*

24.—E. having been joined as a third party in an action appealed against the order joining him, and his appeal was dismissed with costs. At the trial he obtained judgment dismissing him from the action, with costs against the party who obtained the order joining him, and on appeal that judgment was affirmed with costs. On taxation the Master refused to allow E. his costs of the interlocutory proceedings by which he was joined as a party to the action. On an application to the Court of Appeal for E.'s costs of the interlocutory proceedings,—Held, that the Court of Appeal had no power to alter the judgment they had delivered on the appeal from the interlocutory proceedings, so as to give

E. his costs; nor to vary their final judgment in the action. *Beynon v. Godden* (App.), 48 Law J. Rep. Exch. 80; Law Rep. 4 Ex. D. 246.

(C) IN PARTICULAR CASES.

(a) *Allegations of fraud.*

25.—Where there are allegations of personal fraud made which are not proved the proper course is to dismiss with costs so much of the bill as is founded on them, but not to dismiss the bill itself. *Thomson v. Eastwood* (H.L. Ir.), Law Rep. 2 App. Cas. 215.

(b) *Demurrer.*

26.—A shareholder brought an action against the solicitors of a limited company to recover moneys alleged to have been fraudulently retained by the solicitors. The company were made defendants, but there was no allegation that they refused to sue as plaintiffs. The defendants demurred, on the ground that the action ought to have been brought in the name of the company. The Court allowed the demurrer, but granted the plaintiff leave to make the company co-plaintiffs instead of defendants, and reserved the question whether the plaintiff should pay the defendants' cost of the demurrer. *Duchett v. Gorer*, 46 Law J. Rep. Chanc. 407; Law Rep. 6 Ch. D. 82.

The words "*bona fide* mistake" in Order XVI. rule 2, mean a mistake as well of law as of fact. *Ibid.*

(c) *Defence, amendment of.*

27.—Under Order XXVII. rule 1 of the Rules of Court, the Court has power to allow a defendant who has put in a joint statement of defence, and who has afterwards been advised that he has other grounds of defence not set out in the joint statement, to put in a separate statement of defence, without filing an affidavit setting out the nature of the new defence intended to be set up, upon such defendant paying to the plaintiff the costs which he has rendered necessary by not having put in his full defence in the original statement; such costs, however, to include the costs of briefing one counsel only on the part of the plaintiff, and forty shillings for the costs of the other defendants appearing to support the plaintiff. *Cargill v. Bower*, 46 Law J. Rep. Chanc. 175; Law Rep. 4 Ch. D. 78.

(d) *Confessing defence.*

28.—In an action for breach of covenant and other causes of action the defendant paid money into Court in satisfaction, and pleaded that the covenant had been performed. The plaintiff took the money out of Court, and confessed the statement as to the covenant. On an application for costs under Order XX,—Held, that the statement confessed did not amount to a defence within that Order, and that the plaintiff was only entitled to his costs under Order LV. or under 15 & 16 Vict. c. 54. *Callander v. Hawkins*, Law Rep. 2 C.P. D. 592.

(c) *Severing defendants.*

29.—In a partition suit a sale was ordered of real estate to seven-eighths of which the plaintiff was entitled, and to one-eighth of which Mrs. Q., a married woman, was entitled. It was then arranged between the parties that the plaintiff should buy Mrs. Q.'s share, and by an order of the Court it was ordered that the plaintiff should pay 1,200*l.* as the purchase-money of such share into Court, and that on such payment the plaintiff should be let into possession, and all proper parties sign and execute a proper conveyance. The plaintiff paid the purchase-money, but then, before any conveyance was executed, Mrs. Q. died:—Held, that the purchase-money of Mrs. Q.'s share must be treated as real estate. *Mildmay v. Quicke* (App.), 46 Law J. Rep. Chanc. 667; Law Rep. 6 Ch. D. 553.

Mrs. Q. and her husband had severed in their defence, and Mrs. Q.'s solicitors had obtained a charging order and stop order on the fund in Court for the costs due to them in the suit, and appeared on the present hearing on further consideration:—Held, that they must bear their own costs of appearance by counsel as well as of the stop order. *Ibid.*

(f) *Counter-claim.*

30.—Where a plaintiff claimed 57*l.* 10*s.*, and, on a reference to the Master, established his claim to 16*l.* 1*s.* 5*d.* only, and the defendant established his counter-claim for 23*l.*,—Held, that the defendant was entitled to his costs. *Chatfield v. Sedgwick*, Law Rep. 4 C.P. D. 383; affirmed on appeal, *ibid.* 459.

31.—Where the plaintiff's claim exceeds 50*l.*, and he recovers a sum exceeding 20*l.*, he will not be deprived of his costs under section 5 of the County Courts Act, 1867, on the ground that the defendant has succeeded on a set-off and counter-claim so as to reduce the amount actually recovered as the balance to less than 20*l.* Section 67 of the Judicature Act of 1873 has no application to such a case. *Potter v. Chambers*, 48 Law J. Rep. C.P. 274; Law Rep. 4 C.P. D. 69.

32.—The provisions of the County Courts Act, 1867, denying costs in an action in the Superior Court where a minimum is not recovered, do not apply to a defendant recovering on a counter-claim. *Blake v. Appleyard*, 47 Law J. Rep. Exch. 466; Law Rep. 3 Ex. D. 194.

33.—An action and a counter-claim to it were each dismissed with costs. The defendants were allowed all the costs except so far as they were increased by the counter-claim. The plaintiff was allowed the amount by which his costs were increased on account of the counter-claim. *Sanor v. Bilton*, 48 Law J. Rep. Chanc. 545; Law Rep. 11 Ch. D. 416.

*Balance in favour of defendant.* [See PRACTICE, W 73.]

(g) *Third parties.*

34.—A Master has no jurisdiction when applied to for directions under Order XIV. rule 21, admitting a third party who has been served with notice to come in and defend, to order the costs to be in the discretion of the Judge at the trial. The only discretion as to costs given by the rule is as to imposing them or not upon the party so coming in, and there are no means for giving him his costs. *The Yorkshire Railway Waggon Company v. The Newport and Abercarn Coal Company*, 49 Law J. Rep. Q.B. 527; Law Rep. 5 Q.B. D. 268.

35.—There is power to order a defendant to pay costs to a third party who appears in consequence of being served by the defendant with a notice under Order XVI. rule 18. *The Yorkshire Waggon Company v. The Newport and Abercarn Coal Company* (see last case) explained. *Dawson v. Shepherd. Grier* (third party) (App.), 49 Law J. Rep. Exch. 529.

(h) *Plea of plaintiff's bankruptcy.*

36.—Where under the old procedure a defendant added a plea of the plaintiff's bankruptcy since the original pleadings were delivered, such plea was in the nature of a plea *provis darrein* continuance, and all other defences were thereby waived. The plaintiff thereupon was at liberty to confess the plea, and was entitled to his costs up to the time of the pleading of such plea. And the practice is the same under Order XX. rule 3 of the Judicature Act, 1875. *Foster v. Gamgee*, 45 Law J. Rep. Q.B. 576; Law Rep. 1 Q.B. D. 666.

(i) *Motions.*

37.—A motion for an *interim* injunction was adjourned till the trial. The costs of the motion were not then dealt with, and on taxation of general costs they were disallowed:—Held, on motion, that the Court had jurisdiction to deal with the costs of the motion, either under the liberty to apply expressly reserved in the judgment, under the liberty to apply implied in the order adjourning the motion, or under Order XLII. (a), in correction of a "slip or omission." *Fritz v. Hobson*, 49 Law J. Rep. Chanc. 735; 14 Law J. Rep. Chanc. 452.

38.—In an action for specific performance of an agreement to grant a colliery lease where the lessee had long retained possession, and had worked the coal and then threatened to cease pumping,—Held, that a motion for an injunction to restrain the lessee from ceasing pumping was a proper motion for preservation of the property pending the action under Order LII. rule 3. The motion having been ordered to stand over until the trial, the colliery had become drowned before it could be heard, owing to a cross-examination of the plaintiff's witness by the defendant. Held, that it was proper at the trial to make the costs of the motion costs in the action. *Strelley v. Pearson*,

49 Law J. Rep. Chanc. 406; Law Rep. 15 Ch. D. 113.

[And see DAMAGES, 3.]

(k) *Petition.*

*Petition presented without authority.* [See PRACTICE, V 7.]

(l) *Test action.*

[See PRACTICE, F 2.]

(m) *Payment into court.*

39.—To a writ indorsed for 373*l.* on a balance of account for goods sold and delivered and work done, the defendant entered an appearance, but no pleadings were delivered in the action on either side. The defendant subsequently paid 200*l.* into Court, at the same time giving notice to the plaintiff, in Form 5, Appendix B. in the Schedule to the Judicature Act, that that sum was enough to satisfy the plaintiff's claim. This sum the plaintiff took out of Court under Order XXX. rule 3, but without giving any notice to the defendant that he took it out in satisfaction of the claim in respect of which it was paid in, as required by rule 4 of that Order, and without giving any other notice. Upon the matters in dispute being submitted to an arbitrator, the condition as to costs being that costs in the cause abide the event, the arbitrator found that the 200*l.* paid into Court was enough to satisfy the plaintiff's claim:—Held, that the plaintiff was not entitled to his costs of the cause up to the time of the payment of money into Court. *Langridge v. Campbell*, 46 Law J. Rep. Exch. 277; Law Rep. 2 Ex. D. 281.

40.—Where, in an action for breach of covenant, the defendant denied the breach, and also paid money into Court, alleging it was sufficient, and the plaintiff replied joining issue and alleging that the sum was insufficient, and the issues having been referred to an official referee, he reported that the money was not sufficient:—Held, that the costs were in the discretion of the Court, and judgment was entered for the defendant in accordance with the report, with costs of action from date of payment into Court and of the reference; the plaintiff to have the costs of the action down to payment into Court. *Buckton v. Higgs*, Law Rep. 4 Ex. D. 174.

The last case discussed. *Ibid.*

(n) *Refusal to take evidence by affidavit.*

41.—A motion was made to the Court for leave to take evidence in a suit by affidavit. It was opposed by the defendants, who were trustees, and the Court held that the defendants were entitled to have the evidence taken *via voce*, but reserved the costs of the motion. On the cause coming on for hearing no witnesses were called, and no reason was given for insisting upon the evidence being taken *via voce*:—Held, that the costs of the motion

must be paid by the defendants (the trustees), who had perversely, unreasonably and unjustly refused to adopt the cheaper and more familiar mode of taking evidence. *Patterson v. Wooler*, 45 Law J. Rep. Chanc. 274; Law Rep. 2 Ch. D. 586.

(o) *Writ of attachment.*

42.—The rule as to fixed costs only being payable on clearing a contempt in the case of an attachment is altered by the new practice. Such costs are now in the discretion of the Court. *Abud v. Riches*, 45 Law J. Rep. Chanc. 649; Law Rep. 2 Ch. D. 528.

The party moving for a writ of attachment under Order XLIV. rule 2, should ask for the costs of the attachment at the same time. *Ibid.*

(p) *Neglect to lodge case from justices.*

43.—Where an appellant has neglected to lodge a case stated by Justices within the time specified by 20 & 21 Vict. c. 43. s. 2, the Court has power to grant the costs of a rule to shew cause why it should not be struck out from the list. *Brown v. Shaw* (Law Rep. 1 Ex. D. 425) not followed. *The Great Northern and The London and North-Western Joint Committee v. Inett*, 46 Law J. Rep. M.C. 237; Law Rep. 2 Q.B. D. 284.

(q) *Collision of ships.*

44.—The rule of the former Court of Admiralty, that in an action of collision of ships no costs are allowed to the party who, after raising other defences, succeeds on the defence of compulsory pilotage alone, does not apply to cases in the Exchequer Division. *The Dator* (47 Law J. Rep. P. D. & A. 1) distinguished. *The General Steam Navigation Company v. The London and Edinburgh Shipping Company*, 47 Law J. Rep. Exch. 77; Law Rep. 2 Ex. D. 467.

[And see ADMIRALTY, 45-51.]

(r) *Administration actions.*

[See ADMINISTRATION, 42-55.]

(s) *Foreclosure and redemption actions.*

45.—A second mortgagee, who had been paid off, but had not executed any reconveyance, was made the defendant to a foreclosure suit, without having been previously required to disclaim or reconvey. After being served with the bill, the defendant offered to execute a disclaimer, provided he was not required to pay the costs of it. The plaintiff declined the offer, and served interrogatories on the defendant, who put in an answer and disclaimer, and applied at the hearing for his costs:—Held, that the plaintiff's title was not to be perfected at the defendant's expense, and that the defendant was entitled to his costs. *Day v. Gudgeon*, 45 Law J. Rep. Chanc. 263; Law Rep. 2 Ch. D. 209.

46.—A trustee having advanced money on mortgage became lunatic. Upon redemption of the estate and a petition to appoint a person to reconvey, it appearing that the mortgagor had no knowledge that the money was trust money, the costs of the application were ordered to be paid out of the trust estate. *In re Jones* (App.), 45 Law J. Rep. Chanc. 688; Law Rep. 2 Ch. D. 71.

[And see MORTGAGE, 53, 58, 60.]

(t) *Admiralty, divorce and probate actions.*

[See ADMIRALTY, 45-63; DIVORCE, 40, 41; PROBATE, 35-38.]

(u) *Of appeal.*

47.—Upon an appeal by the plaintiff from a decree dismissing his action without costs, it is not open to the defendant to ask that the decree may be varied by dismissing it with costs. *Harris v. Aaron* (App.), 46 Law J. Rep. Chanc. 488; Law Rep. 4 Ch. D. 749.

48.—On appeals commenced under the practice of the Supreme Court a successful appellant will, in the absence of special circumstances, get his costs of the appeal. *Olivant v. Wright* (App.), 45 Law J. Rep. Chanc. 1.

49.—The cost of an application to stay proceedings pending an appeal must be paid by the applicant. *Cooper v. Cooper* (App.), 45 Law J. Rep. Chanc. 667.

50.—The rule that the payment of costs ordered to be paid will not be stayed, pending an appeal to the House of Lords, if the solicitors receiving such costs personally undertake to repay the same in case the order be reversed, will also be applied to cases where there is a *bona fide* intention to appeal to the House of Lords, and an undertaking is given to present an appeal within a short date. *Grant v. La Banque Franco-Egyptienne* (App.), 47 Law J. Rep. Chanc. 455.

The fact that there are other proceedings pending in the same action under which costs might become payable to the party ordered to pay costs, and might be set off against the costs ordered to be paid, is no ground for staying the order directing payment of costs. *Ibid.*

51.—Where, in affirming a judgment, it appeared to the Court of Appeal that a wrong order had been made as to costs, but no notice of cross appeal had been given, the Court declined to open the whole judgment in order to make the proper order as to costs. *In re The New Gas Company* (App.), Law Rep. 5 Ch. D. 703.

52.—Where an appellant succeeds on a point not raised in the Court below, he will be allowed the costs in the Court below, but not the costs of the appeal. *Hussey v. Payne* (App.), 47 Law J. Rep. Chanc. 751.

53.—Where notice of motion of appeal is given, but the party giving it neglects to take the proceedings before the officers of the Court directed by Order LVIII. rule 8, and the matter

is not in the Court paper of the day, the other party ought not to appear, but may make a substantive application for his costs of the motion. *Webb v. Mansel* (App.), Law Rep. 2 Q.B. D. 117.

54.—Where an appellant's solicitor wrote to the respondent's solicitor withdrawing the notice of appeal as irregular, and the respondent having delivered his briefs applied *ex parte* to discharge the notice of appeal with costs,—Held, that notice of motion must be given. *In re The Oakwell Collieries* (App.), Law Rep. 7 Ch. D. 706.

55.—The costs of an application for the costs of an abandoned notice of appeal will not be allowed, unless a previous demand for payment of them has been made and not complied with. *Griffin v. Allen* (App.), Law Rep. 11 Ch. D. 913.

*Admiralty appeals, in, follow event.* [See ADMIRALTY, 58.]

*Cross appeals.* [See ADMIRALTY, 59.]

(D) OF PARTIES IN PARTICULAR CAPACITY.

56.—The next friend of infant plaintiffs ordered to pay the costs of an action against executors for administration, the chief clerk having found in answer to an enquiry directed shortly after the issue of the writ that it would not be fit and proper, and for the benefit of the plaintiffs, that the action should be further prosecuted. *Thomas v. Elsom*, 46 Law J. Rep. Chanc. 793; Law Rep. 6 Ch. D. 346.

57.—A plaintiff, after having obtained a decree with costs, and having appointed one defendant (who had a concurrent interest with her) her executor, died. Two other defendants served notice of appeal, and the executor obtained the common order of revivor. The appeal having been dismissed with costs,—Held, that the costs were payable by him personally. *Boynton v. Boynton* (App.), Law Rep. 9 Ch. D. 250.

*Lunatic trustee and mortgagee, of.* [See No. 46 supra.]

*Trustee, defaulting.* [See ADMINISTRATION, 42.]

(E) SECURITY FOR COSTS.

(a) *When ordered.*

(1) *Old suit.*

58.—The Court will in a proper case direct substantial security for costs to be given under Order LV. of February, 1876, in a suit proceeding under the old practice. *The Republic of Costa Rica v. Erlanger* (App.), 45 Law J. Rep. Chanc. 743; Law Rep. 3 Ch. D. 63.

(2) *Insolvency or liquidation of plaintiff.*

59.—After an action had been set down for trial the plaintiff became insolvent and filed a petition for liquidation:—Held, that he was

rightly ordered to give security for past as well as future costs. *Brooklebank v. The King's Lynn Steamship Company*, 47 Law J. Rep. C.P. 321; Law Rep. 3 C.P. D. 365.

60.—On an application by the defendants in a suit by a company in liquidation, Malins V.C., ordered security sufficient to cover the costs of the defendants' answers, with liberty to renew their application for further security when their answers had been put in. On appeal,—Held, that the matter was one of discretion, and that apart from this the course adopted was convenient and proper. *The Western of Canada Oil, Land and Works Company v. Walker* (App.), 45 Law J. Rep. Chanc. 165.

*Insolvent appellant.* [See MASTER AND SERVANT, 7.]

### (3) Parties out of jurisdiction.

61.—Although the plaintiff is a foreigner, usually resident abroad, and only temporarily in England for the purpose of bringing the action, an order for security for costs will not be made, if the plaintiff be actually in England at the time of the application being made. *Rodondo v. Chaytor* (App.), 48 Law J. Rep. Q.B. 697; Law Rep. 4 Q.B. D. 453.

62.—In a suit commenced before November, 1875, by a foreign government, 120*l.* had been ordered to be given as security for costs. Further security to the amount of 500*l.* to cover future costs was ordered to be given under Order LV. rule 2. *The Republic of Costa Rica v. Erlanger* (App.), Law Rep. 3 Ch. D. 62.

63.—A defendant or respondent cannot be required to give security for costs on the ground that he is out of the jurisdiction. *In re Peroy and Kelly Mining Company*, 45 Law J. Rep. Chanc. 526; Law Rep. 2 Ch. D. 531.

64.—The provisions in Order XIX. rule 3, enabling a defendant to counter-claim in respect of unliquidated damages instead of being obliged to bring an independent action, has in view the convenience of the mode of trial, and does not put a plaintiff residing out of the jurisdiction in any worse position as to giving security for costs, than he was when a cross action against him was necessary. Where, therefore, a defendant admitted the claim of a plaintiff residing out of the jurisdiction, but set up a counter-claim for damages arising out of another transaction, overriding the plaintiff's claim in the action, he was held, as being virtually plaintiff in respect of the balance on the counter-claim, not entitled to require security for his costs from the plaintiff. *Winterfeld v. Bradnum*, 47 Law J. Rep. Q.B. 270; Law Rep. 3 Q.B. D. 324.

65.—The plaintiff brought an action against the defendant, a foreigner residing out of the jurisdiction, for breach of contract. The defendant, besides denying the breaches, brought a counter-claim against the plaintiff, alleging that the plaintiff broke the contract, and claiming damages less in amount than those claimed by the plaintiff:—Held, that the defendant

ought not to be called upon to give security for the costs occasioned by the counter-claim, inasmuch as the statement of claim and counter-claim respectively rested upon the same circumstances. *Winterfeld v. Bradnum* (47 Law J. Rep. Q.B. 270) distinguished. *Mapleson v. Massini*, 49 Law J. Rep. Q.B. 423; Law Rep. 5 Q.B. D. 144.

### (4) Next friend.

66.—The old rule in Chancery that an application that a next friend do give security for costs must be made before the next material step in the cause is taken, and the old rule at common law that the like application must be made before issue joined, is abrogated by the new Judicature Rules; and under Order XVI. rule 8, the Court has a judicial discretion to allow a married woman to sue alone or with a next friend, and to direct security for costs to be given at any time. *Martano v. Mann* (App.), 49 Law J. Rep. Chanc. 510; Law Rep. 14 Ch. D. 419.

### (5) Amendments raising fresh case.

67.—Where the plaintiffs had made amendments raising a fresh case which involved expense, and the defendants applied to have security for costs, (which application was refused in chambers,—Held (on appeal), that on this point an appeal from chambers ought to be allowed, and that security for costs ought to be given. *The Northampton Coal, Iron and Waggon Company v. The Midland Waggon Company*, Law Rep. 7 Ch. D. 500.

### (6) Appeal.

68.—On an application for security for the costs of an appeal, under Order LVIII. rule 15, the Court may take into consideration the subject-matter of the action, and give weight to the circumstance that the appeal is frivolous or vexatious. *Unill v. Hales*. *Unill v. Broadley*. *Unill v. Clarke* (App.), 47 Law J. Rep. C.P. 380; Law Rep. 3 C.P. D. 206.

Semble, that the mere fact that an appellant is poor, and therefore unlikely to be able to pay costs, is not in itself a "special circumstance" in consequence of which the Court will order him to give security for the costs before proceeding with the appeal. *Ibid.*

69.—The fact that an appellant is a foreigner not domiciled in England, and having no assets there, is a "special circumstance," which entitles the respondent to security for costs of appeal from an interlocutory order, under Order LVIII. rule 15. *Grant v. The Banque Franco-Egyptienne* (App.), 47 Law J. Rep. C.P. 41.

70.—Special leave is not required in order to serve notice of motion for security for the costs of an appeal. *Grills v. Dillon* (App.), 45 Law J. Rep. Chanc. 432; Law Rep. 2 Ch. D. 325.

71.—Security for the costs of an appeal having been ordered to be given, a bond with sureties was allowed and the costs were ordered to follow

the result of the appeal. *Phosphate Sewage Company v. Hartmont*, Law Rep. 2 Ch. D. 811.

72.—On an application for security for the costs of an appeal, it is a material circumstance in favour of the application that the appeal is from the refusal of an order in the nature of a mandamus against a County Court Judge, who is made a respondent on the appeal. *Clarke v. Rooke* (App.), 46 Law J. Rep. Chanc. 372.  
[And see DAMAGES, 3.]

(b) Amount and nature of security.

73.—(1) In determining the amount of security for costs to be given under Order L.V. rule 2, the Court, as a general rule, will have regard to the applicant's costs previously incurred as well as to future costs. *Costa Rica v. Er-langer* (45 Law J. Rep. Chanc. 753) explained. *Massey v. Allen*, 48 Law J. Rep. Chanc. 692; Law Rep. 12 Ch. D. 307.

The old rule of the Court of Chancery limiting the amount of security is altogether superseded by Order L.V. rule 2. One of several defendants having obtained an order for security based upon an estimate of the amount of his own costs, the Court refused to extend the bond (on the request of the plaintiff) to the costs of all the defendants. *Ibid.*

(2) A deposit of 50*l.* ordered as security for the costs of an appeal. *Wilson v. Smith* (App.), 45 Law J. Rep. Chanc. 292; Law Rep. 2 Ch. D. 67.

The costs of an application for such security are costs of the appeal, and the Court will not give any directions to meet by anticipation the event of the appeal not being prosecuted. *Ibid.*

(c) Failure to give security.

74.—On default in giving security for costs by an appellant ordered so to do, the respondent is entitled to have the appeal dismissed for want of prosecution after a reasonable time, although no time was fixed by the order. *Vale v. Oppert* (App.), Law Rep. 5 Ch. D. 633.

75.—The rule in Equity that, where a stay of proceedings has been ordered until the plaintiff gives security for costs, and the plaintiff has failed within a reasonable time to give security, the defendant may apply to dismiss the action for want of prosecution, is now of general application to all actions in the High Court of Justice, and a Judge, when so applied to, has a discretionary power to dismiss the action without requiring the defendant to abandon the previous order on the plaintiff to give security for costs. *La Grange v. McAndrew*, 48 Law J. Rep. Q.B. 315; Law Rep. 4 Q.B. D. 210.

76.—An appellant was ordered to give security for the costs of his appeal. Nine months elapsed without his doing so, and he gave no explanation for the delay:—Held, that the appeal must be dismissed with costs, including the costs of the respondents' motions for security and to dismiss. *Judd v. Green* (App.), 46 Law J. Rep. Chanc. 257; Law Rep. 4 Ch. D. 784.

(F) TAXATION OF COSTS.

(a) Right to taxation.

(1) Discharged bankrupt: "party interested."

77.—A bankrupt, after he had paid his creditors in full and received his discharge, and after the bankruptcy had been closed, applied by summons under the Solicitors Act, 1843, for an order upon the solicitors of the mortgagees of part of his property, for delivery and taxation of their bill of costs which had been incurred in relation to a sale of the property by the trustee in bankruptcy, and had been delivered to and paid by the trustee in the course of the bankruptcy proceedings:—Held, that the applicant was not a "party interested" in the property out of which the bill had been paid within the meaning of the statute, and application, accordingly, refused. *In re Leadbitter*, 48 Law J. Rep. Chanc. 39.

Affirmed on appeal, 48 Law J. Rep. Chanc. 242; Law Rep. 10 Ch. D. 388.

Although the title "assignee" has been changed to "trustee" by the Bankruptcy Act, 1869, there is no change in substance, and the nature of the office and relative position of assignee and trustee to the bankrupt remain the same. *Ibid.*

"Party interested" under section 39 held to mean a party interested under a trust created by deed, will, or under an intestacy. *Ibid.*

(2) Taxation after payment.

78.—A bill of costs will be referred for taxation though paid more than twelve months before action commenced, and settled accounts between solicitor and client will be opened where the Court is satisfied that certain charges are exorbitant and improper, and that the business charged for was unnecessary, and that the solicitor has exercised undue influence. *Watson v. Rodwell*, 47 Law J. Rep. Chanc. 418; Law Rep. 7 Ch. D. 625; affirmed on appeal, 48 Law J. Rep. Chanc. 209; Law Rep. 11 Ch. D. 150.

Overcharges are "special circumstances" within the Act, 6 & 7 Vict. c. 73. ss. 37, 41, entitling a client to have his solicitor's bill referred to taxation after the twelve months have expired. *In re Robinson* (37 Law J. Rep. Exch. 11) approved of. *Ibid.*

79.—By 6 & 7 Vict. c. 73, a person not the party chargeable may, if there are "special circumstances," have a solicitor's bill of costs referred for taxation, even after payment. *In re Heritage; ex parte Docker*, 47 Law J. Rep. Q.B. 509; Law Rep. 3 Q.B. D. 726.

In 1875, H., as solicitor for the Credit Foncier, commenced an action against D. to recover a sum of money due from him on a promissory note. After long negotiations the Credit Foncier were induced by H. to accept a composition, D. at the same time agreeing to pay H.'s costs. D.'s solicitor thereupon asked H. to name a lump sum for his costs, and H. named 200*l.* as a fair and reasonable sum. The money was paid

by D. in February, 1877; twelve months later D. applied for the delivery of a bill of costs, alleging that the sum paid by him was excessive, and that great pressure was used by H. to compel him to agree to the sum named for costs:—Held, that the case did not come within the provisions contained in 6 & 7 Vict. c. 73, at all, and that, even if it did, there were no special circumstances such as would justify the Court in exercising its jurisdiction. *Ibid.*

### (3) *Order of Court of Appeal.*

80.—The practice of the Common Law Divisions to have only one taxation of costs in an action does not apply where costs are given by the Court of Appeal, and under an order of the Court of Appeal, directing payment of costs, without any intimation that the taxation and payment are to be postponed, the party to whom they are ordered to be paid is entitled to have them taxed and paid forthwith. *Phillips v. Phillips* (App.), Law Rep. 5 Q.B. D. 60.

### (4) *Series of bills.*

81.—The old rule of Common Law that the retainer of a solicitor for a particular business is a retainer for the purpose of carrying through that business to a conclusion, and that until such conclusion he has no cause of action against his client, is founded on the principle of entirety of contract, and is not to be extended to the case where a solicitor undertakes a business of a complicated nature, e.g. the administration of an estate; in such case the solicitor's bill of costs for carrying such business through is not necessarily to be treated as one bill. *In re Hall*, 47 Law J. Rep. Chanc. 621; Law Rep. 9 Ch. D. 538.

### (b) *Duty of Taxing Master.*

82.—A creditor's administration action was ordered to be stayed on payment by the applicant, the executrix and residuary legatee, of the debt and the costs of the action. Before the Taxing Master, the executrix objected to items in the plaintiff's bill of costs, alleging as to some of them, that they had been incurred in taking unnecessary and improper proceedings in the action. The Taxing Master refused to enquire into the truth of these allegations, and taxed the costs without reference to them:—Held, that under rule 18 of the Additional Rules of Court, 1875, the Taxing Master ought to have considered the plaintiff's objections, and that there must be a new taxation. *Baines v. Wormsley*, 47 Law J. Rep. Chanc. 844.

83.—An order directing an enquiry what is due to a party for costs, but not containing a direction to tax them, does not preclude the taxing officer from disallowing him any costs. It is not necessary for a party who objects to the allowance or disallowance of costs to state his reason in the written objection carried in before the Taxing Officer. *Simmons v. Storer*,

49 Law J. Rep. Chanc. 121; Law Rep. 14 Ch. D. 154.

84.—Direction given to the Taxing Master under rule 18 of Order VI. of the Additional Rules of August, 1875, to look into and disallow the costs of affidavits of unnecessary length. *Cracknell v. Janson* (App.), Law Rep. 11 Ch. D. 1.

85.—In an action against two defendants, J. and H., the plaintiff obtained a judgment, but execution issued against J. The sheriff seized goods of J. which H. claimed, the sheriff interpleaded, and the claim of H. was barred with costs. On taxation of the costs of the action, the Master allowed the plaintiff to deduct from the costs due to the defendant H. the amount of costs due from him, as unsuccessful claimant in the interpleader, to the plaintiff as execution creditor:—Held, that he was wrong in so doing, as the action and the interpleader were wholly distinct proceedings. *Barber & Company v. Hemming*, 49 Law J. Rep. Q.B. 730.

### (c) *Scale of taxation.*

86.—To entitle a party in an action in which an injunction is claimed, in addition to other relief, to charge fees allowed in the "higher scale" of costs, the action must not only be one of the actions specified in rule 2 of Order VI. of the rules as to costs; but the injunction must also be the principal relief sought to be obtained:—So held by the Court of Appeal (affirming the decision of the Queen's Bench Division, 49 Law J. Rep. Q.B. 245; Law Rep. 5 Q.B. D. 167). The Master is to decide whether the "higher scale" is to be allowed under rule 2. *Chapman v. The Midland Railway Company* (App.), 49 Law J. Rep. Q.B. 449; Law Rep. 5 Q.B. D. 431.

87.—The plaintiff, the lessee and owner of a market, brought an action to recover damages for breaches of covenant against the tenants of certain houses within the market, and claimed an injunction to restrain the defendants from further breaches. The Judge before whom the action was tried, holding that the injunction was the principal relief sought, and that the action was brought to establish a right, made an order, allowing the plaintiff costs on the "higher scale." The Judge who tries the action has jurisdiction to make such an order under rule 3 of Order VI. of the rules as to costs, and should, in the exercise of his discretion, regard the intention of the Legislature, as expressed in rule 2 of the same Order. *Horner v. Oylor*, 49 Law J. Rep. C.P. 655.

88.—In an action on a bill of exchange in the Chancery Division costs may be allowed on the "higher scale." *Pooley v. Driver* (App.), Law Rep. 5 Ch. D. 458.

89.—If real estate in an administration action is subject to a mortgage, the actual value of the equity of redemption is the value of such real estate for deciding whether costs are to be

taxed on the higher or lower scale. *In re Sanderson*, Law Rep. 7 Ch. D. 176.

90.—In an action to recover compensation from a devisee who had elected to take against a will which purported to devise freeholds belonging to such devisee to the plaintiff, 360*l.* was recovered as damages:—Held, that the action was not within section 34 of the Judicature Act, 1873, and that costs must be taxed on the lower scale. *Rogers v. Jones*, Law Rep. 7 Ch. D. 345.

(d) *Apportionment of costs.*

91.—The costs of an action to administer the trusts of a settlement where there are both appointed and unappointed funds, must be apportioned according to the amount of the appointed and unappointed parts of the fund, and be borne by those parts respectively, according to their amount. *Trollope v. Routledge* (1 De Gex & S. 662) followed. *Moore v. Dixon*, 49 Law J. Rep. Chanc. 807; Law Rep. 15 Ch. D. 567.

92.—A plaintiff claiming an injunction in respect of three separate subjects of complaint, succeeded as to one, but failed as to the remainder. By the order, taxation was directed of the costs of the defendant of so much of the action as had been dismissed, and of the plaintiff of the rest of the action, with a set-off of the costs of the plaintiff against those of the defendant. The Taxing Master taxed the plaintiff's and the defendant's costs of the whole action, and allowed one-third to the plaintiff and two-thirds to the defendant. Upon a summons by the plaintiff, to vary the certificate, by ordering each item to be considered separately, and according to the subject of complaint, in respect of which each item might turn out to have been incurred, to be paid by the plaintiff or the defendant, as the case might be:—Held, that the Taxing Master had proceeded upon the usual principle, and that the certificate was correct. *Knight v. Purcell*, 49 Law J. Rep. Chanc. 120.

93.—Where the plaintiff's claim and the defendant's counter-claim are both dismissed with costs, the plaintiff is to pay to the defendant the general costs of the action, and the defendant is to pay to the plaintiff only the amount by which the costs have been increased by reason of the counter-claim. *Saner v. Bilton* (48 Law J. Rep. Chanc. 545; Law Rep. 11 Ch. D. 416) approved. *Mason v. Brentini* (App.), Law Rep. 13 Ch. D. 287.

*Joint or several retainer.* [See SOLICITOR, 27.]

(e) *Costs of the day.*

94.—When the hearing of an action is adjourned for parties to be added the party applying for adjournment must pay not merely a fixed sum for the costs of the day, but all costs occasioned by the action having been in the paper. *Lydall v. Martinson*, Law Rep. 5 Ch. D. 780.

(f) *Solicitor and client costs.*

95.—A creditor who obtains the conduct of an administration action, although not the original plaintiff, is equally with a creditor plaintiff entitled to his costs of the action as between solicitor and client. *Thomas v. Jones* (1 Dr. & S. 134; 29 Law J. Rep. Chanc. 570) approved of. *In re Burrell*. *Burrell v. Smith* (39 Law J. Rep. Chanc. 544; Law Rep. 9 Eq. 443) dissented from. *In re Richardson*. *Richardson v. Richardson*, 49 Law J. Rep. Chanc. 612; Law Rep. 14 Ch. D. 611.

(g) *Allowances on taxation.*

(1) *Attendances: diagrams: fees.*

96.—Diagrams annexed to the margin of copies of the evidence supplied to counsel, illustrative of the subject-matter in dispute, although convenient are not necessary, and the extra costs occasioned thereby will not be allowed in taxation as between party and party. *Smith v. Buller*, 45 Law J. Rep. Chanc. 69; Law Rep. 19 Eq. 473.

The attendance of a solicitor's clerk in addition to the solicitor himself, on cross-examination before the examiner, is unnecessary and unusual, and the costs of such attendance will be disallowed in taxation. *Ibid.*

The Court has the right, although reluctant to exercise it, to interfere with the amount of counsel's fees. In cases of great intricacy a fee of 7*l.* 7*s.* a day to counsel for attending before the examiner not considered excessive, and allowed on taxation as between party and party, as also a fee of the same amount to a scientific witness for reading papers and getting up the case, with a view to giving his evidence. A very strong case must be shewn to induce the Court to sanction the allowance in taxation as between party and party, of the fees of more than two counsel. Where the hearing of a case lasts more than two days, whether the evidence is taken by affidavit, or *vice voce*, refreshers allowed to counsel in taxation as between party and party. *Ibid.*

(2) *Refreshers to counsel.*

97.—Where an action with witnesses, tried in the Chancery Division, lasts more than one complete day, refreshers to counsel for the second and following days may be allowed on taxation of costs, but both the allowance of refreshers at all, and the amount of those allowed, are in the discretion of the Taxing Master. *Smith v. Buller* (see last case) dissented from. *Harrison v. Wearing*, 48 Law J. Rep. Chanc. 365; Law Rep. 11 Ch. D. 206.

[And see ADMIRALTY, 62.]

(3) *Shorthand notes.*

98.—A motion to vary the Taxing Master's certificate by allowing costs of supplying copies of shorthand notes to counsel during the progress of the trial was refused on the ground



that special directions ought to have been asked for at the trial. *Kirkwood v. Webster*, 47 Law J. Rep. Chanc. 880; Law Rep. 9 Ch. D. 239.

99.—The cost of copies of a shorthand writer's notes of the evidence supplied to counsel from day to day in the course of a reference will not be allowed on taxation, although there was only one counsel engaged. *Wells v. The Mitcham and Wimbledon Gaslight Company*, 48 Law J. Rep. Exch. 75; Law Rep. 4 Ex. D. 1.

100.—Where shorthand notes of the evidence and proceedings in the Court below are used on appeal, an application to be allowed, on taxation, the costs of the notes as costs of the appeal, must be made before the judgment of the Court of Appeal is entered. Per Baggallay, L.J., and Brett, L.J. (*Bramwell, L.J., dubitante*).—The Court of Appeal has power to allow the costs of all shorthand notes properly used in the appeal, whether taken for the purposes of the appeal or not. *Hill's Executors v. The Managers of the Metropolitan District Asylum* (App.), 49 Law J. Rep. Q.B. 668.

*Costs of printing: appeal on facts decided on viva voce evidence.* [See PRACTICE, K 22.]

*Proceedings in County Court.* [See BANKRUPTCY, P 10.]

#### (4) Witnesses.

101.—By Order VI., schedule, rule 8, Additional Rules of Judicature Act, 1875, in taxing costs "such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, are to be allowed."—Held, that costs incurred in "qualifying" witnesses, so as to enable them to give evidence at the trial, are included in the above rule. Practice of the Court of Chancery, as it existed before the Judicature Act, followed. *Mackley v. Chillingworth*, 46 Law J. Rep. C.P. 484; Law Rep. 2 C.P. D. 273.

102.—The effect of rule 8 of the special allowances for costs contained in the Rules of August, 1875, is to give the Master a discretion as to what allowances should be made for the attendance of witnesses in Court, untrammelled by the old scale of charges. *Turnbull v. Janson*, 47 Law J. Rep. C.P. 374; Law Rep. 3 C.P. D. 264.

#### COUNTER-CLAIM.

[See PRACTICE, W 56-74.]

*Costs of.* [See COSTS, 80-83; PRACTICE, W 73, 74.]

#### COUNTERPART.

*Discrepancy between lease and counterpart.* [See DEED, 13.]

#### COUNSEL.

1.—One counsel only will be heard on each side upon the trial of a question of fact. *Condictor*, 1875-1880.

*ington v. Gilliat*, 45 Law J. Rep. Chanc. 273; Law Rep. 1 Ch. D. 694.

2.—Where the counsel and solicitors of a defendant, being aware of all the facts on which an order ought to be made, consented in Court, in the defendant's presence, to an order against him, he was not allowed to withdraw his consent, on the grounds that his advisers mistook their instructions, and had no sufficient authority to bind him. *Holt v. Jesse*, 46 Law J. Rep. Chanc. 254; Law Rep. 3 Ch. D. 177.

*Retainer: costs.* [See ADMIRALTY, 62; COSTS, 96.]

#### COUNTY COURT.

##### (A) JURISDICTION OF.

- (a) Land of greater annual value than 20l.
- (b) Claim exceeding 20l.
- (c) As to defence and counter-claim.
- (d) Power to commit more than once for same debt.
- (e) To enforce obedience by attachment.
- (f) To restrain action in High Court.
- (g) Admiralty jurisdiction.

##### (B) TRANSFER OF ACTION.

- (a) Remitting action to County Court.
  - (1) Claim not exceeding 50l.
  - (2) Procedure in action remitted.
- (b) Removal of judgment to superior Court.

##### (C) APPEALS FROM.

- (a) Time for.
- (b) Right to appeal.
- (c) Judge's notes, &c.
- (d) Time for taking objection.

##### (D) FEES: RIGHT OF REGISTRAR TO RECOVER.

##### (A) JURISDICTION OF.

- (a) Land of greater annual value than 20l.

1.—The defendant in an action in the County Court to recover possession of land, applied by summons to a Judge of the High Court in chambers for a prohibition, alleging that the annual value was more than 20l. The Judge dismissed the summons, and the defendant did not appeal, and at the trial of the action the County Court Judge declined to admit the defendant's evidence that the value was more than 20l., and gave judgment for the plaintiff.—Held, that, by the dismissal of the summons, the value was conclusively ascertained, and that the County Court had jurisdiction, and the decision of the County Court Judge was right. *Symons v. Rees* (App. Div.), Law Rep. 1 Ex. D. 416.

- (b) Claim exceeding 20l.

2.—The provisions in 19 & 20 Vict. c. 108, s. 89, and Order IX. rule 5, County Court Rules, 1875, enabling a defendant in the County Court to a claim exceeding 20l. in contract or 5l. in tort, to object to the trial taking place in the County Court, on giving notice five clear days

before the "return day," do not apply to the case of a second trial. Where, therefore, a new trial of an action had been, on the application of a defendant, granted by the County Court Judge,—Held, that the defendant could not, under the above statute, take objection to the new trial being had in the County Court. *Campbell v. Fairlie*, 49 Law J. Rep. Q.B. 445.

(c) *As to defence and counter-claim.*

3.—Under sections 89 and 90 of the Judicature Act, 1873, inferior Courts may give effect to counter-claims relating to matters beyond the jurisdiction of the Court, by way of defence to, and to the extent of the plaintiff's claim, but such Courts have no power to award to a defendant, in respect of such counter-claim, damages in excess of the claim. *Davis v. The Flagstaff Silver Mining Company of Utah* (App.), 47 Law J. Rep. C.P. 503; Law Rep. 3 C.P. D. 228.

(d) *Power to commit more than once for the same debt.*

4.—Where a judgment debtor refuses or neglects to pay the judgment debt which he has been ordered to pay in one sum, and not by instalments, there is no power under section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), to commit him to prison more than once, although after a first committal it is proved he has the means of paying the sum in respect of which he still makes default. *Evans v. Wills*, 45 Law J. Rep. C.P. 420; Law Rep. 2 C.P. D. 229.

(e) *To enforce obedience by attachment.*

5.—In an action for nuisance brought in a County Court where the claim for damages is within the limits of its jurisdiction, the Judge has power to grant an injunction restraining the nuisance, and also to enforce obedience by attachment. *Reg. v. Harrington* (App.), 48 Law J. Rep. Q.B. 677; Law Rep. 4 Q.B. D. 491 (*nom. Martin v. Bannister*); affirming the decision of the Divisional Court (*nom. Ex parte Martin*), 48 Law J. Rep. Q.B. 800; Law Rep. 4 Q.B. D. 212.

(f) *To restrain action in High Court.*

6.—The County Courts Act, 1865 (28 & 29 Vict. c. 99), s. 2, confers upon the Judge of a County Court all the powers and authorities, for the purposes of that Act, possessed by a Judge of the Court of Chancery, which at that time included the power of restraining by injunction an action in a superior Court of Common Law. Such a power has been taken away from the Court of Chancery by section 24, sub-section 5 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), and is therefore impliedly taken away also from a County Court Judge, who has moreover expressly conferred upon him by the same Act (section 89) the same powers as are possessed by the High Court of Justice. *Cobbold v. Pryke*; *Beater (claimant)*, 49 Law J. Rep. Exch. 8; Law Rep. 4 Ex. D. 315.

(g) *Admiralty jurisdiction.*

7.—A County Court having Admiralty jurisdiction has jurisdiction to entertain a suit for distribution of salvage, where the amount which the Court is asked to apportion does not exceed 300*l.*, although the value of the property saved exceeds 1,000*l.* *The Glannibanta*, 46 Law J. Rep. P. D. & A. 75; Law Rep. 2 P. D. 45.

8.—The County Courts have jurisdiction, under the County Courts Admiralty Jurisdiction Amendment Act, 1869, in actions *in rem* for breach of a charter-party, provided the damages claimed do not exceed 300*l.*, although the Admiralty Court has no original jurisdiction in such matters. *Gaudet v. Brown: The Cargo ex Argos* (42 Law J. Rep. Adm. 1; Law Rep. 5 P.C. 134) followed. *Simpson v. Blues* (41 Law J. Rep. C.P. 121; Law Rep. 7 C.P. 290); and *Gunnsted v. Price* (44 Law J. Rep. Exch. 44; Law Rep. 10 Exch. 65) overruled. *The Alina* (App.), 49 Law J. Rep. P. D. & A. 40; Law Rep. 5 P. D. 138.

*Bankruptcy: enforcing bond of trustee.* [See BANKRUPTCY, F 1.]

*County Courts: Admiralty Jurisdiction Act, 1869.* [See SHIPPING LAW, V 1.]

*Interpleader summons: County Courts Act, 1867: stay of action after sale of goods.* [See INTERPLEADER, 4.]

(B) TRANSFER OF ACTION.

(a) *Remitting action to County Court.*

(1) *Claim not exceeding 50*l.**

9.—An action cannot be referred to a County Court under 30 & 31 Vict. c. 142. s. 7, where the claim is reduced below 50*l.* by payment after action brought. *Osborne v. Homburg*, 45 Law J. Rep. Exch. 65; Law Rep. 1 Ex. D. 48.

10.—Where the claim indorsed on a writ in an action in the Superior Court is reduced below 50*l.* by a payment of money into Court, the action cannot be sent for trial to the County Court under 30 & 31 Vict. c. 132. s. 7. The decision in *Osborne v. Homburg* (see last case) approved. *Foster v. Ushernood* (App.), 47 Law J. Rep. Exch. 30; Law Rep. 3 Ex. D. 1.

11.—The defendant in an action in the High Court, in which the writ was indorsed with a claim of 50*l.*, "and interest from the date of the writ," applied under the County Courts Act, 1867, section 7, for an order that the action should be tried in a County Court as an action of contract where "the claim indorsed on the writ" did "not exceed 50*l.*:"—Held, that the claim indorsed on the writ exceeded 50*l.* within the meaning of the Act. *Insley v. Jones*, 48 Law J. Rep. Exch. 222; Law Rep. 4 Ex. D. 16.

(2) *Procedure in action remitted.*

12.—An action was remitted to the County Court after delivery of the statement of claim. The writ and claim, together with particulars under County Court Rules, 1875, Order XX.

rule 1, were lodged in the County Court:—Held, that the County Court Judge ought not to restrict the plaintiff to proof of the claim on the writ or in the particulars, but should receive evidence in support of the contents of the statement of claim. *Johnson v. Palmer*, Law Rep. 4 C.P. D. 258.

13.—Where an action has been sent down to be tried in a County Court under section 26 of 19 & 20 Vict. c. 108, judgment may still be signed as provided in that section; and it is not necessary before signing judgment to obtain the order of the Court or a Judge, nor to set down the action on motion for judgment, as section 26 of 19 & 20 Vict. c. 108 is not repealed or affected by Order XXXVI. rule 22, or Order XL. rules 1 and 7 of the Judicature Act. *Soult v. Freeman*, 46 Law J. Rep. Q.B. 173; Law Rep. 2 Q.B. D. 177.

14.—Where the time limited by an order made under section 10 of 30 & 31 Vict. c. 142, remitting an action for trial to a County Court unless the plaintiff give security for costs, has expired, the action nevertheless remains in the Superior Court until the plaintiff has lodged the original writ and order with the registrar of the County Court; and until this has been done, a Master has jurisdiction to grant to the plaintiff further terms as to his giving security, upon compliance with which he will be at liberty to proceed in the Superior Court, notwithstanding his disobedience to the first order:—So held by the Court of Appeal (affirming the decision of the Queen's Bench Division). *Welpley v. Buhl* (App.), 47 Law J. Rep. Q.B. 151; Law Rep. 3 Q.B. D. 80, 253.

15.—Where a cause ordered under 19 & 20 Vict. c. 108. s. 26, to be tried in a County Court, has been tried there accordingly, and afterwards a new trial has been ordered, either party has a right to require a jury on the second trial, notwithstanding the order for the second trial does not direct how the cause shall be tried, and the first trial was by the Judge without a jury. *Ford v. Taylor*, 47 Law J. Rep. C.P. 116; Law Rep. 3 C.P. D. 21.

(b) Removal of judgment to superior Court.

16.—On removal of a judgment for execution from an inferior to a superior Court, the superior Court has no jurisdiction to enquire into the merits or the regularity of the proceedings in the inferior Court. *Williams v. Bolland*, Law Rep. 1 C.P. D. 227.

(C) APPEALS FROM.

(a) Time for.

17.—Section 6 of 38 & 39 Vict. c. 50 (the County Courts Act, 1875), enacts "In any cause, suit or proceeding, other than a proceeding in bankruptcy, tried or heard in any County Court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction or decision of the Judge, at any time within eight days after the same shall have been made or

given, to appeal against such ruling, order, direction or decision by motion to the Court to which such appeal lies, instead of by special case," &c.:—Held, that the words "right of appeal" are not limited to cases where the party appealing has a statutory right of appeal, but extend to cases where the Judge has given leave to appeal under section 13 of 30 & 31 Vict. c. 142. *Turner v. The Great Western Railway Company*, 46 Law J. Rep. Q.B. 226; Law Rep. 2 Q.B. D. 125.

18.—The Court has no power to extend the time for moving in appeals from County Courts. The motion must be made within eight days from the time when the decision of the County Court was pronounced. *Tennant v. Ramlins*, Law Rep. 4 C.P. D. 133.

19.—In order to enable the plaintiff to appeal within the eight days prescribed by section 6 of the County Courts Act, 1875, the County Court Judge allowed his judgment, delivered on the 18th of April, to be treated as delivered a fortnight later, namely, on the 2nd of May; and such judgment was accordingly entered and dated the 2nd of May. The plaintiff having appealed within eight days of the 2nd of May,—Held, that such appeal was not brought within eight days of the "ruling, order, direction or decision of the Judge," as prescribed by section 6 of the County Courts Act, 1875. *Wilberforce v. Sonston*, 48 Law J. Rep. C.P. 28.

20.—Where a motion for a new trial of an action in the County Court is made to a Judge at chambers in vacation, under section 6 of 38 & 39 Vict. c. 50, it must be heard and determined by him, and he has no power to adjourn it to the Divisional Court. *Button v. The Woolwich Building Society*, 49 Law J. Rep. Q.B. 249; Law Rep. 5 Q.B. D. 88.

(b) Right to appeal.

21.—The 6th section of the County Courts Act, 1875, gives no right to appeal from a County Court on a question of fact. *Cousens v. The London Deposit Bank* (App. Div.), 45 Law J. Rep. Exch. 573; Law Rep. 1 Ex. D. 404.

22.—The statutes giving a right of appeal from the County Court extend only to an appeal from a decision in a cause or action. A garnishee order is therefore not the subject of appeal, not being made in the action. *Mason v. The Wirral Highway Board*, 48 Law J. Rep. Q.B. 679; Law Rep. 4 Q.B. D. 459.

23.—The Court has a discretion as to granting or refusing a rule calling upon a County Court Judge to settle and sign a case on appeal under 19 & 20 Vict. c. 108. s. 43, and is justified in refusing a rule where it plainly appears that no question of law can arise thereon. *Sharrock v. The London and North-Western Railway Company* (App.), Law Rep. 1 C.P. D. 70.

24.—At the trial of an action in a County Court without a jury the Judge took a note of the evidence, but was not required to take a note of

any question of law. On motion to set aside his judgment, on the ground that there was no evidence to warrant it,—Held, that no objection on a question of law having been taken before the County Court Judge, there could be no appeal under 38 & 39 Vict. c. 50. s. 6, nor would a rule be granted calling upon the Judge to state and sign a Special Case under 13 & 14 Vict. c. 61. s. 15. *Rhodes v. The Liverpool Commercial Investment Company*, Law Rep. 4 C.P. D. 425.

25.—A Judge of the High Court, sitting at chambers on a day when the Court of Appeal from inferior Courts is sitting, has no jurisdiction to make an order to shew cause why the judgment in a County Court should not be set aside. *Brown v. Shaw*, Law Rep. 1 Ex. D. 425.

When a County Court appeal is struck out, on the ground that the order giving leave to appeal has been granted by a Judge in chambers without jurisdiction, the Court of Appeal from inferior Courts has no power to give costs to the party shewing cause against it. *Ibid.*

*Enforcing judgment on appeal by motion.* [See SOLICITOR, 14.]

*None from refusal to set aside award.* [See ARBITRATION, 18.]

#### (c) Judge's notes, &c.

26.—An appeal lies by motion under 38 & 39 Vict. c. 50. s. 6, from the decision of a County Court Judge on a point of law, if it appears from the Judge's note that such point was necessarily decided by him in deciding the case, whether such point was taken in argument before him or not. It is not a condition precedent to the right of appeal that the Judge should have been requested at the trial to take a note. Decision of the Queen's Bench Division reversed. On the trial of an interpleader issue a County Court Judge held a bill of sale, given for valid consideration, to be void, because it was executed in pursuance of composition resolutions, and there had been fraud in procuring the resolutions; the resolutions had not been set aside. On appeal by the claimants under the bill of sale,—Held, that the fraud in procuring the resolutions did not affect the validity of the bill of sale, and therefore the decision must be reversed. *Seymour v. Coulson* (App.), 49 Law J. Rep. Q.B. 604; Law Rep. 5 Q.B. D. 359.

27.—Under 38 & 39 Vict. c. 50. s. 6, the request for the Judge to make a note of any question of law must be made during or immediately at the end of the trial or hearing of the cause; and, therefore, a request not made until an hour and a half after judgment given is too late. *Pierpoint v. Carterwright*, Law Rep. 5 C.P. D. 139.

#### (d) Time for taking objection.

28.—On application by a trustee in bankruptcy to a County Court to set aside as fraudulent a mortgage which the bankrupt had executed; the Court directed the trial of certain

issues by a jury, and the jury having found that the deed was executed by the bankrupt without consideration, and with intent to defeat and delay his creditors, the County Court declared the deed to be void, and ordered it to be delivered up to be cancelled. An application by the mortgagee for a new trial having been refused, he appealed to the Chief Judge from the order, which declared the deed void, but did not appeal from the refusal for a new trial. On the hearing of the appeal the objection was taken that the case was not one in which the Court of Bankruptcy ought to exercise its extraordinary jurisdiction under section 72:—Held, that the objection was raised too late after the mortgagee had taken his chance of a decision in his favour on the merits in the County Court. *Ex parte Swinbanks* (see BANKRUPTCY, A 17) followed. Decision of Bacon, C.J., reversed:—Held also, that as there had been no appeal from the refusal of a new trial, the finding of the jury on the issues was conclusive, and the order declaring the deed void followed as a necessary consequence. *Ex parte Butters; in re Harrison* (App.), Law Rep. 14 Ch. D. 265.

#### (D) FEES: RIGHT OF REGISTRAR TO RECOVER.

29.—The defendant, having obtained a writ of certiorari for the removal of an action in the County Court, in which he was the defendant, into the Queen's Bench, delivered it to the clerk of the Registrar at the County Court office, without his being asked for or paying any fee at the time. The Registrar duly made the return to the writ, and upon the defendant refusing afterwards, when it was demanded, to pay the fee, sued him in the County Court and obtained judgment. It was proved that it was the custom of the registrar's office to give credit to respectable solicitors in respect of the payment of fees of which in strictness prepayment ought to have been required, and that the defendant was a well-known solicitor in the district:—Held, that the fee was one within the authority of the Commissioners to make, and not illegal; that the making a return to a writ of certiorari was a "proceeding taken in the County Court" within section 79, and that the defendant was "the party on whose behalf" the proceeding was taken within section 78; that the circumstances under which prepayment was not enforced were evidence of a tacit agreement by the defendant to pay afterwards on which he might be sued. And per Lush, J., and *semble* per Blackburn, J., the defendant not having prepaid the fee as required by the Act, an action at common law would lie against him by the Registrar who had made the return, for its recovery, independently of the other remedy for default of payment given in section 78. *Batt v. Price*, 45 Law J. Rep. Q.B. 170; Law Rep. 1 Q.B. D. 264.

#### COUNTY PALATINE OF LANCASTER.

[See LANCASTER PALATINE COURT.]

## COUNTY RATE.

By the Municipal Corporations Act, 1835 (5 & 6 Will. 4. c. 76), s. 117, the treasurer of a county is bound to keep an account of the sums of money expended out of the county rate for other purposes than the costs arising out of the prosecution, &c., of offenders, and to send a copy of the said account to the council of every borough within the county in which a separate Court of Quarter Sessions shall be holden, and which before the passing of the Boundary Act, 1832, was chargeable with or liable to contribute, in whole or in part, to the county rate of such county, and to make an order on the council of such borough for the payment of such proportion as would have been chargeable, if the first-mentioned Act had not passed, on such borough, as the same shall be bounded according to the provisions of the said Act, and the council of such borough is forthwith to order the same to be paid to the treasurer of the county. A borough which, before the passing of the Boundary Act, 1832 (2 & 3 Will. 4. c. 64), had a separate Court of Quarter Sessions, and a charter containing a non-intromittant clause, and was therefore exempt from the county rate, had by that Act a portion of the county added to it. By the Municipal Corporations Act, 1835, s. 7, the metes and bounds of all boroughs named in the first section of schedule A, of which the said borough was one, are to be the same as the limits settled by the Boundary Act, 1832:—Held (affirming the decision of the Queen's Bench Division, 45 Law J. Rep. M.C. 50; Law Rep. 1 Q.B. D. 152), that such borough was chargeable to the county rate in respect of the expenses other than the costs of the prosecution, &c., of offenders as a borough which was liable to contribute, in respect of the part of the county added by the Boundary Act, 1832, to the county rate. *Reg. v. Monck* (App.), 46 Law J. Rep. M.C. 251; Law Rep. 2 Q.B. D. 544.

## COUNTY VOTE.

[See PARLIAMENT.]

## COURT FEES.

*Fee on taking account.*

The per-centage on taking accounts imposed by the order as to Court fees of October 28, 1875, is not payable on accounts begun to be taken before commencement of the Judicature Acts. Where payable it is in substitution for the old certificate and other fees. *Meredith v. Treffry* (App.), 45 Law J. Rep. Chanc. 162.

[And see PRACTICE, A 7.]

*Plaintiff suing in forma pauperis.* [See PRACTICE, U 39.]

## COURTS OF JUSTICE.

[The Courts of Justice Building Act, 1865, amended. 43 & 44 Vict. c. 29.]

## COVENANT.

[And see LANDLORD AND TENANT.]

- (A) COVENANT TO SETTLE PROPERTY.
- (B) COVENANT IN RESTRAINT OF TRADE.
- (C) BREACH OF COVENANT.
  - (a) *Covenant to pay rates.*
  - (b) *Covenant as to mode of user of property.*
    - (1) *User for trade or business purposes.*
    - (2) *Public-house: covenant not to forfeit licence.*
    - (3) *Exclusive right to sell goods.*
  - (c) *Right to sue for.*
    - (1) *Acquiescence or waiver.*
    - (2) *Effect of subsequent Act of Parliament.*
    - (3) *Right of mortgagor to sue.*
    - (4) *Covenant binding assign with notice.*
    - (5) *Mode of building: line of frontage.*
- (D) COVENANTS FOR TITLE AND QUIET ENJOYMENT.
- (E) USUAL COVENANTS.
- (F) COVENANTS WHETHER RUNNING WITH THE LAND.
  - (a) *Right of assigns of covenantee to benefit of covenant.*
  - (b) *"Assigns:" lessee an assign.*
- (G) PERSONAL COVENANT.
  - (a) *Effect of proviso limiting liability.*
  - (b) *Covenant to pay compensation to be settled by arbitration.*
- (H) IMPLIED COVENANT.

## (A) COVENANT TO SETTLE PROPERTY.

1.—Under a marriage settlement the husband was entitled to certain real estate for life, with remainder to the use of such of the children or issue of the marriage as he should by deed or will appoint, and in default of appointment, to the use of the children equally as tenants in common or fee. The only issue of the marriage was a son and a daughter. By the daughter's marriage settlement she and her intended husband covenanted with the trustees for the conveyance and settlement of all property, which she "then was seised of or interested in or entitled to" upon certain trusts, and amongst others, trusts were declared of any "interest" which "should fall into possession." The husband died first, and thereupon H. appointed by deed the real estate comprised in the original settlement, subject to his own life interest, to the son and daughter equally in fee:—Held, that the share she took under the appointment was not bound by the covenant to settle, inasmuch as it was a new interest acquired since the date of the settlement. *Sweetapple v. Horlock*, 48 Law J. Rep. Chanc. 660; Law Rep. 11 Ch. D. 745.

[And see SETTLEMENT, 1-4, 18-24.]

## (B) COVENANT IN RESTRAINT OF TRADE.

2.—The defendant sold to the plaintiff a business of manufacturing and selling the "Government Carbolic Disinfectants," the process of

manufacturing which was a secret in his possession, and covenanted not to carry on the business of a manufacturer or seller of the "Government Carbolic Disinfectants," or of any other article or thing of a disinfectant nature for fourteen years, and not to disclose the secret for the same period. The plaintiff brought this action, alleging that the defendant was infringing those covenants and seeking to restrain him. The defendant delivered a statement of defence, whereby he specifically denied that he was infringing the covenants, and further demurred on the ground that the covenant not to carry on such business was in restraint of trade, and too general in its provisions:—Held, that under Order XXVIII. rule 5, the defendant could not, without leave, plead and demur to the same statement. Held also, that, having regard to the subject-matter, the covenant was not too general, and that the demurrer must be overruled. *Hagg v. Darley*, 47 Law J. Rep. Chanc. 567.

3.—Covenant not to carry on, or be concerned in carrying on, either directly or indirectly, the business of a saddler, or sell any goods in any way connected with that trade within a distance of ten miles from C. under a penalty of 100l. by way of liquidated damages for every such offence:—Held, broken by selling goods as a journeyman in the employ of a person carrying on the business of a saddler in C. and injunction granted. *Jones v. Heavens*, Law Rep. 4 Ch. D. 636.

4.—A covenant in restraint of trade is not necessarily void if it is unlimited in regard to space, but the question in each case is whether the restraint extends further than is necessary for the reasonable protection of the covenantee. If it does not do that, the performance of the covenant will be enforced, even though the restriction be unlimited as to space. *Allopp v. Wheatcroft* (42 Law J. Rep. Chanc. 12; Law Rep. 15 Eq. 59) disapproved. *The Leather Cloth Company v. Lonsont* (39 Law J. Rep. Chanc. 86; Law Rep. 9 Eq. 345) followed. Where an agreement contrary to the policy of the English law is entered into in a country by the law of which it is valid, an English Court will not enforce it. *Roussillon v. Roussillon*, Law Rep. 14 Ch. D. 351.

The policy of the English law in favour of trade applies to foreigners trading in England equally with English subjects. *Ibid*.

#### (C) BREACH OF COVENANT.

##### (a) *Covenant to pay rates.*

5.—The plaintiff let certain houses to the defendant for a term of years, and the defendant covenanted to pay "all and all manner of taxes, rates, charges, assessments and impositions whatsoever, at any time during the said term to be charged, assessed or imposed on the said premises thereby demised, or in respect thereof or of the said rent as aforesaid, by authority of Parliament or otherwise howsoever."

An urban sanitary authority for the district within which the houses were situate, required the defendant, under the Public Health Act, 1875, to abate a nuisance arising from the drains of the said houses, and for that purpose to construct proper and sufficient drains, and the defendant having refused to execute such works or to pay for the same, the plaintiff executed them according to the directions of the said sanitary authority, and then sued the defendant for the expense incurred in executing such works:—Held, that the plaintiff was not entitled to recover the same, as it was not a charge imposed by the Act upon the premises but on the landlord personally, and was therefore not within the terms of the defendant's covenant. *Rawlins v. Biggs*, 47 Law J. Rep. C.P. 487; Law Rep. 3 C.P. D. 368 (*nom. Rawlins v. Briggs*).

[And see LANDLORD AND TENANT, 6, 7; MINES, 4.]

##### (b) *Covenant as to mode of user of property.*

###### (1) *User for trade or business purposes.*

6.—The defendant, as assignee of a lease, granted in 1868, covenanted (*inter alia*) that he would not permit a certain house "to be used as a beer-shop." The defendant, who carried on the business of a grocer at this house, had subsequently obtained a licence for the sale of beer not to be consumed on the premises; and in pursuance of the licence beer was sold on the premises, but not drunk thereon:—Held, that there had been a breach of the covenant. *The Bishop of St. Albans v. Battersby*, 47 Law J. Rep. Q.B. 571; Law Rep. 3 Q.B. D. 559.

7.—A lease contained a covenant on the part of the lessee not to carry on upon the demised premises "any trade, business or dealing whatsoever, or anything of the nature thereof, or be party to or suffer any act or thing which may be or grow to the annoyance, damage, injury, prejudice or inconvenience of the neighbouring premises:—Held, that the user of the premises as an out-patient branch of a hospital for throat and chest diseases, where some portion of the patients made small money payments, was a breach of the covenant. *Bramwell v. Laoy*, 48 Law J. Rep. Chanc. 339; Law Rep. 10 Ch. D. 691.

Such out-patient branch of the hospital is a "business" within the meaning of the above covenant. *Ibid*.

8.—B. demised a house for twenty-one years, and covenanted with the lessee that he would not demise any other house in the same street to any person for the purpose of carrying on an eating-house, but provided that the covenant should be binding on himself only and not on his heirs, executors, administrators or assigns. Two years after B. demised the adjoining house, and the lessee covenanted that he would not carry on any trade or business without leave of the lessor. The assignee under

the first lease brought an action against the assignee of the second lease to restrain him from carrying on, and against B. to restrain him from permitting the assignee to carry on, the business of an eating-house upon his premises:—Held (affirming the decision of Fry, J.), that as B. had not let the house as an eating-house there was no breach of covenant, and that there was nothing in the words of the covenant to extend it to all persons into whose hands the premises might come. *Kemp v. Bird* (App.), 46 Law J. Rep. Chanc. 828; Law Rep. 5 Ch. D. 549, 974.

9.—An estate of fifty-seven acres was purchased for the purpose of cutting it up and selling it in building plots. As each plot was sold the purchaser entered into a covenant that no house or other building to be erected on the land should "be used or occupied otherwise than as and for a private residence only, and not for the purpose of trade." A plot of four acres was purchased by the trustees for an institution for the education of the daughters of missionaries, with the intention of erecting on it buildings to accommodate over 100 girls:—Held (reversing the decision of Bacon, V.C.), that the intended building would be a breach of the covenant, and an injunction was granted to restrain the defendants from erecting any building to be used as a school or an institution, or otherwise than as a private residence. *German v. Chapman* (App.), 47 Law J. Rep. Chanc. 250; Law Rep. 7 Ch. D. 271.

A small plot of land at a corner of the fifty-seven acres had been purchased by a gentleman, who had built a house upon it, and had asked and obtained leave to carry on in this house a school for about eighteen boys:—Held, that this was no waiver of the covenants which had been entered into by the purchasers of the other plots. *Ibid.*

(2) *Public-house : covenant not to forfeit licence.*

10.—The lessee of a public-house, subject to forfeiture on breach of covenant, covenanted not to "do any act that could or might affect, lessen or make void either or any of the licences." She on one day kept open the house during prohibited hours, permitted drunkenness, and was herself drunk. Convictions took place in respect of the first two offences, but they were not recorded on the licence under section 13 of the Licensing Act, 1874:—Held (affirming the judgment below, 45 Law J. Rep. Exch. 313; Law Rep. 1 Ex. D. 124), that the covenant had not been broken. *Wooler v. Knott* (App.), 45 Law J. Rep. Exch. 384; Law Rep. 1 Ex. D. 265.

*Covenant to take beer.* [See No. 15 infra.]

*Covenant not to get coal.* [See MINES, 2.]

(3) *Exclusive right to sell goods.*

11.—The owners of a public building contracted with A.—ex-renter of a stall from them

—that he should have the exclusive right of exhibiting and selling certain specified goods:—Held, that A. was entitled to an injunction against the owners for permitting the sale and exhibition of such goods by other renters of stalls within the building. *Altman v. The Royal Aquarium Society*, Law Rep. 3 Ch. D. 228.

*Breach of covenant to repair : ejectment by assignee of reversion : notice to tenant not necessary.* [See EJECTMENT, 1.]

(c) *Right to sue.*

(1) *Acquiescence or waiver.*

12.—Where a covenant had been entered into not to sell wines and spirits on certain premises:—Held, that the covenantee, by not interfering with the sale of British wines to a limited extent, did not lose his right to an injunction to restrain a more extensive breach. *Richards v. Revett*, 47 Law J. Rep. Chanc. 472; Law Rep. 7 Ch. D. 224.

[And see No. 9 supra.]

(2) *Effect of subsequent Act of Parliament.*

13.—Where after the granting of a lease an Act of Parliament has been passed which renders it illegal to use the premises for the purpose for which they were let, the refusal to permit them to be used for that purpose is no breach of a covenant for quiet enjoyment or of a covenant to keep the premises in proper condition. *Newby v. Sharpe* (App.), 47 Law J. Rep. Chanc. 617; Law Rep. 8 Ch. D. 39.

(3) *Right of mortgagor to sue.*

14.—A mortgagor in possession of the beneficial interest in a covenant can sue for an injunction against the person on whom the burden of the covenant lies, to restrain a breach of the duty thereby imposed, without joining the mortgagee as plaintiff in the action. *Fairclough v. Marshall* (App.), 48 Law J. Rep. Exch. 146; Law Rep. 4 Ex. D. 37.

(4) *Covenant binding on assign with notice.*

15.—A covenant relating to but not running with land is binding on an assign with notice. *Keppel v. Bailey* (2 Myl. & K. 517) treated as overruled. *Luker v. Dennis*, 47 Law J. Rep. Chanc. 174; Law Rep. 7 Ch. D. 227.

A. and B. on a demise to them of the S. Arms covenanted to take from the landlord or his assigns all beer consumed in the S. Arms, and also the M. Arms (a public-house held by A. alone, of different landlords):—Held, that an assign from A. of the M. Arms, who had notice, was bound by the covenant. *Ibid.*

A covenant to take all beer consumed on premises is conditional on a proper supply of a marketable article. *Ibid.*

A contemporaneous counter-covenant to supply imports a condition precedent that it will

be performed in lieu of the condition otherwise implied. *Ibid.*

A continual breach of such condition amounts to a release of the covenant to take. *Ibid.*

(5) *Mode of building : breach of line of frontage.*

16.—Where houses were set out in a regular plan, and each purchaser of a house covenanted with the former owners of the whole not to erect any building in advance of the general line of frontage:—Held, that a purchaser of one of such houses to whom the benefit of such covenants was assigned, was entitled to a mandatory injunction to compel the purchaser of another house to pull down a bay-window built in breach of such covenant, even without shewing material damage. *Manners v. Johnson*, 45 Law J. Rep. Chanc. 404; Law Rep. 1 Ch. D. 673.

(D) COVENANTS FOR TITLE AND QUIET ENJOYMENT.

17.—The defendant demised the ground-floor of his house to the plaintiff under a lease containing a covenant that the lessee might "peaceably hold and enjoy the said demised premises during the said term without any interruption by the lessor, or any person lawfully claiming through or in trust for him." The remainder of the house was let out in floors to different tenants. Before and during the demise to the plaintiff the water supply was effected by means of a main service pipe connected with a cistern placed at the top of the house, branch pipes being inserted into the main pipe for the supply of water to each floor. The tenants paid a proportion of the water rate for the supply to their respective premises. The branch pipe on the first floor suddenly burst, and the water therefrom poured down into the plaintiff's premises and injured his goods. In an action for damages the jury found that the branch pipe when fixed (which was before the demise) was a reasonably fit and proper one for the purpose for which it was fixed and intended, and that there was no negligence or want of skill in the fixing and maintaining the pipe where and as it was:—Held (affirming the judgment of Field, J., reported 49 Law J. Rep. Q.B. 466), that the plaintiff had no cause of action founded upon the covenant for quiet enjoyment, because the covenant was prospective, and there had been no act of omission or commission during the demise to the plaintiff, causing an interruption of his enjoyment. Held also, that the apparatus for the water supply, being for the common benefit of the plaintiff and the other tenants, the plaintiff had no cause of action founded upon the principle laid down in *Fletcher v. Rylands*, 34 Law J. Rep. Exch. 177; 3 Hurl. & C. 774; 35 Law J. Rep. Exch. 154; *Rylands v. Fletcher* (H.L.), 37 Law J. Rep. Exch. 161; in Ex. Ch. Law Rep. 1 Exch. 265;

in H.L. Law Rep. 8 H.L. 330. *Anderson v. Openheimer* (App.), 49 Law J. Rep. Q.B. 708.

*Quiet enjoyment : damages.* [See DAMAGES, 12.]

(E) USUAL COVENANTS.

18.—The defendant sold to the plaintiff the lease of a public-house "subject to performance of the covenants thereby reserved and contained, such covenants being common and usual in leases of public-houses." The lease contained a clause that every under lease was to be left with the ground landlord for registration, with a power of re-entry in case of a breach. The plaintiff declined to complete, on the ground that this was not a common and usual covenant:—Held, that the clause was a covenant within the contemplation of the agreement, and that the plaintiff was not bound to complete. *Brookes v. Drysdale*, Law Rep. 3 C.P. D. 52.

*Colliery lease : usual covenant.* [See LEASE, 6.]

*Covenant not to assign without notice.* [See LEASE, 4, 5.]

(F) COVENANTS WHETHER RUNNING WITH THE LAND.

(a) *Right of assigns of covenantee to benefit of covenant.*

19.—In 1853 the owners of a building estate demised a plot with an hotel thereon for a term of ninety-nine years, the lease containing a covenant by the lessees not to do anything which might be an annoyance to the neighbourhood or the lessees or tenants of the lessors, or diminish the value of the adjoining property, nor erect any house or building nearer than twenty feet to the road, nor any building without submitting the plans to the lessors and obtaining their approval. In 1858 the lessors demised the adjoining land with the houses thereon, the lease containing similar covenants. The second lessee did not appear to have received notice of the covenants in the previous lease. In 1876 the lessee under the first lease, without objection on the part of the lessors, commenced the erection of other buildings on their land so as to obstruct the second lessee's lights. On an action by the second lessee against the first lessee and the lessor for an injunction,—Held, that the covenants in the first lease were for the benefit of the lessor and not of the specific property adjoining, and that the second lessee having made no stipulation for the benefit of the covenants, was not entitled thereto. Held also, that a refusal by the lessor to enforce the covenant against the first lessee could not be considered a derogation from his grant to the second. *Master v. Hansard* (App.), 46 Law J. Rep. Chanc. 505; Law Rep. 4 Ch. D. 718.

20.—The owners of a freehold residential estate and adjoining lands sold and conveyed part of the adjoining lands to the predecessor



in title of the defendants, who entered into a covenant for himself, his heirs, executors, administrators and assigns, with the owners, their heirs and assigns, restrictive of his right to build upon the land. The owners afterwards sold and conveyed the residential estate to the predecessor in title of the plaintiffs, but no reference was made in that conveyance to the existence of the restrictive covenant, nor did it appear that any representation or contract was made that the purchaser was to have the benefit of the covenant. The defendants, who took with notice of the restrictive covenant, having commenced building upon their land in contravention of such covenant, the plaintiffs, as assigns of the residential estate, brought their action for an injunction:—Held, that in the absence of any contract with or representation to the plaintiffs' predecessor in title, that he was to have the benefit of the restrictive covenant, the plaintiffs could not sue upon the covenant. *Renals v. Cowlishaw*, 48 Law J. Rep. Chanc. 33; Law Rep. 9 Ch. D. 125. Affirmed on appeal, 48 Law J. Rep. Chanc. 830; Law Rep. 11 Ch. D. 867.

Consideration of the circumstances under which the assign of a covenantee is entitled to sue upon a restrictive covenant. *Ibid.*

21.—A covenant by a purchaser to supply houses on the adjoining land of the vendor with water from a well in the purchased land runs with the land both as to the benefit and the burden of the covenant; but even if it did not a purchaser with notice would be bound by it, and the Court will enforce it by injunction restraining him from leaving the houses unsupplied. *Cooke v. Chilcott*, Law Rep. 3 Ch. D. 694.

22.—An assignee of land from a purchaser for value without notice is not affected by an agreement which does not run with the land, though he have notice himself. The defence of a purchaser for value without notice must be specifically pleaded. *The Attorney-General v. The Biphosphated Guano Company (Lim.) (App.)*, 49 Law J. Rep. Chanc. 68.

[And see No. 16 supra.]

*Covenant to renew lease.* [See LEASE.]

(b) "Assigns:" lessee an assign.

23.—A lessee for ninety years was held entitled to the benefit of a covenant with the predecessor of his lessor and his assigns. *Taito v. Gosling*, 48 Law J. Rep. Chanc. 397; Law Rep. 11 Ch. D. 273.

#### (G) PERSONAL COVENANT.

(a) *Effect of proviso limiting liability.*

24.—A proviso wholly repugnant to a covenant creating a personal liability is void, but *secus* a proviso only limiting the personal liability. *Williams v. Hathaway*, Law Rep. 6 Ch. D. 544.

C. a vicar, and A. the incumbent of an ecclesiastical district, being trustees of a building fund, agreed with the builder for the erection of a church and parsonage to be paid for by the persons for the time being entitled to apply the fund, and the agreement contained a covenant by the vicar and incumbent, to the intent to bind such persons as aforesaid, but not so as to bind themselves, &c. after they should have ceased to be so entitled, to pay the consideration money. The vicar ceased to be vicar, and subsequently died, and the whole of the fund was exhausted, leaving a balance due to the builder:—Held, that the vicar's executors were not liable. *Ibid.*

(b) *Covenant to pay compensation to be settled by arbitration.*

25.—Declaration, that the defendant became tenant to the plaintiffs upon the terms that the defendant would keep such number only of hares and rabbits as would do no injury to the trees, &c., of the plaintiffs, or to the crops of their tenants, and that in case the defendant should keep such a number of hares and rabbits as should injure the trees, &c., or crops, &c., the defendant would pay to the plaintiffs or their tenants a fair and reasonable compensation for such injury. Breach, that the defendant did keep such a number of hares and rabbits as did injury to such trees and crops, and had not paid a fair and reasonable or any compensation. Plea, that one of the terms of the said tenancy was that in case any such injury should be done the "defendant would pay a fair and reasonable compensation for the same, the amount of such compensation, in case of difference, to be referred" to arbitration. Averment, that a difference arose as to the amount of compensation, but no arbitrator had been appointed nor any award made. Demurrer and joinder in demurrer:—Held (reversing the judgment of the Court below, 43 Law J. Rep. Exch. 19; Law Rep. 9 Exch. 7), that the plea was bad, for the stipulation as to compensation and reference, though in the form of one sentence, contained in reality two covenants, and such covenants were distinct and independent. *Dawson v. Fitzgerald (App.)*, 45 Law J. Rep. Exch. 894; Law Rep. 1 Ex. D. 257.

#### (H) IMPLIED COVENANT.

26.—A covenant in a lease by which the lessee agrees at the expiration of the lease to deliver up to the lessors "all landlord's fixtures," does not imply a representation and covenant on the part of the lessors that the lessee is to be at liberty without hindrance from any one to remove during the term trade fixtures, and that the lessors have not entered into covenants inconsistent with such right. *Porter v. Drew*, 49 Law J. Rep. C.P. 482; Law Rep. 5 C.P. D. 143.

*Implied covenant to pay: acknowledgment of debt under seal.* [See DEED, 2.]

E E

## COVIN AND COLLUSION.

The defendants kept the Brighton Aquarium open to the public on Sunday, the 15th of August, 1875, thereby incurring a penalty under 21 Geo. 3. c. 49. The plaintiff issued his writ in an action to recover the penalty on the 17th of April, omitting to specify in the writ the Sunday in respect of which the action was brought. The defendants continued to keep the Aquarium open every Sunday up to and including Sunday, the 17th of October. On the 20th of October a writ was issued in the name of one R., claiming penalties in respect of all the Sundays from the 15th of August to the 17th of October, both inclusive, and judgment was signed by default in R.'s action on the 28th of October. The defendants pleaded this judgment in bar of the plaintiff's action. Reply, that the judgment was obtained by covin and collusion. It was proved that R.'s action was brought at the request of the defendants; that the defendants' solicitor instructed another solicitor to carry it on in the name of R.; that it was intended to protect the defendants from any other actions for penalties in respect of those Sundays, and also to ascertain whether the Home Secretary would remit the penalties under 38 & 39 Vict. c. 80, and that there was an understanding between R. and the defendants that he should not enforce the judgment:—Held, that the judgment obtained in R.'s action was no bar to the plaintiff's action, R.'s action being a nullity, having been, in fact, brought by the defendants against themselves. Held also, by Cotton, L.J., and Thesiger, L.J., that there was ample evidence of covin and collusion on the part of R. and the defendants. *Girdlestone v. The Brighton Aquarium Company* (App.), 48 Law J. Rep. Exch. 373; Law Rep. 3 Ex. D. 137; 4 Ex. D. 107.

## CREDITORS' DEED.

[See VOLUNTARY SETTLEMENT, 13, 14.]

## CRIMINAL INFORMATION.

Upon the trial of a criminal information for a defamatory libel the defendant obtained a verdict, whereupon the Master on taxation allowed him the costs which he had incurred in shewing cause unsuccessfully against the rule *nisi* for filing the information, under 6 & 7 Vict. c. 96. s. 8, which enacts that "in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information:—"—Held (by Mellor, J., and Lush, J., Blackburn, J., *dubitante*), that the allowance was properly made. The intention of the statute was to indemnify the defendant in respect of all costs incurred by him, and those of unsuccessfully shewing cause against the rule for the filing of the criminal information are included under

the words "sustained by reason of such information." *Reg. v. Steel*, 45 Law J. Rep. Q.B. 391; Law Rep. 1 Q.B. D. 482.

*Reg. v. Cavendish* (12 Irish Law Rep. 230) not followed. *Ibid.*

[See LIBEL, 20-24.]

## CRIMINAL LAW.

[Appointment of Director of Public Prosecutions and regulations as to procedure. 42 & 43 Vict. c. 22.]

*Appeal in criminal matters.*

1.—The operation of section 47 of the Judicature Act, 1873, in prohibiting appeals in criminal matters, extends to all orders of the High Court in criminal cases, even where the original criminal proceedings were not in the High Court. And where the Queen's Bench Division was applied to for a *certiorari* to quash a conviction for trespassing in pursuit of game, on the ground that there was a *bona fide* claim of right, ousting the jurisdiction of the magistrates, and that Court refused the order,—Held, that this was a proceeding in a criminal matter, and that no appeal lay to the Court of Appeal. *Reg. v. Fletcher; ex parte Birnie* (App.), 46 Law J. Rep. M.C. 4; Law Rep. 2 Q.B. D. 43.

2.—The effect of section 47 of the Judicature Act, 1873, explained by section 19 of the Act of 1875, is to prohibit appeals not only from the Court of Criminal Appeal, but also in all criminal matters and proceedings in the High Court. *Reg. v. Steel* (App.), 46 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. D. 37.

The taxation of costs allowed to a successful defendant in a criminal information for libel is a "proceeding in a criminal cause" within the meaning of the above sections, and, therefore, no appeal lies from an order of the Queen's Bench Division as to such taxation. *Ibid.*

*Practice: joinder of several misdemeanours: successive sentences.*

3.—The first count of an indictment charged C. with committing perjury in an action of ejectment in the Court of Common Pleas; the second count charged him with committing perjury in a suit brought in the Court of Chancery, in order to obtain an injunction to prevent the defendants to the action of ejectment from setting up certain defences. Upon conviction on both counts, C. was sentenced on each count to the maximum term of penal servitude fixed by statute for perjury, the second term being directed to commence at the expiration of the first. A writ of error having been issued,—Held (by the Court of Appeal), that the charges contained in the two counts were charges of two distinct offences; that upon conviction on both charges the maximum sentence allowed by law for the offence charged could be awarded for each of the two offences, and that the commencement of the second term could be postponed until the expiration of the first term of

punishment. Held also, that 2 Geo. 2. c. 25. s. 2, and 20 & 21 Vict. c. 3. s. 2, which enact "that besides the punishment already to be inflicted for" perjury, "it shall and may be lawful" for the Court to send to penal servitude, for "a time not exceeding seven years," persons convicted of perjury; and "thereupon judgment shall be given that the person convicted" shall be sent to penal servitude "accordingly, over and beside such punishment as shall be adjudged to be inflicted on such person, agreeable to the laws now in being," do not require that any other sentence should be prefixed to that of penal servitude. *Reg. v. Castro* (App.), 49 Law J. Rep. Q.B. 747; Law Rep. 5 Q.B. D. 490 (affirmed on appeal to the House of Lords, but not yet reported).

*Abortion, attempt to procure.* [See ABORTION.]

*Accessory after the fact: murder.* [See ACCESSORY.]

*Adulteration.* [See ADULTERATION OF FOOD, 6.]

*Agent: misappropriation by.* [See EMBEZZLEMENT, 5.]

*Bigamy.* [See DIVORCE, 6.]

*Conspiracy: indictment, sufficiency of.* [See CONSPIRACY.]

*Conviction: duplicity.* [PUBLIC HEALTH ACT, 40.]

*Counterfeit coin, uttering.* [See COINING.]

*Debtors' Act: infant.* [See DEBTORS ACT, 9.]

*Embezzlement.* [See EMBEZZLEMENT.]

*Evidence in criminal cases.* [See EVIDENCE, 34-38.]

*Extradition.* [See EXTRADITION; LIBEL, 23.]

*False pretences: evidence of pretences.* [See EVIDENCE, 35.]

*False pretences: sale of goods.* [See FALSE PRETENCES, 1.]

*Furious driving.* [See HIGHWAY, 24.]

*Forgery: cheque signed in fictitious name.* [See FORGERY.]

*Indecent assault.* [See ASSAULT, 3.]

*Indictment, form and sufficiency of.* [See ACCESSORY; CONSPIRACY; FALSE PRETENCES, 3; HIGHWAY, 4; OBSCENE PUBLICATION, 2, 3.]

*Justices: jurisdiction of.* [See JUSTICE OF THE PEACE, 1-13.]

*Larceny.* [See FALSE PRETENCES; LARCENY; RECEIVING STOLEN GOODS.]

*Libel: criminal information.* [See LIBEL, 20-24.]

*Lunatic: deaf mute.* [See TRIAL.]

*Malicious injury to property.* [See MALICIOUS INJURY.]

*Manslaughter: neglect to provide medical aid.* [See MANSLAUGHTER.]

*Nuisance: indecency.* [See NUISANCE, 16.]

*Perjury: petty sessions: jurisdiction.* [See PERJURY.]

*Procedure: death of complainant.* [See OBSCENE PUBLICATION, 3.]

*Public health, offences against.* [See PUBLIC HEALTH ACT, 39-41.]

*Rape: pretence of surgical operation.* [See RAPE.]

*Receiving stolen goods: husband and wife: adultery.* [See RECEIVING STOLEN GOODS.]

*Reception of lunatic in unlicensed house.* [See LUNACY, 26.]

*Sale of unsound meat.* [See PUBLIC HEALTH ACT, 40.]

*Venue.* [See EMBEZZLEMENT, 1, 2: VENUE.]

*Warrant, issue of.* [See PERJURY, 1; EXTRADITION, 1; JUSTICE OF THE PEACE, 13.]

*Wild animals.* [See EMBEZZLEMENT, 3.]

## CRIMINAL LUNATIC.

[See LUNATIC, 22.]

## CROP.

*Right of mortgagee taking possession to growing crops.* [See MORTGAGE, 12.]

*Sale of.* [See SALE OF GOODS, 5.]

## CROSSED CHEQUES ACT, 1876.

[See BILL OF EXCHANGE, 4.]

## CROWN.

[Power to Her Majesty to make an addition to the Royal style and title. 39 & 40 Vict. c. 10.]

### *Prerogative: cession of British territory.*

1.—Land in India which has become British territory and been subjected to the jurisdiction of British Courts by legislation, cannot be transferred to the jurisdiction of any other tribunal without legislation. *Damodhar Gerdhan v. Deoram Kauji* (P.C.), Law Rep. 1 App. Cas. 332.

Quære, whether the Crown has power to cede British territory in time of peace without the Legislature's concurrence. *Ibid.*

### *Foreshore.*

2.—It is the duty of the Crown to protect the realm against inundation by the sea, and therefore to maintain all natural barriers which protect it from such inundation; and although a subject cannot enforce the performance of this duty by the Crown, yet he can invoke the aid of the Crown to enforce the observance of this duty by a fellow-subject. A bank of shingle, thrown up and from time to time replenished by the action of the sea on a foreshore, formed the natural barrier to the lands

within against inroads of the sea. The owner of the foreshore, who possessed and exercised the right to remove and sell the shingle, removed the shingle to such an extent as to expose the lands within to the inroads of the sea:—Held (on appeal from the Chancery Division, 48 Law J. Rep. Chanc. 593), that an action would lie by the Attorney-General, at the relation of the owner of the land within, to restrain the owner of the foreshore from removing the shingle in such a manner as to endanger the land within or expose it to inroads of the sea. *Smith v. Kenrick* (7 Com. B. Rep. 515; 18 Law J. Rep. C.P. 172) discussed and distinguished. *The Attorney-General v. Tomlins* (App.), 49 Law J. Rep. Chanc. 377; Law Rep. 15 Ch. D. 150.

#### *Repair of sea-wall.*

8.—Owners and occupiers of land next the sea are not liable to maintain the sea-walls along their frontage for the protection of the adjoining owners of land, either by prescription or at Common Law. The fact that a frontager has always maintained his own wall (taken in connection with the fact that in so doing though incidentally he benefited his neighbours, yet primarily he benefited himself), and that the adjoining owners have not repaired their neighbours' walls nor erected cross walls to protect themselves (taken in connection with the fact that there was no evidence of any claim by one owner to have the wall of another kept up for his benefit having been asserted adversely), is not sufficient to establish the inference of a prescriptive obligation on each frontager to repair his part of the wall. Although an owner of land fronting the sea might be made liable, under a commission issued by the Crown, to contribute to the expense of maintaining the sea-walls of the district, yet independently of a Royal Commission no liability to maintain them is imposed upon the frontagers at Common Law. *Hudson v. Tabor*, 46 Law J. Rep. Q.B. 463; Law Rep. 2 Q.B. D. 290; on appeal from the Queen's Bench Division, 45 Law J. Rep. Q.B. 463; Law Rep. 1 Q.B. D. 225.

#### *Extent by the Crown: Bankruptcy Act.*

4.—The Crown is not bound by a statute unless and in so far as it is referred to in express words or by necessary implication. Where some sections of an Act give the Crown a benefit or reserve its rights, the Crown is not to be held to be bound and deprived of its undoubted prerogative by other sections which do not mention it, and consequently the Crown, though named in some sections of the Bankruptcy Act, is not bound by the other sections. Nor is the Crown affected by the doctrine of the relation back of the trustee's title, which is a creation of the statute. On the 21st of September a Crown debtor filed a petition for liquidation by arrangement, and on the same day a receiver was appointed by the Court on his application. On the 15th of October the sheriff seized his goods

under an extent issued by the Crown on the 27th of September. On the 17th of October the creditors resolved on liquidation by arrangement, and appointed the receiver trustee:—Held, that the debtor's goods did not vest in the receiver, but remained vested in him until the creditors resolved what course to take; and that the Crown not being bound by the Bankruptcy Act, 1869, nor by the doctrine of relation back of the trustee's title, the goods so seized between the filing of the petition and the appointment of the trustee were bound by the extent. *Ex parte The Postmaster-General; in re Bonham and M'Donnell* (App.), 48 Law J. Rep. Bankr. 84; Law Rep. 10 Ch. D. 595.

#### *Right to bring proceedings into the Exchequer.*

5.—The prerogative of the Sovereign to bring proceedings in which Crown property is involved into the Exchequer by information filed by the Attorney-General, and to restrain proceedings pending elsewhere, is not affected by the Judicature Acts. *The Attorney-General and The Corporation of Hull v. Constable*, 48 Law J. Rep. Exch. 455; Law Rep. 4 Ex. D. 172.

#### *Money received by Crown under treaty.*

6.—Where the Crown in the exercise of its prerogative makes a treaty of peace, and receives under it money on account of debts due to its subjects by the subjects of the foreign Government, no petition of right will lie to compel the payment or distribution of the money to any of its subjects to whom such debts may be due. *Rustomjee v. The Queen*, 45 Law J. Rep. Q.B. 249; Law Rep. 1 Q.B. D. 487; affirmed on appeal, 46 Law J. Rep. Q.B. 238; Law Rep. 2 Q.B. D. 69.

The Statute of Limitations cannot be pleaded to a petition of right. *Ibid.*

#### *Interest payable by Crown.*

7.—Where the trustees and executors of a will administered to the property, and upon its being decided in a suit instituted for the purpose that there was an intestacy, and no heir or next-of-kin being discovered, the trustees assigned the leasehold property to the Solicitor for the Treasury, to be held for the benefit of the Crown, and the plaintiffs, six years afterwards, established their claim as next-of-kin of the testator, and the Court declared them entitled:—Held, that the Crown was bound to pay to the plaintiffs interest at the rate of four per cent. upon all the rents and profits received on account of the personalty, just as if the Crown had administered to the estate. *In re Gosman*, Law Rep. 15 Ch. D. 67.

#### *Removal of officer of East India Company.*

8.—The East India Company, before 21 & 22 Vict. c. 106, when the Government of India was transferred to the Crown, had the absolute power to dismiss or compel the retirement of an officer in the Indian army at the will and plea-

sure of the Company, and such power being in the nature of a Crown prerogative could not be waived by contract between the Company and its officers. *Grant v. The Secretary of State for India*, 46 Law J. Rep. C.P. 681; Law Rep. 2 C.P. D. 445.

An action for removing an officer does not lie against the Secretary of State for India, as the act of removal was not within the cognizance of a Court of law, the East India Company and afterwards the Crown having an absolute power to remove the plaintiff at will and pleasure; and held that the defendant was not liable for libel by reason of the publication of the order of removal in the *Gazette*, at all events when not alleged to have been published by him maliciously and without reasonable and probable cause. *Ibid*.

*Crown debt: costs of appeal: estreated recognition.* [See DEBTORS ACT, 1.]

*Fishery: inland non-tidal lake.* [See FISHERY, 1.]

*Grant by, of profit à prendre.* [See COMMON, 3; CUSTOM, 1, 4.]

*Priority of, in winding up: property tax.* [See PROPERTY TAX, 1.]

*Right of executor to surplus as against Crown.* [See EXECUTOR, 9.]

*Right to use of patented article.* [See PATENT, 23.]

*Royal warrant, effect of: liability of Crown to account.* [See BOOTY OF WAR.]

*Treaty making power of Crown.* [See ADMIRALTY, 4.]

#### CROWN LANDS.

[See COLONIAL LAW, 21, 30-36, 38, 45-47.]

#### CRUCIFIX.

*Erection of, in church.* [See CHURCH AND CLERGY, 19.]

#### CRUELTY TO ANIMALS.

[See ANIMALS, 1, 2.]

#### CURTESY.

[See HUSBAND AND WIFE, 40.]

#### CUSTODY OF CHILD.

[See INFANT, 22-26; DIVORCE, 7, 30.]

#### CUSTODY OF DEEDS.

[See TENANT FOR LIFE, 1.]

#### CUSTOM.

*Prescription: claim by inhabitants to profit à prendre.*

1.—The defendants to an action for taking underwood for fuel from the waste of the plaintiff's manor of T. F., justified as inhabitants

of the parish of T. F., and proved immemorial user by some inhabitants as such, but they did not prove user by the inhabitants generally as such, and exclusive right was claimed by the tenants of the manor:—Held, that the justification could not stand either upon custom, as the custom would be for the inhabitants to have a profit à prendre in the soil of another, or upon a lost grant from a private person, inhabitants being incapable of taking under a grant which does not incorporate them, or upon a lost grant from the Crown, user by the inhabitants generally as such being necessary for supposing a grant to the inhabitants, other considerations against supposing the grant being the absence of evidence of even a *de facto* corporation of the inhabitants, the claim by the tenants of the manor, and the unreasonableness and repugnancy to law of the supposed right. *Rivers v. Adams; the Same v. Isaacs; the Same v. Ferrett*, 48 Law J. Rep. Ex. 47; Law Rep. 8 Ex. D. 361.

The defendants justified also as occupiers of certain cottages, relying upon user by the occupiers as inhabitants of the parish:—Held, that a prescriptive claim as occupier of a certain house or the like could not be founded upon user in a different character such as inhabitant of a parish. *Ibid*.

The result of the decisions in the year-books upon the effect of a royal grant to the inhabitants of a parish or village appears to be that, if the grant is for a specified purpose, the grant incorporates the inhabitants so as to effectuate that purpose, but otherwise is inoperative. Therefore, when a Court or jury is called upon to presume a lost royal grant to inhabitants, it has to presume a royal grant such as to incorporate them. *Willingale v. Maitland* (36 Law J. Rep. Chanc. 64), considered. *Ibid*.

*Right of parishioners to disport themselves in alieno solo at any time of the year.*

2.—A custom for the inhabitants of a parish to erect a maypole on certain ground of a landowner within the parish, and dance round and about the same, and otherwise enjoy any lawful and innocent recreation at any time in the year on the said ground, is reasonable and lawful. *Hall v. Nottingham*, 45 Law J. Rep. Exch. 50; Law Rep. 1 Ex. D. 1.

#### *Incoming and outgoing tenant.*

3.—A custom by which the incoming tenant of a farm is alone liable to compensate the outgoing tenant for seeds, acts of husbandry, tillages, &c., for which, as outgoing tenant, he is entitled to be compensated, is unreasonable, and cannot be supported at law. *Bradburn v. Ffley*, 47 Law J. Rep. C.P. 381; Law Rep. 3 C.P. D. 129.

#### *Several fishery: navigable river.*

4.—The plaintiffs, an incorporated body, claimed to be possessed of a several fishery in a tidal navigable river, and in support of their

title produced charters of confirmation and grant, and proved acts of immemorial user, from which the Court, drawing inferences of fact, held a *prima facie* title to the soil and several fishery to be established, raising the presumption of a legal origin—that is, a grant before Magna Charta. The defendants claimed, as free inhabitants of ancient tenements in the borough of Saltash, to have from time immemorial, without interruption, and as of right, the privilege of dredging for oysters in the *locus in quo*, from the 2nd day of February to Easter Eve in each year, and carrying away the same without stint, for sale and otherwise. They also claimed to have exercised the above privilege as free inhabitants of the borough, and as subjects of the realm; and they also claimed a general right to dredge for oysters as subjects of the realm:—Held, that no right in the defendants, as subjects of the realm, could be established, as it would be inconsistent with a several fishery in the plaintiffs, who would take nothing by their grant, and would be destructive of the fishery. Held, further, that the other claims of the defendants founded on immemorial user could not be established, for that they were made in respect of a fluctuating body, and would have to be supported by the presumption of a lost royal grant, which alone would have the effect of incorporating such body, and that such a presumption could not be made when antagonistic to the existing rights of the plaintiffs. *Lord Rivers v. Adams* (48 Law J. Rep. Exch. 47; Law Rep. 3 Ex. D. 361) followed. *The Mayor and Free Burgesses of the Borough of Saltash v. Goodman*, 49 Law J. Rep. C.P. 565; Law Rep. 5 C.P. D. 431 (affirmed on appeal, but not yet reported).

*Approvement by lord: consent of homage.* [See COMMON, 4.]

*Evidence: custom of trade.* [See EVIDENCE, 3, 4; SALE, 1, 4, 23; TRADE MARK, 16.]

*Landlord and tenant: incoming and outgoing tenant.* [See LANDLORD AND TENANT, 18.]

*Prescription: profit à prendre: occupier.* [See COMMON, 2.]

#### CYPRES.

*Charitable bequests.* [See CHARITY, 14, 17, 18.]

*Construction of will: unborn children.* [See REMOTENESS, 6.]

#### DAMAGES.

##### (A) WHEN RECOVERABLE.

(a) *Against telegraph company not contracting with sender of telegram.*

(b) *Obstruction of access of air.*

(c) *In other cases.*

##### (B) MEASURE AND CRITERION OF.

(a) *Sale of goods: fraud on purchaser.*

(b) *Default in delivery of goods.*

(c) *Loss on shares: misrepresentation.*

(d) *Breach of contract to pay debts.*

(e) *Loss of charter-party: consequential loss.*

(f) *Breach of covenant for quiet enjoyment.*

(g) *Injury from mining; prospective damage.*

(h) *Interference with ancient lights.*

(i) *Personal injuries by railway accident.*

(k) *Nominal damages: injury to crops by rabbits.*

(l) *In other cases.*

##### (C) REMOTENESS OF.

(a) *Failure to transmit telegram.*

(b) *Unpunctuality of railway company.*

(c) *Costs of consequent litigation.*

(d) *Wrongful working of mines.*

(e) *Detention of ship.*

(f) *Damage from diseased animals.*

(g) *Sale of land: expenses of attempted resale.*

##### (A) WHEN RECOVERABLE.

(a) *Against telegraph company not contracting with sender of telegram.*

1.—The plaintiffs, merchants at Valparaiso, received through the defendants a telegram purporting to come from London and addressed to them, ordering a large shipment of barley. No such message was ever in fact sent to the plaintiffs. The misdelivery of the message was caused by the negligence of the defendants, and occasioned heavy loss to the plaintiffs, in consequence of a fall in the market price of barley. In an action to recover the amount of this loss,—Held (affirming the decision below, 46 Law J. Rep. C.P. 197; Law Rep. 2 C.P. D. 62), that there was no duty owing by the defendants to the plaintiffs in the matter, either by contract or law, and therefore no action would lie. *Dixon v. Reuter's Telegraph Company (Lim.)* (App.), 47 Law J. Rep. C.P. 1; Law Rep. 3 C.P. D. 1.

(b) *Obstruction of access of air.*

2.—Damages were given in respect of an obstruction of access of air to a slaughterhouse which had been used for upwards of thirty years on the ground of implied covenant. *Hall v. The Lichfield Brewery Company*, 49 Law J. Rep. Chanc. 655.

(c) *In other cases.*

*Detention of ship.* [See SHIPPING LAW, D 8.]

*Disclaimer of contract by trustee of bankrupt.* [See BANKRUPTCY, F 45.]

*For breach of implied covenant for title.* [See MINES, 16.]

*For detention of goods.* [See INTERPLEADER, 1.]

*For dishonouring bill of exchange.* [See BILL OF EXCHANGE, 16, 18.]

*Liquidated damages or penalty.* [See CONTRACT, 37.]

## (B) MEASURE AND CRITERION OF.

(a) *Sale of goods: fraud on purchaser.*

3.—The plaintiff was induced by the fraudulent representation of the defendant to buy a quantity of rupee paper. He sold it again when it had become greatly depreciated by a fall in the value of silver in ignorance of the fraud, and afterwards becoming aware of the fraud brought an action against the defendant, claiming the full loss upon the resale:—Held, that the plaintiff could not recover so much of his loss as was caused by the fall in the value of silver. *Waddell v. Blockey* (App.), 48 Law J. Rep. Exch. 517; Law Rep. 12 Ch. D. 678.

By Baggallay, L.J., and Thesiger, L.J.—The measure of damages was the difference between the price given by the plaintiff, and that which he could have obtained for the stock in the market if he had resold on the day of the purchase. *Ibid.*

By Bramwell, L.J.—The measure of damages was the difference between the price given by the plaintiff and that which he could have obtained for the stock, selling in reasonable quantities within a reasonable time and with due caution. *Brookman v. Rothschild* (3 Sim. 153; 5 Bligh, 165) commented upon. *Ibid.*

(b) *Default in delivery of goods.*

4.—The plaintiff was a dealer in cattle-spice, and was in the habit of going about to agricultural shows exhibiting samples of his goods. He so exhibited them at B. and desiring to exhibit them at N. he had them delivered to an agent of the defendants (a railway company) who had a special office on the show-ground at B. for the purpose of forwarding goods that had been exhibited. The defendants' clerk supplied a blank consignment note. This the plaintiff's agent filled up, describing the goods as sundries, and the address as Newcastle Show-ground, and endorsing it, "must be delivered Monday certain." A conversation also took place with reference to the vital importance of having the goods at N. on Monday. The goods not having been delivered at N. on Monday, nor in time for the show, the plaintiff, who had gone there to meet them, sued the defendants for the non-delivery, claiming damages for his expenses and loss of time or profit. The defendants paid 10*l.* into Court to cover expenses, and a verdict was entered for 20*l.* additional, in respect of loss of time or profit:—Held, that the verdict was right, the surrounding circumstances justifying the inference that the defendants' clerk knew the purpose for which the goods were wanted, and made that the basis of the contract so as to render the defendants responsible for the damage naturally flowing from the non-delivery. Also, that in the case of a man whose business it was to attend agricultural shows and make profit thereby, the profit which would have been made at a particular show is not too speculative to form the subject of damages. *Simpson v. The London and North Western Rail-*

*way Company*, 45 Law J. Rep. Q.B. 182; Law Rep. 1 Q.B. D. 274.

5.—The plaintiffs employed L. to make waggons according to sample. L. employed the W. Company to make them, and at the request of the W. Company, with L.'s consent, the plaintiffs undertook to pay the W. Company direct. Waggons were delivered to the defendants by the W. Company to be delivered to the plaintiffs, but as they were not up to sample the plaintiffs wrote to the W. Company and L. complaining, but not rejecting the waggons. L., however, did reject them. The plaintiffs gave notice to the defendants not to deliver the waggons without their order, but the defendants nevertheless delivered them to the W. Company, who refused to give them up. Held, that the plaintiffs could recover against both the defendants and the W. Company, and that the W. Company could not deduct the price of the waggons from the amount recoverable by the plaintiffs. *Johnson v. The Lancashire and Yorkshire Railway Company*, Law Rep. 3 C.P. D. 499.

6.—The plaintiff shipped hemp and sugar on board the P. For an unreasonable delay in delivering the cargo, the plaintiff claimed loss by drainage in respect of the sugar, and interest on the invoice value of the whole cargo, which were allowed. He also claimed for loss of market price in respect of the hemp. This was disallowed by the Registrar. On appeal from the Registrar the Court allowed compensation for the difference between the market price when the goods ought to have been, and when they were delivered. *The Parana* (App.), 45 Law J. Rep. P., D. & A. 108; Law Rep. 1 P. D. 452; 2 P. D. 118.

7.—The defendants were in possession of the plaintiffs' goods as bailees, under orders not to part with them except upon delivery orders signed by the plaintiffs. The defendants parted with the goods upon the order of one G., who was the plaintiffs' agent for the sale but not for the delivery of the goods. Shortly afterwards the plaintiffs sent a delivery order for the same goods to T., who indorsed it to G., who lodged it with the defendants to cover the previous delivery. Afterwards the plaintiffs being unable to obtain the price of the goods from T., sued the defendants for the conversion of the goods, and claimed the full value. Held (by Bramwell, L.J., and Thesiger, L.J.), that there had been a conversion in respect of which the plaintiffs were entitled to recover; but that what had occurred with respect to the delivery order was equivalent to a return of the goods by the defendants to the plaintiffs, and, therefore, under the circumstances of this case, the damages could only be nominal. By Baggallay, L.J., that the plaintiffs were not entitled even to nominal damages. *Hiorv v. The London and North Western Railway Company* (App.), 48 Law J. Rep. Exch. 545; Law Rep. 4 Ex. D. 188.

*Per curiam*, the plaintiffs must pay the costs of the action. *Ibid.*

8.—Observations of James, L.J., as to the application of the principle of assessing damages on the footing that there is what may be properly called a market. *The Dunkirk Colliery Company v. Lever*, Law Rep. 9 Ch. D. 20, at pp. 24, 25.

[And see CONTRACT, 36.]

*Shipment "per vessel or vessels": part performance by vendor: right of purchaser to reject whole.* [See SALE, 3.]

(c) *Loss on shares: misrepresentation.*

9.—In an action for loss on shares procured to be taken by misrepresentation, the measure of damages was held to be the difference between what was paid for the shares and what would have been paid had the truth been known. *Arkwright v. Newbold*, 49 Law J. Rep. Chanc. 684.

(d) *Breach of contract to pay debts.*

10.—Traders in embarrassed circumstances sold their business to the defendant upon condition that he should pay certain debts owing by them. This he failed to do, and left a balance of 1,750*l.* unpaid to the creditors. The traders afterwards liquidated their affairs by arrangement under the Bankruptcy Act, 1869, and the plaintiff having been appointed trustee, brought an action for breach of contract:—Held, that he was entitled to recover the sum of 1,750*l.*, and not merely nominal damages. *Porter v. Vorley* (9 Bing. 93) disapproved of. *Ashdown v. Ingamells* (App.), 50 Law J. Rep. Exch. 109; Law Rep. 5 Ex. D. 280.

(e) *Loss of charter-party: consequential loss.*

11.—The S. I. and the C. came into collision on the 1st of May, by which the C. was unable to load cargo by the time stipulated for in the charter-party, which was accordingly cancelled. She was not sufficiently repaired to obtain another charter-party until the 4th of July. The collision was the fault of the S. I.:—Held (overruling the Registrar's Report), first, that the owners of the C. were entitled to some compensation for loss of charter-party; and secondly, that such compensation was not included in the usual allowance of fourpence per ton a day for demurrage. *The Star of India*, 45 Law J. Rep. P. D. & A. 102; Law Rep. 1 P. D. 466.

(f) *Breach of covenant for quiet enjoyment.*

12.—In an action for damages for breach of the covenant for quiet enjoyment in a lease, there being disturbance of enjoyment but not eviction, the measure of damages is the actual damages sustained up to the date of the issuing of the writ, and, in the absence of evidence of actual damage, such damages will be nominal. A. and B. were lessees of C., and B. under his lease claimed a right of way over A.'s land. C. supported A.'s title, and insisted that B. had no

such right of way. A. having brought an action against B. and C., claiming as against B. an injunction, and, in the alternative, as against C. damages for the breach of his covenant for quiet enjoyment contained in A.'s lease, judgment was given for B. with costs against A., and 400*l.* damages were awarded to A. in respect of C.'s breach of covenant, but the costs of B. ordered to be paid by A. were not included in such damages. On appeal as to the quantum of damages,—Held (on appeal from the Chancery Division, 47 Law J. Rep. Chanc. 371; Law Rep. 7 Ch. D. 413), that the damages, in the absence of evidence of actual damage, must be reduced to 40*s.* *Child v. Stenning* (App.), 48 Law J. Rep. Chanc. 392; Law Rep. 11 Ch. D. 82.

But held, further (following *Williams v. Burrell*, 1 Com. B. Rep. 402), that A. was entitled by way of increased damages to the costs of B. *Ibid.*

[And see COVENANT, 13.]

(g) *Injury from mining: prospective damage.*

13.—Where injury has been occasioned to land and buildings by mining operations under the land of an adjoining owner, the plaintiff is entitled to recover, in an action founded upon such injury, compensation, not only for the damage that has actually occurred at the time of action brought, but also for the prospective damage resulting from the defendant's act. As the cause of action was complete at the moment that the first damage accrued to him, the plaintiff must recover once for all in one and the same action for all damage past, present, and future, resulting from that one cause of action, for the reason that no occurrence of damage subsequently, as the result of the original act of the defendant, would give a fresh cause of action.—So held, per Mellor, J., and Manisty, J.; Cockburn, L.C.J., *dissentiente*; and per Cockburn, L.C.J.—There being no abstract right to the support of the adjacent land, the act of the excavating owner is only tortious when it produces and to the extent to which it produces actual damage. On the one hand, therefore, the defendant is not liable for damage which has not occurred, and which never may occur; and on the other, each fresh interference with the enjoyment of property, on the occurrence of subsequent damage, is a wrong done, and creates a further cause of action, of which the plaintiff can avail himself. *Lamb v. Walker*, 47 Law J. Rep. Q.B. 451; Law Rep. 3 Q.B. D. 389.

(h) *Interference with ancient lights.*

14.—Where the access of light to ancient windows is interfered with, the measure of damages is the diminished value of the premises, having regard to any purpose to which they may reasonably be put. The right of the owner of the dominant tenement is to the quantum of light which has always entered the windows



without reference to the purpose for which it has been used. *Martin v. Goble* (1 Campb. 320) dissented from. *Moor v. Hall*, 47 Law J. Rep. Q.B. 334; Law Rep. 3 Q.B. D. 178.

(i) *Personal injuries by railway accident.*

15.—The right direction to a jury, who have to assess damages in an action for personal injuries sustained in a railway accident by a professional man making a large income, is that, in respect to the plaintiff's money loss, they should not attempt to arrive at an absolute or mathematically accurate compensation, but should give a fair and reasonable compensation, taking into consideration the amount of his income when the injuries were sustained, the length of time he has been deprived of that income, the probability of his having continued to earn it if he had not been injured, the prospect of his being able to earn anything in the future, and all the other circumstances of the case. The distinction between such a case and the case of *Hadley v. Baxendale* (9 Exch. Rep. 341; 23 Law J. Rep. Exch. 179) pointed out. *Phillips v. The London and South Western Railway Company* (App.), 49 Law J. Rep. Q.B. 233; Law Rep. 5 Q.B. D. 78, 280.

(k) *Nominal damages: injury to crops by rabbits.*

16.—The plaintiff let lands to R., reserving the right of sporting. He afterwards let the sporting to the defendant, who covenanted to keep down the rabbits so that no appreciable damage should be done to the crops. In an action for breach of this covenant,—Held, that as the plaintiff was under no liability to compensate his tenant for the consequences of the defendant's breach of covenant, he could only recover nominal damages against the defendant. *West v. Houghton*, Law Rep. 4 C.P. D. 197.

(l) *In other cases.*

*Misfeasance by officer of company taking improper benefit.* [See COMPANY, D 31.]

*Person induced to take shares by fraudulent prospectus.* [See COMPANY, A 3.]

*Sale of chattels for specific purpose.* [See SALE, 7.]

*Sale of land: breach of contract: time of the essence.* [See VENDOR AND PURCHASER, 16.]

(C) REMOTENESS OF DAMAGE.

(a) *Failure to transmit telegram.*

17.—The defendant made a profit by collecting messages, and transmitting them by telegraph to America. He received amongst others a message from the plaintiffs for transmission to their correspondent at New York, containing an order for goods, but the message was in cypher, wholly unintelligible to any but the plaintiffs and their correspondent at New York. Through the defendant's negligence the message was not sent, and the plaintiffs thereby

lost profits which they would have made had the order been executed.—Held, in an action for such negligence, that the plaintiffs could not recover more than nominal damages. *Sanders v. Stuart*, 45 Law J. Rep. C.P. 662; Law Rep. 1 C.P. D. 326.

(b) *Unpunctuality of railway company.*

18.—The plaintiff had taken a ticket at the defendant's station in Liverpool for Scarborough *via* Leeds. In consequence of delay on the journey the plaintiff arrived at Leeds after the ordinary train had left, and, though travelling for pleasure only, he took a special train thence to Scarborough. In an action to recover the cost of the special train, the Court of Common Pleas held, first, that the facts and documents which formed the contract were the taking and granting of the ticket, the ticket, the time-table, and the conditions; secondly, that the defendants thereby contracted to make every reasonable effort to ensure punctuality; thirdly, that although a delay of a few minutes would not be evidence of a want of reasonable effort, yet a long or unusual delay, such as had occurred in this case, was evidence calling upon the company to shew that it arose in spite of such reasonable effort, and that there was evidence that such delay was the cause of the plaintiff's missing the corresponding train at Leeds; fourthly, that the cost of the special train was recoverable as damages. On appeal, the judgment below was, on the first point, affirmed; on the second, affirmed (*dissentiente*, Cleasby, B.); on the third, affirmed (*dissentiente*, Baggallay, J.A.), and on the fourth, reversed. *Loblanck v. The London and North Western Railway Company* (App.), 45 Law J. Rep. C.P. 521; Law Rep. 1 C.P. D. 286.

Per James, L.J.—The contract is to be read as made with regard to that particular train on that particular day; and the question in determining whether there has been a breach, is—"Were the persons having the control and management and conduct of the train, on that day guilty of wilful delay or reckless loitering?" *Ibid*.

(c) *Costs of consequent litigation.*

19.—In consequence of the defective state of some asphalt pavement belonging to a tramway company, H., while driving over it in his cart, was thrown out and injured, and forthwith made a claim for compensation on the tramway company. The tramway company had made a contract with the plaintiffs, by which the plaintiffs were to lay down the asphalt and keep the same in repair for one year (at the time of the accident unexpired), and the plaintiffs had entered into a similar contract with the defendants. On receiving notice of H.'s claim the tramway company gave notice to the plaintiffs to meet it, and the plaintiffs handed on the notice to the defendants. The defendants refused to meet the claim, and the

plaintiffs were compelled to undertake the case themselves, and forthwith entered into negotiations with H., which eventually resulted in a compromise of the claim for a certain sum paid to H. by way of compensation, with costs of settlement. In an action by the plaintiffs over against the defendants to recover the sum paid by way of compromise to H. and the costs incidental thereto, the jury found that the compromise was reasonable, and that the costs were reasonably incurred:—Held, on the authority of *Baxendale v. The London, Chatham and Dover Railway Company* (44 Law J. Rep. Exch. 20; Law Rep. 10 Exch. 35), that such costs were not recoverable. *Fisher v. The Val de Travers Asphalt Company*, 45 Law J. Rep. O.P. 479; Law Rep. 1 O.P. D. 511.

(d) *Wrongful working of mines.*

20.—The defendant wrongfully worked the plaintiffs' coal, so that some coal left in large pillars was rendered partly by the effect of crushing less valuable to work:—Held, that, inasmuch as the physical constitution of the unworked coal was changed, damages would be given for the injury to the unworked coal. *Williams v. Raggott*, 46 Law J. Rep. Chanc. 849.

(e) *Detention of ship.*

21.—By charter-party it was agreed that the plaintiff's ship should go to a port, and there "load in regular turn" a cargo from the defendants. On her arrival the defendants made default in supplying cargo, whereby she lost one turn. Wind afterwards came on to blow, and the harbour-master therefore would not allow the ship to take up her loading berth for three days more:—Held, that the default of the defendants was the proximate cause of the detention during those three days, and that the plaintiff was entitled to damages as demurrage in respect of them. *Jones v. Adamson*, 45 Law J. Rep. Exch. 64; Law Rep. 1 Ex. D. 60.

22.—In an action against the defendants for breach of contract in improperly repairing a sea-going steam-vessel, the plaintiffs claimed damages for the loss sustained by the detention of the vessel by reason of such improper repairs:—Held (on the authority of *Hadley v. Baxendale*, 9 Exch. Rep. 341; 23 Law J. Rep. Exch. 179), that they were entitled to do so, the detention of the vessel being the probable result of the breach of contract. *Wilson v. The General Iron Sorey Colliery Company (Lim.)*, 47 Law J. Rep. Q.B. 239.

(f) *Damage from diseased animals.*

23.—The defendants sold a cow to the plaintiff with a warranty that the cow was free from the foot and mouth disease. The cow in fact had that disease, and the plaintiff, who was a farmer, having put the cow with other cows of his, she communicated the disease to them, and they died in consequence. In an action for such breach of the warranty the Judge at the

trial directed the jury that in assessing the damages they might take into account the loss arising from the injury to the other cows, if they thought the defendant knew or ought to have known that the plaintiff was a farmer, and would in the ordinary course of his business as a farmer place the cow with other cows, as then the damage resulting from the breach of the warranty was one which would naturally occur from such breach, and would be in the contemplation of both parties at the time the warranty was given:—Held, that such direction was right. *Smith v. Green*, 45 Law J. Rep. C.P. 28; Law Rep. 1 C.P. D. 92.

(g) *Sale of lands: expenses of attempted resale.*

24.—A vendor having reason to be put on enquiry as to the nature of the tenure of certain land, which he believed was freehold, sold and conveyed it as freehold. The land was really copyhold. The Court set aside the sale at the instance of the purchaser, though the contract had been performed. *Hart v. Swain*, 47 Law J. Rep. Chanc. 5; Law Rep. 7 Ch. D. 42.

The expenses of the purchaser about his purchase were allowed him by way of damages, but damages in respect of expenses incurred in respect of an attempted resale were refused, as being too remote. *Ibid.*

*For breach of contract in specific performance action.* [See VENDOR AND PURCHASER, 23.]

*Contract by company to allot fully paid-up shares: measure of damages.* [See COMPANY, D 72.]

DAMP.

*Nuisance by.* [See NUISANCE, 3.]

DANCING.

*Custom to dance on freeholds of another.* [See CUSTOM, 2.]

DAY.

*Fraction of, keeping dog without licence.* [See DOG LICENCE.]

DE BENE ESSE.

[See EVIDENCE, 31.]

DEBENTURE.

*Bequest of, ademption.* [See LEGACY, 22.]

*Bequest of, to charity.* [See CHARITY, 7-9.]

*Debenture stock: priorities of different issues.* [See RAILWAY, 2.]

*Rights of debenture holders.* [See COMPANY, D 48-50.]

## DEBTOR AND CREDITOR.

- (A) ASSIGNMENT OF DEBT.  
 (B) JOINT AND SEVERAL LIABILITY: EFFECT OF JUDGMENT AGAINST ONE JOINT CONTRACTOR.  
 (C) APPROPRIATION OF PAYMENTS.

## (A) ASSIGNMENT OF DEBT.

1.—One Gough contracted with the defendant to build him a ship, to be paid for in instalments. Gough being in difficulties, the defendant, in order that the ship might be finished, advanced him the whole contract price before it became due. Before the last 100*l.* was advanced, Gough borrowed a like sum from the plaintiff, and by writing assigned to him the 100*l.* "to become due" from the defendant. The defendant had due notice of this, but notwithstanding advanced the remaining 100*l.* to Gough:—Held (by Bramwell, L.J., and Cotton, L.J., *dissentiente* Brett, L.J.), that he was liable to pay the 100*l.* to the plaintiff, the assignment being a good one under the Judicature Act, 1873, s. 25, sub-s. 6. *Brice v. Bannister* (App.), 47 Law J. Rep. Q.B. 722; Law Rep. 3 Q.B. D. 569.

[And see *BANKRUPTCY*, D 28; *CHAMPERTY*; *STAMP*, 5.]

- (B) JOINT AND SEVERAL LIABILITY: EFFECT OF JUDGMENT AGAINST ONE JOINT CONTRACTOR.

2.—The appellants recovered judgments against W. & Co. for breach of contracts, in respect of which the respondent was a partner with W. & Co. and jointly liable to the appellants. W. & Co. became bankrupts, and the appellants having received a dividend in the bankruptcy sued the respondent for the balance due upon the contracts:—Held (on appeal from the Court of Appeal and Common Pleas Division, 46 Law J. Rep. C.P. 665; Law Rep. 3 C.P. D. 203), that there was no principle of equity which would prevent the operation of the rule laid down in *King v. Hoare* (13 Mee. & W. 494; 14 Law J. Rep. Exch. 29), that judgment recovered against one or more of several joint contractors is a bar to an action upon the same contract against the others. *Kendall and others v. Hamilton* (H.L.), 48 Law J. Rep. C.P. 705; Law Rep. 4 App. Cas. 504.

The expression, that partnership debts are in equity joint and several, is only to be taken *sub modo*, that is to say, as meaning that there is no survivorship of liability in favour of a deceased partner. *Ibid.*

Held also (*dissentiente* Lord Penzance), that the abolition of pleas in abatement under the Judicature Acts did not take away the right of a defendant to insist on his co-contractors being joined as defendants, and consequently did not affect the validity of the rule in *King v. Hoare*. *Ibid.*

Per Lord Penzance.—Under the Judicature Acts a defendant has no longer an absolute right

to insist, by plea in abatement or otherwise, on being sued together with his co-contractors or not at all; and inasmuch as that right formed the ground of the rule in *King v. Hoare*, that rule is no longer law. *Ibid.*

## (C) APPROPRIATION OF PAYMENTS.

3.—Where a firm and a debtor of the firm had transactions with each other both before and after a change in the firm, but there was no specific appropriation of certain payments by the debtor, and the debtor sent in a statement to the new firm treating the whole account as one:—Held, that the payments must be appropriated to the earliest items. *Hooper v. Keay*, Law Rep. 1 Q.B. D. 178.

4.—A debtor owed his creditor a debt consisting of several items of cash advances. Some of these advances were made more than six years before, and some within six years of the action. The debtor made a small cash payment in 1873, without appropriating it to any particular advance. The creditor made an affidavit in the action, saying that this payment was made on account of all the cash advances. He was not cross-examined:—Held, that there was, under the circumstances, evidence of a payment on account of all the advances sufficient to take the whole debt out of the Statute of Limitations. *In re Rainforth. Gwynn v. Gwynn*, 48 Law J. Rep. Chanc. 725.

*Rule in Clayton's Case: following trust money.*

[See *TRUST*, C 7.]

*Specific appropriation of funds in hands of bankers: duty of principal: discharge of surety.* [See *BANKER*, 7.]

*Attachment of debt.* [See *ATTACHMENT*, 1-14.]

*Bequest to debtor.* [See *LEGACY*, 4, 5.]

*Bequest to creditor.* [See *LEGACY*, 6, 7.]

*Crown debt: recognisance for costs in House of Lords: person bound by, liable to imprisonment.* [See *DEBTORS ACT*, 1.]

*Proof of.* [See *ADMINISTRATION*, 8-12; *BANKRUPTCY*, D; *COMPANY*, H 52-50.]

*Rent: speciality.* [See *ADMINISTRATION*, 9.]

## DEBTORS ACTS.

- (A) IMPRISONMENT.

(a) *Crown debtor.*

(b) *Mayor's Court: debtor living beyond local limits.*

(c) *Defaulting trustees.*

(d) *Defaulting attorney: service.*

(e) *Debtor's wife having separate estate.*

(f) *Conviction of infant under section 12.*

(g) *Power to commit more than once.*

(h) *Form of order for committal.*

- (B) DISCHARGE FROM ARREST.

(a) *Default in payment into court.*

(b) *Person imprisoned for contempt of court.*

(C) NOTICE OF WRIT OF ATTACHMENT.  
(D) FRAUDULENT DEBTOR.

[Amendment of the Debtors Act, 1869, and the Debtors Act (Ireland), 1872. 41 & 42 Vict. c. 54.]

[Provisions for the abolition of imprisonment for debt in Scotland, and for the punishment of fraudulent debtors. 43 & 44 Vict. c. 34.]

(A) IMPRISONMENT.

(a) *Crown debtor.*

1.—The recognisance entered into before the clerks of Parliament to secure the costs of an appeal to the House of Lords, constitutes a Crown debt, which is not subject to the provisions of the Debtors Act, and therefore the person bound by such recognisance is, when the same is estreated, liable to imprisonment for non-payment of the sum in which he is bound. *In re Smith*, 46 Law J. Rep. Exch. 73; Law Rep. 2 Ex. D. 47.

(b) *Mayor's Court: debtor living beyond local limits.*

2.—The power of making an order for payment of a debt due on a judgment of a Superior Court, and of committing the debtor in case of default, which is conferred on Inferior Courts by section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), cannot be exercised by the Mayor's Court of London if the debtor does not reside or carry on business within the City of London at the time he is summoned on such judgment. *Wasker v. Elliott*, 45 Law J. Rep. C.P. 144; Law Rep. 1 C.P. D. 169.

(c) *Defaulting trustee.*

3.—The policy of the Debtors Acts, 1869, 1878, as to the imprisonment of defaulting trustees, is not the punishment of the trustee but the payment of the money. Therefore where a defaulting trustee, on being served with notice of motion for a writ of attachment stated by affidavit (which was uncontradicted), that he had no means at present of paying and was not aware when he should be able to pay, the Court refused to make any order on the motion on the ground that no good purpose would be served by sending the man to prison. *Barrett v. Hammond*, 48 Law J. Rep. Chanc. 249; Law Rep. 10 Ch. D. 285 (but see next case).

4.—The Debtors Act, 1869, although it abolishes imprisonment for debt in the case of an honest debtor, is at the same time intended for the punishment of a fraudulent or dishonest debtor, and is in that sense vindictive. The Debtors Act, 1878, was not passed with the object of getting rid of the penal clauses of the Act of 1869, but only to give the Judges a judicial discretion in dealing with exceptional cases. *Barrett v. Hammond* (48 Law J. Rep. Chanc. 249; Law Rep. 10 Ch. D. 285) not followed. *Morris v. Ingram*, 49 Law J. Rep. Chanc. 128; Law Rep. 13 Ch. D. 398.

A "person acting in a fiduciary capacity," within the meaning of the Debtors Act, 1869, s. 4, sub-s. 3, is a person standing in a fiduciary relationship towards any other person entitled to call upon him to pay money, whether that person is the plaintiff or not, or one of the plaintiffs in the action in which the order for payment is made. *Ibid.*

A son was employed by his father as manager of a farm, and in that capacity sold some of the farming stock, and received the proceeds. On the death of the father, an action was brought by persons interested in his estate against the son for payment of the sums received by him, and for accounts; and an order was made for payment into Court by the son. On failure to comply with this order,—Held, that the son was a "person in a fiduciary capacity" within the meaning of the Debtors Act, 1869, s. 4, sub-s. 3, and a writ of attachment was directed to be issued against him. The Court considered it no answer to the motion for the writ that the son had no means of payment, even if such were the fact; but on the evidence the Court was not satisfied that he had not the means of payment. *Ibid.*

The words "High Court of Justice" in section 76 of the Judicature Act, 1873, must be used in substitution for the words "Court of Equity" in section 4, sub-section 3, of the Debtors Act, 1869. The exceptions in the 4th section of the Debtors Act, 1869, discussed. *Ibid.*

5.—A director of a company to whom a number of fully paid-up shares in the company had been given, some of which at the date of the winding-up remained standing in his name, while the remainder had been transferred, some for value and others for a nominal consideration, having been ordered to pay the full nominal value of all the shares, and having made default in payment,—Held, upon motion for his committal for non-payment, that he was not liable to imprisonment as not falling within the 8rd exception to section 4 of the Debtors Act, 1869. *In re The Diamond Fuel Company; ex parte Mitcalfe*, 49 Law J. Rep. Chanc. 347; Law Rep. 13 Ch. D. 815.

(d) *Defaulting attorney: service.*

6.—A notice of motion for a writ of attachment for disobedience to an order made on an original petition need not, as well as the order, be served personally on the respondent to the petition, but may be served by being left at his residence. *Browning v. Sabin* (46 Law J. Rep. Chanc. 728; Law Rep. 5 Ch. D. 511; No. 16 *infra*) explained. *In re A Solicitor*, 49 Law J. Rep. Chanc. 295; Law Rep. 14 Ch. D. 152.

7.—Service of an order to answer interrogatories upon the solicitor of a party is, under Order XXXI. rule 21, sufficient service to found an application for attachment. So held where the party in default had in fact notice of the order. *In re Mulcaster. Dalton v. Nanson*, 47 Law J. Rep. Chanc. 609.

*(e) Debtor's wife having separate estate.*

8.—The defendant was committed to prison for six weeks for default in payment of an instalment of 10*l.* pursuant to an order under the Debtors Act, 1869, upon an affidavit by the plaintiff that the defendant was residing in a large well-furnished house, keeping horses, carriages, a groom, and other servants, and living in the style of a country gentleman of means; that he had been seen on several occasions at different towns and places with his horse and carriage, and always appeared to have money at his command; and that the plaintiff was informed and believed that he had ample means to pay the debt and costs in the action. The defendant swore that all the furniture, horses, carriages, and effects at the house above mentioned belonged to his wife, and were bought and maintained by her separate money and estate; that the groom and other servants were the servants of his wife, and maintained at her sole expense; that he had no horse or carriage or any other property of his own, nor had he money at his command that would enable him to attend Court to answer the application, and his wife declined to supply him with any; and that he was unable to pay the debt and costs in the action:—Held, nevertheless, that the order of commitment must be affirmed. *Harper v. Scrimgeour*, Law Rep. 5 C.P. D. 366.

*(f) Conviction of infant, under section 12.*

9.—The prisoner was convicted under section 12 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), for that he, within four months before the presentation of a bankruptcy petition against him, upon which he was adjudged bankrupt, quitted England, taking with him property to the amount of 20*l.*, which ought by law to have been divided amongst his creditors. The prisoner, who traded in Hull, left England with a sum of money exceeding 20*l.*, and was during his absence adjudged bankrupt. At the time he was so adjudged, he was, as also at the present time, a minor. The debts proved against his estate in the bankruptcy were trade debts, and it did not appear that any debts for necessities supplied to him existed:—Held, that the conviction could not be upheld, because the prisoner had no creditors amongst whom the said sum of money ought by law to have been divided, the trade contracts being, by the Infants Relief Act, 1874 (37 & 38 Vict. c. 62, s. 1), void. *Reg. v. Wilson*, 49 Law J. Rep. M.C. 13; Law Rep. 5 Q.B. D. 28.

*(g) Power to commit more than once.*

10.—Where a judgment debtor refuses or neglects to pay the judgment debt which he has been ordered to pay in one sum, and not by instalments, there is no power under section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), to commit him to prison more than once, although after the first committal it is proved he

has the means of paying the sum in respect of which he still makes default. *Evans v. Wills*, 45 Law J. Rep. C.P. 420; Law Rep. 1 C.P. D. 229.

*(h) Form of order for committal.*

11.—Where a man makes default in payment of a sum of money which he has been ordered by the Court to pay, he cannot be attached for contempt, but must be proceeded against under the Debtors Act, s. 5. But where a Judge made an order for the committal of a defaulting party under the Debtors Act, and the order was drawn up by the registrar in the presence of the debtor in the form of an attachment for contempt, from which the debtor appealed, the Court dismissed the appeal and directed the order to be rectified. As a general rule, when a Judge has been judicially satisfied of the ability of a debtor to pay the amount in which he has made default, the Court of Appeal will not interfere with his conclusion. *Edaile v. Visser* (App.), Law Rep. 13 Ch. D. 421.

**(B) DISCHARGE FROM ARREST.***(a) Default in payment into Court.*

12.—A person was committed to prison for contempt of Court in breaking an order not to communicate with a ward of Court. An order was made that on paying certain costs the prisoner should be released. He failed to pay the costs:—Held, that inasmuch as he had not purged his contempt he was not, under the Debtors Act, in prison for debt, or entitled to be released. *In re M*—(App.), 46 Law J. Rep. Chanc. 24.

13.—A person attached for default in payment of money in his possession, or under his control, which he has been ordered by a Court of Equity to pay, cannot, by causing himself to be made bankrupt, entitle himself to be discharged from custody. *Earl of Lovelace v. Barnett* (App.), 47 Law J. Rep. Chanc. 144; Law Rep. 6 Ch. D. 262.

*(b) Prisoner for contempt of Court.*

14.—A defendant in prison for contempt will be discharged from prison on clearing his contempt, and though liable to pay the costs of the contempt, is not liable to be detained in prison until payment. *Jackson v. Mawby*, 45 Law J. Rep. Chanc. 53; Law Rep. 1 Ch. D. 86.

[And see CONTEMPT OF COURT, 2.]

**(C) NOTICE OF WRIT OF ATTACHMENT.**

15.—No writ of attachment ought, in future, to be issued, under either the old or the new practice, without notice to the party to be affected by it. *Dallas v. Glynn*, 46 Law J. Rep. Chanc. 51.

16.—Service of a notice of motion for a writ of attachment upon the solicitor on the record,

of the party against whom the attachment is to be issued, is sufficient notice to the party, without personal service. *Browning v. Sabin*, 46 Law J. Rep. Chanc. 728; Law Rep. 5 Ch. D. 511.

[And see No. 6 supra.]

#### (D) FRAUDULENT DEBTOR.

17.—A trader, when insolvent, and within four months of his bankruptcy, obtained goods on credit for exportation, and at once pledged the bills of lading; and could give no account of the application of the money so raised. The trustee reported that he had been guilty of offences under sub-sections 14 and 15 of section 11 of the Debtors Act, 1869, and applied under section 16 for an order for his prosecution:—Held, that to bring the case within sub-sections 14 and 15 of section 11 you must shew dealings with the goods themselves otherwise than in the ordinary course of trade, and that the application of the money obtained by an ordinary dealing was for this purpose immaterial. Per Mellish, L.J., the fraud mentioned in sub-section 13 of section 11 (providing for the case of obtaining property on credit by false representation or other fraud) must be active fraud similar to false representation. Application for leave to prosecute refused. *Ex parte Brett; in re Hodgson* (App.), 45 Law J. Rep. Bankr. 17; Law Rep. 1 Ch. D. 151.

18.—An order having been made *ex parte* under section 16 of the Debtors Act, 1869, for the prosecution of a bankrupt with another person for offences under the Act,—Held, that such other person had no *locus standi* to appeal from the order. *Ex parte Brown; in re Appleby* (App.), 45 Law J. Rep. Bankr. 115; Law Rep. 2 Ch. D. 799.

19.—Where an application by the trustee for leave to prosecute the debtor for fraudulent concealment under the Debtors Act, 1869, was refused in the County Court, but the trustee continued the prosecution and obtained a conviction, and then appealed against the order of refusal in order to obtain the costs of prosecution from the Treasury,—the Chief Judge, holding that the Court below ought upon the evidence to have made an order to prosecute, made such order *nunc pro tunc*. *In re Stanlake & Son; ex parte Priestly*, 48 Law J. Rep. Bankr. 48; Law Rep. 10 Ch. D. 774.

20.—A foreigner, temporarily in this country, being served with a debtor summons, prepared to return to his own country:—Held, that there was no presumption that he was going away to avoid paying the debt. *Ex parte Gutierrez; in re Gutierrez* (App.), Law Rep. 11 Ch. D. 298. [And see No. 9 supra; BANKRUPTCY, H 6.]

*Arrest on meane process: writ of ne exeat.* [See NE EXEAT REGNO, 2.]

#### DEBTORS' SUMMONS.

[See BANKRUPTCY, B 24; M 24–84.]

#### DECLARATION.

*By court, of future rights.* [See PRACTICE, R 7.]

*Of deceased persons, admissibility of, in evidence.* [See EVIDENCE, 5–7.]

*Of trust.* [See ADMINISTRATION, 5; TRUST, A 2.]

#### DECREE.

[See PRACTICE, R.]

#### DEED.

##### (A) CONSTRUCTION OF.

(a) *Whether to be construed against grantor: "watercourse:" "spring."*

(b) *Acknowledgment of debts: implied covenant to pay.*

(c) *Inconsistency between habendum and reddendum, and between lease and counterpart.*

##### (B) ESTOPPEL BY.

##### (C) RECTIFICATION OF.

##### (A) CONSTRUCTION OF.

(a) *Whether to be construed against grantor: "watercourse:" "spring."*

1.—T. granted in 1844 certain watercourses and springs and streams of water, as indicated on a plan annexed to the deed, to a waterworks company, and gave them power from time to time to enter upon the lands conveyed, and to dig and remove the soil for the purpose of constructing or repairing the watercourse, and all other powers requisite to enable them to enjoy the premises, but reserved the right to the mines and minerals under the springs or streams, and declared that T. should have a right to the overflow water when it should be useless to the company. Subsequent to the grant T. constructed three weirs and a large reservoir to enable him to use the overflow water. At the time of the grant there was, although neither grantor nor grantees knew of it, a "throttle" or weir in the principal watercourse, which considerably increased the amount of the overflow water. In 1875 this was removed by the Corporation (then the proprietors of the waterworks), and an enlarged culvert was laid down in its place. This alteration much diminished the overflow water, and T. asked for an injunction to restrain the Corporation from enlarging the size or altering the level of the watercourse, and for an order that the throttle might be restored:—Held (affirming the decision of the Vice-Chancellor of the Lancashire Palatine Court), that the deed of grant only passed the actual watercourse as it then existed, and the particular springs and streams shewn on the plan, and that it did not pass either the land on which the watercourse was situate or the right to the whole of the water, which by any means found its way into the watercourse, and that T.

was therefore entitled to the injunction and the order asked for. *Taylor v. The Corporation of St. Helens* (App.), 46 Law J. Rep. Chanc. 857; Law Rep. 6 Ch. D. 264.

Per Jessel, M.R.—The maxim that a grant in which there is any obscurity or difficulty must be construed most strongly against the grantor has no application at the present time. *Ibid.*

Per James, L.J., and Bramwell, L.J.—When powers to make certain works are granted by Act of Parliament they can only be exercised once and for all, and the grantees have no power afterwards to enlarge such works. *Ibid.*

(b) *Acknowledgment of debt: implied covenant to pay.*

2.—By the acknowledgment of a debt in a deed under seal, a covenant to pay will not be implied where the acknowledgment is merely collateral to the purpose for which the deed was executed. *Jackson v. The North Eastern Railway Company*, 47 Law J. Rep. Chanc. 303; Law Rep. 7 Ch. D. 573.

(c) *Inconsistency between habendum and reddendum and between lease and counterpart.*

3.—The rule that where there is a discrepancy between the habendum and the reddendum in a lease the habendum is to prevail does not apply to cases where it appears upon the face of the deed that the habendum is wrong. And the rule that where there is a discrepancy between the lease and the counterpart the lease is to prevail does not apply when the mistake is clearly in the lease. *Burchell v. Clark* (App.), 46 Law J. Rep. C.P. 115; Law Rep. 2 C.P. D. 88.

A lease of certain premises was granted in 1784, habendum for 94½ years, reddendum for 91½ years. In the counterpart the term was uniformly mentioned as for 91½ years. In 1876 the assignee of the lessor brought ejectment against the assignee of the lessee:—Held (reversing the decision below, 45 Law J. Rep. C.P. D. 671; Law Rep. 1 C.P. D. 602, *dissentiente Kelly, C.B.*), that the lease and counterpart must be taken as one document and construed together, and that upon the true construction of the deeds so taken the term must be considered as granted for 91½ years. *Ibid.*

(E) *ESTOPPEL.*

*Recitals, effect of.* [See *BANKRUPTCY*, M 36.]

(E) *RECTIFICATION OF.*

*Action to set aside by person who did not execute.* [See *MORTGAGE*, 41.]

*Lease, setting aside, on ground of concealment.* [See *MINE*, 16.]

*Settlement, alteration of, by Court in case of divorce.* [See *DIVORCE*, 28–33.]

—*rectification of, by Chancery Division.* [See *SETTLEMENT*, 27–32.]

*Lost deed: mortgagor and mortgagee.* [See *MORTGAGE*, 60.]

**DEFAMATION.**

[See *LIBEL, SLANDER*.]

**DEFENCE.**

[See *PRACTICE, W.*]

**DEFENCE ACT.**

*User of land vested in Secretary of State for War.* [See *INJUNCTION*, 20.]

**DELAY.**

*Effect of, as bar to action.* [See *DIVORCE*, 11; *EVIDENCE*, 32; *INJUNCTION*, 12; *SHIPPING LAW*, B 3; *SPECIFIC PERFORMANCE*, 17, 18.]

*Interest on legacy: express trust.* [See *LIMITATIONS, STATUTE OF*, 6.]

*Registration of trade mark, in applying for.* [See *TRADE MARK*, 13.]

**DENTISTS ACT.**

[Amendment of the law relating to Dental Practitioners, 41 & 42 Vict. c. 33.]

**DEMURRAGE.**

[See *SHIPPING LAW, G.*]

**DEMURRER.**

[See *PRACTICE, W* 38–43.]

**DEPOSIT.**

*Equitable mortgage by.* [See *MORTGAGE*, 36, 38.]

*Forfeiture of, by servant.* [See *CONTRACT*, 16.]

*Parliamentary.* [See *PARLIAMENTARY DEPOSIT*.]

*Sale of land, on.* [See *VENDOR AND PURCHASER*, 21, 26; *ESTOPPEL*, 5.]

*Wager: action to recover deposit.* [See *CONTRACT*, 10.]

**DERELICT.**

[See *SHIPPING LAW, T.*]

**DERRICK.**

*Liability to poor rate.* [See *RATES*, 6.]

**DESCENT.**

*Evidence of.* [See *EVIDENCE*, 27, 29.]

**DESIGNS.**

[See *COPYRIGHT*, 14–18.]

## DESTRUCTIVE INSECTS.

[Prevention of the Introduction and Spreading of Insects Destructive to Crops. 40 & 41 Vict. c. 68; and see 41 & 42 Vict. c. 74. s. 4. sub-s. 4.]

## DETINUE.

1.—The plaintiff was tried and acquitted on a charge of stealing a diamond ring and pin found on his person. The defendant, a superintendent of police, into whose hands the goods had come in the ordinary course of proceedings, did not deliver the goods to the plaintiff, but within a reasonable time applied to a metropolitan police magistrate, under 2 & 3 Vict. c. 71. s. 29, for an order as to how he was to dispose of the goods. The magistrate, after hearing evidence, including that of the plaintiff, adjourned the hearing to a day not yet expired. In an action for the detention and conversion of the goods,—Held, on demurrer to the statement of defence based on the above facts, that the defendant having within a reasonable time proceeded in accordance with the provisions of the Act to place the matter in the hands of the magistrate, was not liable. *Bullock v. Dunlap*, 46 Law J. Rep. Exch. 150; Law Rep. 2 Ex. D. 43.

2.—The defendants sold goods to B. & Co. and at the same time handed to B. & Co. two documents, each as follows: "We hereby undertake to deliver to your order endorsed hereon twenty-five tons merchantable zinc off your contract of this date." Before delivery B. & Co. became insolvent and unable to pay the defendants, whereupon the defendants retained the goods by virtue of their lien as unpaid vendors of insolvent purchasers. B. & Co. resold the goods to the plaintiffs and endorsed and handed to them the two documents above referred to. In an action by the plaintiffs against the defendants for refusing to deliver the goods, it was held, that inasmuch as the defendants were entitled to set up their lien as against B. & Co., and inasmuch as the two documents were only undertakings to do something, and not representations of any fact, the defendants were not estopped by them from setting up their lien as against the plaintiffs, and were therefore entitled to retain the goods. *Farniloe v. Bain*, 45 Law J. Rep. C.P. 264; Law Rep. 1 C.P. D. 45.

3.—When a plaintiff in an action of detinue has recovered judgment, the property in the goods obtained by the wrong-doer remains, until the judgment is satisfied, in the plaintiff, and the bankruptcy of the defendant will not vest it in the trustee. *Brinsmead v. Harrison* (40 Law J. Rep. C.P. 281; Law Rep. 6 C.P. 584) followed. The proper course, however, for the plaintiff to pursue is to apply to the Court of Bankruptcy for an order directing the trustee to deliver up the goods, and if instead of this he takes forcible possession, he will be deprived of his costs. *In re Ware; ex parte Drake* (App.),

46 Law J. Rep. Bankr. 105; Law Rep. 5 Ch. D. 867.

A plaintiff recovered judgment in an action of detinue. The defendant became bankrupt, and the plaintiff, his judgment being still unsatisfied, carried in a claim for the full amount of the judgment debt, but his claim was neither admitted nor rejected, and he never voted at any meeting of the creditors:—Held, that he had not by this elected to give up his property in the subject-matter of the action of detinue. *Ibid.*

4.—J. R. insured his life and gave the policy to his mother, without making a valid assignment to her of the interest in the money secured thereby. He then died intestate, and his administratrix brought detinue and trover against the mother's solicitor and the mother, to recover possession of the policy:—Held (affirming the judgment of the Court below), that the action could not be maintained. *Rummens v. Hare* (App.), 46 Law J. Rep. Exch. 30; Law Rep. 1 Ex. D. 169.

5.—Detinue is an action of tort within the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 5. *Bryant v. Herbert*, 47 Law J. Rep. C.P. 670; Law Rep. 3 C.P. D. 389.

The plaintiffs delivered to the defendant a picture in order that the defendant might determine whether it was a genuine picture painted by himself or not. The defendant, having come to the conclusion that the picture was not genuine, refused to give it back to the plaintiffs except upon conditions to which the plaintiffs would not agree. In an action brought for the wrongful detention of the picture, the plaintiffs obtained a verdict for 10*l.*, the value of the picture, and 1*s.* as damages for its detention. The Judge at the trial refused to make any order for the delivery up of the picture, and made no order as to costs:—Held (overruling the decision below, 47 Law J. Rep. C.P. 354; Law Rep. 3 C.P. D. 189), that the plaintiffs were not deprived of their costs by 30 & 31 Vict. c. 142. s. 5. *Ibid.*

## DEVIATION.

[See MARINE INSURANCE, 8, 10.]

## DEVICE.

[See TRADE MARK, 2.]

## DEVISE.

[See WILL CONSTRUCTION.]

## DILAPIDATIONS.

[See CHURCH AND CLERGY, 5-8.]

## DIRECTORS.

[See COMPANY, D 5-41.]



## DISCHARGE.

*Bankruptcy, in.* [See BANKRUPTCY, H.]  
*Port of.* [See SHIPPING LAW, F 5, 6.]  
*Prisoner, of.* [See PRISON, DEBTORS ACT.]  
*Surety, of.* [See PRINCIPAL AND SURETY, 12-17.]

## DISCLAIMER.

*Defendant, by, in foreclosure action.* [See MORTGAGE, 44.]  
*Patentee, by.* [See PATENT, 55.]  
*Trustee in bankruptcy, by.* [See BANKRUPTCY, F 39-51.]

## DISCONTINUANCE OF ACTION.

[See PRACTICE, G, EE.]

## DISCOVERY.

[See PRACTICE, P; PRODUCTION OF DOCUMENTS; SOLICITOR.]  
*In redemption action: particulars of property.* [See MORTGAGE, 61.]  
*Third party: discovery to plaintiff.* [See PRODUCTION, 26.]

## DISCRETION.

*Trustees, of, not interfered with by Court.* [See TRUST, D 11.]

## DISENTAILING DEED.

[See FINES AND RECOVERIES ACT.]  
*When necessary on payment out of Court.* [See LUNACY, 15; SETTLED ESTATES ACT, 9.]

## DISHONOUR, NOTICE OF.

[See BILL OF EXCHANGE, 15-18.]

## DISQUALIFICATION.

*Alderman, of.* [See MUNICIPAL CORPORATION, 1.]  
*Arbitrator, of.* [See ARBITRATION, 14.]  
*Director, of.* [See COMPANY, D 12-17.]  
*Justice of the Peace, of.* [See JUSTICE OF THE PEACE, 3-6.]  
*Voter, of, by bribery.* [See PARLIAMENT, 13.]  
*Witness, of.* [See JUSTICE OF THE PEACE, 12.]

## DISSOLUTION.

*Of marriage.* [See DIVORCE, 14-19.]  
*Of partnership.* [See PARTNERSHIP, 21-24.]  
 DIGEST, 1875-1880.

## DISTRESS.

[See LANDLORD AND TENANT, 10-14.]  
*Company in liquidation, as against.* [See COMPANY, H 34-36.]  
*Goods privileged from.* [See LANDLORD AND TENANT, 10.]  
*Injunction to restrain: bankruptcy: gas company.* [See BANKRUPTCY, D 38.]

## DISTRIBUTIONS, STATUTE OF.

No persons are entitled, either as children or as next-of-kin, to a share in the personal property of an intestate who dies domiciled in England, unless they are legitimate according to English law, even though they are legitimate according to the law of the country where they are domiciled. *In re Goodman's Trusts*, 49 Law J. Rep. Chanc. 805; Law Rep. 14 Ch. D. 619 [reversed on appeal, but not yet reported].

*Advancements: bringing into hotchpot.* [See ADVANCEMENT.]

[And see WILL CONSTRUCTION, M 2.]

## DISTRICT AUDITORS.

[Amendment of the law with respect to district auditors. 42 & 43 Vict. c. 6.]

## DISTRICT BOARD.

[See METROPOLIS, 17.]

## DISTRICT CHURCH.

*Mortgage of pew rents.* [See CHURCH AND CLERGY, 18.]

## DISTRICT RATE.

[See METROPOLIS, 17.]

## DISTRICT REGISTRY.

1.—The District Registrar has no power to make a decree even by consent. *Irlam v. Irlam*, Law Rep. 2 Ch. D. 608.

Under Order XV. rule 1, and Order XXXV. rule 1, a District Registrar can only make an order in default of appearance; and accounts and enquiries cannot be prosecuted in a District Registry except by the direction of the Court or Judge under section 66 of the Judicature Act, 1873. *Ibid.*

Usual administration decree made with a direction that the accounts and enquiries should be taken and made in the District Registry, and that the sale of the real estate should take place in London under the supervision of the Judge in chambers. *Ibid.*

2.—An administration decree having been made, directing accounts in District Registry and sale of real estate, with approbation of the

Judge, Hall, V.C., directed that the sale should take place in his chambers:—Held (on appeal), that the matter was one for the discretion of the Judge, which would not be interfered with, although it might have been more convenient that the sale should take place in the District Registry. *Macdonald v. Foster* (App.), Law Rep. 6 Ch. D. 193.

3.—Chancery actions commenced in District Registry ought, notwithstanding Order XXXV. rule 1a, to be tried in London before the Judge to whom they are assigned. District Registrars cannot appoint receivers or give directions as to keeping banking accounts, nor can they take accounts unless specially directed so to do by the judgment in the action. *In re Smith; Hutchinson v. Ward*, Law Rep. 6 Ch. D. 692.

4.—Where the proceedings in an administration action down to further consideration have been taken in a District Registry the costs will, in the absence of special circumstances, be ordered to be taxed by the Taxing Master in London, and not by the District Registrar. *Day v. Whittaker*, 46 Law J. Rep. Chanc. 680; Law Rep. 6 Ch. D. 734.

Where the accounts and enquiries in an action for the administration of an estate which was insufficient to pay legacies in full had been prosecuted in a District Registry the Court allowed the minutes of the order on further consideration to be altered, by directing the apportionment amongst the legatees to be made by the District Registrar instead of by the Chief Clerk. *Ibid.*

5.—The enactment in section 49 of the Judicature Act, 1873, that no order by the High Court, or any Judge thereof, as to costs only which by law are left to the discretion of the Court shall be subject to any appeal, does not apply to the order of a Master or District Registrar, and therefore a Judge of such Court has power to vary as to costs an order of a District Registrar dismissing the action without costs. *Foster v. Edwards*, 48 Law J. Rep. Q.B. 767.

6.—A writ issued under the Bills of Exchange Act is subject to the rules of the Judicature Act, though subject first to the conditions of the Bills of Exchange Act. Therefore a writ under the Bills of Exchange Act may be issued from a District Registry, and the defendant, although neither residing nor carrying on business within such district, must apply at such District Registry for leave to appear, unless under Order XXXV. rule 1 Judicature Act, 1875, he applies to the Court or Judge, and obtains leave to apply for an order to appear in London. *Oger v. Bradnum*, 45 Law J. Rep. C.P. 273; Law Rep. 1 C.P. D. 334.

7.—Upon a petition by a solicitor for a charging order under 23 & 24 Vict. c. 127. s. 28, upon property preserved in an action instituted in the Chancery Division in the Liverpool District Registry, and attached to the Court of the Vice-Chancellor Hall, but which had been tried by a Judge and jury at Liverpool,—Held, that the Judge before whom the action had been

tried, and who had dealt with the substantial question in the case, was the Judge to whom the application ought to be made. *Owen v. Henshaw*, 47 Law J. Rep. Chanc. 265; Law Rep. 7 Ch. D. 385.

8.—When an action is commenced in a District Registry, and money is ordered to be paid by a receiver into Court to the credit of an action, it is not a compliance with that order to pay the money into a bank to the credit of the District Registrar. That mode of payment is irregular, and the money will be ordered to be brought into Court under the Chancery Funds Act and Rules. *Finlay v. Davis*, Law Rep. 12 Ch. D. 735.

## DIVORCE.

### (A) JURISDICTION.

- (a) *Foreign domicile.*
- (b) *Appeals.*

### (B) NULLITY OF MARRIAGE.

- (a) *Impotence.*
  - (1) *No structural defect.*
  - (2) *Delay.*
- (b) *Scotch irregular marriage.*
- (c) *Domicile.*

### (C) DISSOLUTION OF MARRIAGE.

- (a) *Petitioner lunatic.*
- (b) *Decree nisi.*
  - (1) *Effect of, on status of wife.*
  - (2) *Application by respondent to have decree made absolute.*
  - (3) *Re-marriage of petitioner.*
- (c) *Apportionment of damages: provision for respondent dum casta.*
- (d) *Fresh petition after dismissal of previous petition.*

### (D) RESTITUTION OF CONJUGAL RIGHTS.

- (a) *Separation deed: pleading.*
- (b) *Suit stayed on terms.*
- (c) *Service.*

### (E) DESERTION.

### (F) CONNIVANCE AND COLLUSION.

### (G) ALIMONY.

- (a) *Permanent maintenance of wife after decree absolute.*
- (b) *Wife's costs: solicitor's lien: rule 94.*

### (H) CUSTODY OF CHILDREN.

### (I) PROPERTY OF PARTIES.

- (a) *Alteration of settlements.*
- (b) *Injunction restraining wife from dealing with property.*

### (K) EVIDENCE.

- (a) *Privilege: admission by petitioner to solicitor.*
- (b) *Confession by respondent and admission of co-respondent.*

### (L) PRACTICE.

- (a) *Petition.*
  - (1) *Previous petition: res judicata.*
  - (2) *Service of.*
  - (3) *Application to dispense with co-respondent.*
  - (4) *Dismissal of.*
  - (5) *Queen's Proctor, intervention of.*

(b) *Costs.*

- (1) *Sequestration of civil servant's pension.*
- (2) *Removal of suit for tazation of.*

(A) JURISDICTION..

(a) *Foreign domicile.*

[And see DOMICILE.]

1.—Jersey is exempt from the operation of the Divorce Act, 20 & 21 Vict. c. 85. Husband and wife were married and cohabited in Jersey. The husband committed adultery and desertion there. The wife, permanently resident in England, sued in the English Divorce Court for dissolution of her marriage:—Held, that as the tribunal was neither in the place of the husband's original or acquired domicile, or of his residence, or of the marriage, or of the offence, the English Court had no jurisdiction to entertain the suit. *Le Sueur v. Le Sueur*, 45 Law J. Rep. P. D. & A. 79; Law Rep. 1 P. D. 139.

2.—For the purposes of the question of the jurisdiction of the Divorce Court, the British Colonies, as well as Ireland and Scotland are to be deemed foreign countries. *Firebrace v. Firebrace*, 41 Law J. Rep. P. D. & A. 41; Law Rep. 4 P. D. 63.

The Court has no power to order in suits for restitution of conjugal rights service of the petition out of the jurisdiction. *Ibid.*

It is not inconsistent with the principle that a wife's remedy for matrimonial wrongs must be usually sought in the place of the husband's domicile that she may be allowed in some cases to obtain relief against her husband in the tribunal of the country in which she is resident though not domiciled. But where the husband, who, while resident in England, refused to receive his wife into his home, left the country before the institution by her of a suit for restitution of conjugal rights, the Court held that it had no jurisdiction to entertain the suit. *Ibid.*

3.—An Englishwoman married a Frenchman at Gibraltar. The parties afterwards resided in England for some years, and then the wife filed a petition for dissolution of marriage for matrimonial offences committed by her husband in England. Both parties were resident in England at the commencement of the suit, but the husband had never abandoned his domicile of residence, which was French:—Held (affirming the decision of the Court below, 47 Law J. Rep. P. D. & A. 49; Law Rep. 3 P. D. 52, per James, L.J., and Cotton, L.J., *dissentiente* Brett, L.J.), that as the parties were resident in England at the commencement of the suit, and the matrimonial offences had been committed in England, the Court had jurisdiction to entertain the petition. But Held (per Brett, L.J.), that the domicile of the husband at the time the petition was presented was the test of jurisdiction, and that, as the domicile of the husband was foreign, the Court

had no jurisdiction. *Niboyet v. Niboyet* (App.), 48 Law J. Rep. P. D. & A. 1; Law Rep. 4 P. D. 1.

4.—An English lady of fortune consented to marry the son and heir of a Neapolitan nobleman, on condition of their always having after marriage a residence in England, and of their residing there six months, at least, in each year. The marriage was celebrated in August, 1854, in England. There were five English trustees of the marriage settlements, which contained a proviso that they should be construed according to the law of England. A few months after the marriage a London residence was taken and furnished by the parties, which they occupied for six months in each year, with two or three exceptions, from 1855 to 1872, living for the remainder of the year in apartments in the palace of the husband's father at Naples, or at other places on the Continent. In 1872 the lady separated from her husband in consequence of his cruelty and of his adultery with an opera singer, and she continued up to the hearing of her petition to reside in their London residence. In 1873 the husband's father died, when he succeeded to his title and estates and palace at Naples, and since then he had resided sometimes at Naples, but principally with the opera singer at other places on the Continent. The petition and citation were served on him at Paris, and he had entered no appearance:—Held, that the Court had jurisdiction to dissolve the marriage. *Santo Teodoro v. Santo Teodoro*, 49 Law J. Rep. P. D. & A. 20; Law Rep. 5 P. D. 79.

5.—A domiciled Scotchman married an Englishwoman in England in 1861. After the marriage he returned to Scotland with his wife, and remained domiciled there until after the year 1863, when, on the petition of the wife, the marriage was dissolved by a decree of the Scotch Court by reason of his adultery:—Held, that the decree was valid and binding on the Courts of this country, although the matrimonial offence for which it was granted was one on which a dissolution of marriage by the wife could not be obtained in England. *Harvey v. Farnie*, 49 Law J. Rep. P. D. & A. 33; Law Rep. 5 P. D. 153; affirmed on appeal, Law Rep. 6 P. D. 35.

6.—The petitioner and the respondent, who were both domiciled English subjects, were married in England in 1862. In 1868 the respondent (the husband) went to America, leaving the petitioner in England, and took up his residence in the state of Kansas. In June, 1873, he procured a divorce from his wife on the ground of her desertion, and in September in the same year he went through a ceremony of marriage in Kansas with E. H., with whom he afterwards cohabited. He had not at the time of the institution of his suit for divorce acquired a domicile in the state of Kansas:—Held, that the case fell within the principle of *Lolley's Case* (Russ. & R. 237), and that the decree of the Court of Kansas was not binding on the tribunals of this country. On the petition

of the wife, a decree *nisi* for dissolution of her marriage with the respondent was pronounced, on the ground of his adultery coupled with bigamy. *Briggs v. Briggs*, 49 Law J. Rep. P. D. & A. 38; Law Rep. 5 P. D. 163.

(b) Appeals.

7.—An appeal from an order as to the custody of children, after decree absolute for dissolution of marriage of the parents, is to the full Court of Divorce, and not the Court of Appeal. *Gladstone v. Gladstone* (App.), Law Rep. 2 P. D. 143.

8.—An appeal from an order of the Judge Ordinary of the Divorce Court granting alimony must be brought to the full Court of Divorce, and not the Court of Appeal. *Wallis v. Wallis* (App.), Law Rep. 2 P. D. 141.

9.—The Court of Appeal has the same power as the High Court of Justice to order service under the Divorce Court Act, 1860, section 5, on the Queen's Proctor. *Le Sueur v. Le Sueur* (App.), Law Rep. 2 P. D. 79.

(B) NULLITY OF MARRIAGE.

(a) Impotence.

(1) No structural defect.

10.—Wilful wrongful refusal of marital intercourse is not in itself sufficient to justify the Court in declaring a marriage null by reason of impotence. *S. v. A.*, 47 Law J. Rep. P. D. & A. 75; Law Rep. 3 P. D. 72.

When, after a reasonable time, it is shewn that there has been no sexual intercourse, and that the wife has resisted all attempts, the Court, if satisfied of the *bona fides* of the suit, will infer that the refusal arises from incapacity, and will pronounce a decree of nullity of marriage. *Ibid.*

(2) Delay.

11.—A wife lived with her husband for one year and nine months after the marriage. After a lapse of nine years she again lived with him for five years and six months, and left him in consequence of, amongst other things, his ill-treatment. Twenty-seven years after the marriage, and when she was forty-eight years of age, she brought a suit for nullity of marriage by reason of his impotence. It was proved that she was *virgo intacta*.—Held, that she was not entitled to relief. *Reynolds v. Reynolds*, 45 Law J. Rep. P. D. & A. 89; Law Rep. 1 P. D. 405 (*nom. W.*, falsely called *R. v. R.*)

Semble, even though one of the parties is impotent, the marriage cannot be annulled if there has been unreasonable delay in instituting the suit. *Ibid.*

(b) Scotch irregular marriage.

12.—A. and B., who were both domiciled in England, left London for Scotland on the 30th of June, 1870. They arrived at Edinburgh between five and six o'clock on the fol-

lowing morning, the 1st of July, and they lived in Scotland until the 21st of July, on which day, about 11 30 a.m., they contracted an irregular marriage by declaration before the registrar at Edinburgh. By 19 & 20 Vict. c. 96. s. 1, it is enacted that "no irregular marriage contracted in Scotland by declaration, acknowledgment or ceremony, shall be valid unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage."—Held, on the construction of the statute in accordance with the principles of Scotch law, that the parties had not lived the prescribed time in Scotland, and that the marriage was invalid. *Lanford v. Davies*, 47 Law J. Rep. P. D. & A. 38; Law Rep. 4 P. D. 61.

(c) Domicile.

13.—Two Portuguese subjects, one of whom was domiciled in England, the other in Portugal, contracted a marriage in England in 1866. They were first cousins, and were incapable, according to the law of Portugal, of intermarrying, on account of consanguinity, without a Papal dispensation. The petitioner (the wife) filed a petition, praying that her marriage with the respondent might be declared null and void.—Held, that the *lex loci contractus* should prevail in the matter; and the marriage being valid according to the law of England, the Court dismissed the petition. *Sottomayor (otherwise De Barros) v. De Barros* (the Queen's Proctor intervening), 49 Law J. Rep. P. D. & A. 1; Law Rep. 5 P. D. 1.

The Queen's Proctor, when intervening before decree *nisi*, is not precluded from setting up other defences in addition to that of collusion. *Ibid.*

(C) DISSOLUTION OF MARRIAGE.

(a) Petitioner lunatic.

14.—The insanity of the husband or wife is not a bar to a suit on his or her behalf for dissolution of marriage, and such a suit may be instituted by the committee of the estate of the lunatic. *Baker v. Baker*, 49 Law J. Rep. P. D. & A. 49; affirmed on appeal, 49 Law J. Rep. P. D. & A. 83; Law Rep. 5 P. D. 142.

(b) Decree nisi.

(1) Effect of, on status of wife.

15.—A decree *nisi* in a suit for dissolution of marriage is a contingent decree and does not alter the status of the parties to the suit, so that the marriage is not dissolved until the decree absolute has been pronounced. And where to an action by the plaintiff (a petitioner for a divorce who had obtained a decree *nisi*), for conversion of her goods while she was living apart from her husband during the interval between the making of the decree *nisi* and the decree absolute, the defendant pleaded the coverture of the plaintiff at the time of the con-

version.—Held (reversing the judgment of the Exchequer Division), a good plea, for, inasmuch as the plaintiff did not become a *feme sole* until the decree had been made absolute, she could not sue in her own name during the pendency of the proceedings for the divorce. *Norman v. Villars* (App.), 46 Law J. Rep. Exch. 579; Law Rep. 2 Ex. D. 359.

(2) *Application by respondent to have decree made absolute.*

16.—The petitioner obtained a decree *nisi* for dissolution of marriage by reason of the respondent's adultery with the co-respondent. Six months having elapsed, and no steps having been taken by the petitioner to have the decree made absolute, an application to that effect was made to the Court on behalf of the respondents:—Held, that the application could not be sustained, a guilty spouse not being entitled under the Divorce Acts to the relief involved in a dissolution of marriage. *Ousey v. Ousey*, 45 Law J. Rep. P. D. & A. 33; Law Rep. 1 P. D. 56.

Semble, that the Court has power to dismiss a petition after a decree *nisi* for non-prosecution. *Ibid.*

(3) *Re-marriage of petitioner.*

17.—The petitioner (the wife) obtained a decree *nisi* for dissolution of her marriage with the respondent. The decree was pronounced on the 17th of June, 1868, but was not made absolute, owing to inadvertence or neglect on the part of the petitioner's solicitor, who had undertaken to do all that was necessary in the matter. In the belief that the decree had been made absolute, the petitioner went through a ceremony of marriage with D. S., on the 17th of September, 1871. She afterwards lived with him as his wife and had children by him, and did not discover until May, 1880, that the decree for the dissolution of her marriage with the respondent had not been made absolute. She now applied to have the decree made absolute. No opposition was offered by the Queen's Proctor, and the Court granted the application. *Wickham v. Wickham*, 49 Law J. Rep. P. D. & A. 70.

(c) *Apportionment of damages: provision for respondent dum casta.*

18.—The husband obtained a decree *nisi*, afterwards made absolute, for dissolution of marriage by reason of the wife's adultery with the co-respondent, against whom damages to the amount of 5,000*l.* were assessed. There were four children, of whom one was still a minor, issue of the marriage. In apportioning the damages, the Court directed that in the first instance 1,500*l.* should be settled on the youngest child of the marriage, a minor, who was in the custody of the petitioner, the money to go to the petitioner in the event of the child's death, before attaining its majority; that the petitioner's extra costs be paid out of

the damages, in addition to a further sum of 1,500*l.*; and that the balance of the damages be applied in the purchase of an annuity for the life of the respondent, to be paid to her so long as she lived chastely, and that in the event of her not living chastely, or of her becoming the wife of the co-respondent, it be paid to the petitioner for his life. *Meyern v. Meyern*, 46 Law J. Rep. P. D. & A. 5; Law Rep. 2 P. D. 254.

(d) *Fresh petition after dismissal of previous petition.*

19.—The respondent eloped with a Miss S. on the 2nd of January, 1877, leaving his wife destitute. On the 16th of April, 1877, she filed a petition for divorce on the ground of his adultery and cruelty, but withdrew the petition at the hearing on the 22nd of November, 1877, it being doubtful on the evidence whether the charge of cruelty could be sustained. On the 12th of February, 1880, she filed a fresh petition praying for a decree on the ground of the respondent's adultery and desertion. The respondent had never contributed towards her support since he left her in 1877, and he was still living with Miss S. when the copy petition and citation were served on him on the 25th of February, 1880:—Held, that the petition was well presented, and that the petitioner was entitled to a decree, on the ground of the respondent's adultery and desertion. *Knapp v. Knapp*, 49 Law J. Rep. P. D. & A. 69.

(D) RESTITUTION OF CONJUGAL RIGHTS.

(a) *Separation deed: pleading.*

20.—An agreement by deed between husband and wife and trustees containing reciprocal covenants and a renunciation by the husband of his rights in his wife's property, by which the husband and wife agree to live separate and apart is a bar to a suit by the wife for restitution of conjugal rights. Husband and wife agreed by deed to live separate and apart. Several years after the separation the wife instituted a suit for restitution of conjugal rights. The Court, holding that though its practice remained unchanged, it was bound, like the other Divisions of the High Court of Justice, to administer law and equity according to the rules contained in the 24th section of the Judicature Act of 1873, declined to restrain the petitioner by injunction from proceeding with the suit, or to order a stay of proceedings, and required the question of the sufficiency of the deed of separation as a defence to the suit to be raised by plea. *Marshall v. Marshall*, 48 Law J. Rep. P. D. & A. 49; Law Rep. 5 P. D. 19.

(b) *Suit stayed on terms.*

21.—The wife filed a petition for restitution of conjugal rights, but agreed that the suit should be stayed upon terms which her husband was willing and ready to fulfil. She sub-

sequently sought to proceed with the suit, but the Court held that she was bound by the agreement, and refused to allow the petition to be set down for hearing. *Stanes v. Stanes*, 47 Law J. Rep. P. D. & A. 19; Law Rep. 3 P. D. 42.

(c) *Service.*

22.—Where the Court is satisfied that the place of residence of an intended respondent is wilfully withheld from the knowledge of the petitioner, substituted service of the demand for cohabitation required by Rule 175 of January 30, 1869, as well as of the petition and citation, will be ordered. *In re Sheehy*, Law Rep. 1 P. D. 423.

*Service of petition out of jurisdiction.* [See No. 2 supra.]

(E) *DESERTION.*

[See No. 19 supra.]

(F) *CONNIVANCE AND COLLUSION.*

23.—If, by agreement between the parties to a divorce suit, pertinent and material facts, which might be adduced in evidence in support of a counter-charge against the petitioner by the respondent or co-respondent, be withheld from the Court, such agreement will amount to collusion, even though the suppressed facts might not have been sufficient to establish the counter-charge. *Hunt v. Hunt*, 47 Law J. Rep. P. D. & A. 22.

24.—To entitle the Queen's Proctor to intervene in his official capacity in a suit after decree nisi, it must be alleged that the decree was obtained by collusion between the parties. In the absence of collusion he can only intervene, though acting under the directions of the Attorney-General, as one of the public, and in shewing cause against the decree nisi being made absolute must proceed in the manner prescribed by Rules 70 to 76 (Rules and Orders, 1866). *Hudson v. Hudson*, 45 Law J. Rep. P. D. & A. 39; Law Rep. 1 P. D. 65.

(G) *ALIMONY.*

(a) *Permanent maintenance of wife after decree absolute.*

25.—The Court has power under section 32 of 20 & 21 Vict. c. 85, to make an order for permanent maintenance of a wife after a decree absolute has been pronounced. *Vicars v. Vicars* (29 Law J. Rep. P. & M. 20) overruled. *Bradley v. Bradley*, 47 Law J. Rep. P. D. & A. 53; Law Rep. 3 P. D. 47.

(b) *Wife's costs: solicitor's lien: rule 94.*

26.—The alimony allotted to the wife (the petitioner) was, by the order of the Court, made payable to herself. The respondent paid the alimony to the wife's solicitor, who, from

time to time, made payments on account to the petitioner. The petitioner never authorised him, by nomination in writing, to receive the alimony, nor was it shewn that she had acquiesced in his receiving it:—Held, that the solicitor had no lien for costs on the money which he had received as alimony. *Leete v. Leete*, 48 Law J. Rep. P. D. 61.

(H) *CUSTODY OF CHILDREN.*

27.—In determining the custody of children, the interests of the children are paramount with the Court. In committing them to the charge of the mother when the innocent party, the Court acts upon the principle that a wife ought not to be deprived of the comfort and society of her children by reason of the wrongful act of the husband, but it will depart from the rule when it is for the interest of the children that their education should be free from her control. *D'Alton v. D'Alton*, 47 Law J. Rep. P. D. & A. 59; Law Rep. 4 P. D. 87.

(I) *PROPERTY OF PARTIES.*

(a) *Alteration of settlements.*

28.—The functions of the Court in varying the provisions of a marriage settlement are not to punish the guilty party, but to prevent, as far as it may think just and practicable, the innocent party being damaged, in a pecuniary sense, by the decree of dissolution. It will not deprive the father of the power of exercising parental judgment and discrimination with regard to his children, except so far as it is inevitable from their remaining in the custody of their mother. *Maudslay v. Maudslay*, 47 Law J. Rep. P. D. & A. 26; Law Rep. 2 P. D. 256.

Both parties desiring it, the Court made an order varying the provisions of the settlement as to the appointment of new trustees. *Ibid.*

29.—The marriage of the petitioner and the respondent was solemnised in 1870, and in 1872 a deed of separation was entered into between them, in which, amongst other things, it was arranged that the respondent (the wife) should pay the petitioner during their joint lives an annuity of 100*l.* a year out of the settled property. In 1874 the marriage was dissolved by reason of the respondent's adultery:—Held, that on a revision of the settlements the petitioner was not precluded by the deed of separation from asking for a larger allowance out of the wife's settled property than that which was secured to him by the deed. *Bonyon v. Bonyon*, 45 Law J. Rep. P. D. & A. 93; Law Rep. 1 P. D. 447 (*nom.* *Bonyon v. O'Callaghan*).

Decree absolute for dissolution of marriage between petitioner and respondent in July, 1874; in December, 1874, marriage between respondent and co-respondent, who were ignorant of the fact that in the previous November a petition had been filed for variation of the settlements made on the marriage of the re-

spondent with her previous husband:—Held, that there had been no unreasonable delay on the part of the petitioner in applying for an alteration of the settlements; and further, that the co-respondent must be taken to have known all the circumstances of the respondent, and that his ignorance of the fact that those circumstances were likely to be altered to her disadvantage did not constitute a sufficient ground for the Court refusing to deprive her of a portion of the property brought into settlement by her on her marriage with the petitioner. *Ibid.*

Wife's property, yielding an income of 1,350*l.* a year, settled on herself for life for her separate use; covenant by husband to appoint in favour of wife the income arising from a certain sum (8,000*l.*) in which he had a prospective interest; marriage dissolved by reason of the wife's adultery. The Court, in varying the settlements, relieved the husband of his covenant and allowed him, he having himself only an allowance of 100*l.* a year, 300*l.* a year out of the wife's income, and 200*l.* a year for the maintenance and education of the only child of the marriage (a son) until he attained the age of twenty-one. *Ibid.*

30.—The Court will, under special circumstances, review its orders for variation of marriage settlements made under 22 & 23 Vict. c. 61, section 5. *Gladstone v. Gladstone*, 45 Law J. Rep. P. D. & A. 82; Law Rep. 1 P. D. 442.

A marriage having been dissolved on the petition of the wife, the Court varied the settlements by extinguishing the husband's interest in the wife's fortune, and declined to make the wife's enjoyment of the income of the settled property dependent on her living chaste and unmarried. *Ibid.*

31.—In the settlement made on the marriage of the parties, power was given to the trustees, in the event of the husband (who took the first life interest in the settled property) becoming bankrupt, to apply, as they in their absolute and uncontrolled discretion might think fit, the income of the trust funds or any parts thereof, "for the maintenance and personal support of the husband and his then present or any future wife and child or children, and other issue, by his then present or any future wife, or any one or more of such objects to the exclusion of the others." The husband became bankrupt in 1866, and in April, 1872, the marriage was dissolved on the petition of the wife. The fund brought into settlement came from the respondent's father, and yielded an income of 312*l.* per annum; and there were other funds out of which, under his father's will, the respondent was entitled to an income of about 300*l.* a year. For some time before the dissolution of the marriage, and ever since, until March, 1877, the trustees paid to the petitioner, who had the custody of the five children, issue of the marriage, the net income of the settled property. In April, 1877, proceedings were commenced in the Chancery Division by the respondent, on behalf of his infant son, for an administra-

tion of the trusts of the settlement, and the trustees thereupon declined to exercise their discretionary power under the settlement by payment of the income thereunder. The petitioner filed, in consequence, in June, 1877, a petition for a variation of the provisions of the settlement. The Court made an order that the trustees, during the life of the petitioner and so long as she should remain unmarried, and the children of the marriage remain under age, pay to her the whole income of the settled property, and that as each of the children attained the age of twenty-one, a sum of 20*l.* a year, be paid to such child during the life of the mother. *Marsh v. Marsh*, 47 Law J. Rep. P. D. & A. 34.

Affirmed on appeal, the Court holding that the petitioner was not barred by delay from presenting her petition, and that notwithstanding the absolute discretion vested in the trustees, the Court had power to make such order in respect of the application of the settled property as to it might seem fit. *Marsh v. Marsh*, 47 Law J. Rep. P. D. & A. 78.

32.—41 & 42 Vict. c. 19. s. 3 (giving the Court power to vary settlements where there are no children of the marriage), is not retrospective, and does not apply to decrees made absolute before the Act came into operation. *Yglesias v. Yglesias*, Law Rep. 4 P. D. 71.

33.—In contemplation of their marriage, a settlement was made by the petitioner on the respondent. There was no issue of the marriage, and a decree *nisi* for its dissolution, by reason of the respondent's adultery, was pronounced on the 9th of May, 1878, and the decree was made absolute in November of the same year. On the 27th of May, 1878, the Matrimonial Causes Act, 1878 (41 Vict. c. 19), which allows the Court, notwithstanding that there are no children of the marriage, to exercise the powers vested in it by 22 & 23 Vict. c. 61. s. 5, was passed:—Held, that the Court had jurisdiction under the Act to vary the settlement. *Ansdell v. Ansdell*, 49 Law J. Rep. P. D. & A. 57; Law Rep. 5 P. D. 139.

(b) *Injunction restraining wife from dealing with property.*

34.—The petitioner (the husband) obtained a decree *nisi* for dissolution of his marriage, of which there was issue one child, and he had given instructions to the solicitor to file at the proper time a petition for variation of an alleged post-nuptial settlement under which the respondent had possessed herself of a sum of 3,000*l.*, his moneys, with which she had purchased a house at Brighton. It appearing that she was about to dispose of the house, the Court, on the application of the petitioner, granted an injunction, restraining her from dealing with the property, and ordering her, in the event of the house being sold, to bring the proceeds of the sale into the Registry. *Noakes v. Noakes*, 47 Law J. Rep. P. D. & A. 20; Law Rep. 4 P. D. 60.

## (K) EVIDENCE.

(a) *Privilege: admission by petitioner to solicitor.*

35.—In shewing cause against the decree *nisi* obtained by the husband for dissolution of marriage on the ground of the wife's adultery, the petitioner's solicitor was called as a witness on behalf of the Queen's Proctor, and it was proposed to ask the witness whether, in the course of the proceedings in the cause, the petitioner had not made an admission to him respecting a matrimonial offence:—Held, that the evidence was inadmissible, the communications between solicitor and client in divorce suits, as in all civil actions, being privileged. *Branford v. Branford and Sheppard (the Queen's Proctor shewing cause)*, 48 Law J. Rep. P. D. & A. 40; Law Rep. 4 P. D. 72.

(b) *Confession by respondent and admission by co-respondent.*

36.—In a suit for dissolution of marriage promoted by the husband, the evidence adduced at the hearing of the case in proof of the adultery charged against the respondent and co-respondent, consisted exclusively of confessions by the wife, but on a subsequent day the counsel for the co-respondent stated that he was instructed to admit the adultery charged against him. The Court being satisfied that both the confession of the wife and the admission of the co-respondent, which was against interest, were *bona fide*, acted upon them, and pronounced a decree for the dissolution of the marriage. *Le Marchant v. Le Marchant*, 45 Law J. Rep. P. D. & A. 43.

## (L) PRACTICE.

(a) *Petition.*(1) *Previous petition: res judicata.*

37.—To the wife's petition for dissolution of marriage, the respondent answered, denying the charges alleged against him, and making counter-charges of adultery against the petitioner. It was alleged by the petitioner that the counter-charges were substantially the same as those which were made against her in a previous suit in which her husband was the petitioner, and which were negatived by the verdict of the jury, and in these circumstances the Court was moved on her behalf to order that the counter-charges be struck out of the respondent's answer. The Court refused to make the order, holding that the proper mode of raising the question of the alleged estoppel was by replication. *Robinson v. Robinson*, 46 Law J. Rep. P. D. & A. 47; Law Rep. 2 P. D. 77.

38.—Husband filed a petition for dissolution of marriage in May, 1873. In July, 1874, the petition was dismissed before hearing on the petitioner's application, and with the consent of the respondent and co-respondent. In October, 1878, the petitioner filed a fresh petition, which

included the charges of adultery against the respondent and the co-respondent contained in the first petition:—Held, that he was not precluded by the dismissal of the first petition from repeating those charges. *Hall v. Hall and Richardson*, 48 Law J. Rep. P. D. & A. 57.

*Damages in divorce suit: bankruptcy: petitioning creditor's debt.* [See BANKRUPTCY, C 2.]

(2) *Service of.*

*Service out of jurisdiction: suit for restitution of conjugal rights.* [See No. 2 supra.]

*Substituted service.* [See No. 22 supra.]

(3) *Application to dispense with co-respondent.*

39.—The wife appeared and answered in the suit, and application was then made to the Court on behalf of the petitioner, to dispense with a co-respondent. The respondent opposed the application as too late. The Court allowed the application, no special ground of objection being alleged against it, but intimated that such application should be made to the Court at an early stage, and as soon as possible. *Jeffries v. Jeffries*, 46 Law J. Rep. P. D. & A. 80; Law Rep. 2 P. D. 90.

(4) *Dismissal of.*

*Power to dismiss for non-prosecution after decree nisi.* [See No. 16 supra.]

(5) *Queen's Proctor, intervention of.*

[See Nos. 9, 23, 34 supra.]

(b) *Costs.*(1) *Sequestration of civil servant's pension.*

40.—A decree of judicial separation was pronounced on the petition of the wife. The respondent was a retired officer of the Court of Queen's Bench, and was in the receipt of a pension for past services. He had failed to pay the petitioner's costs of suit or the alimony allotted to her, and was resident out of the jurisdiction. The Court, holding that the pension was liable to sequestration, ordered that it should stand charged with the petitioner's costs and alimony, that it might be received by her or her trustee, and that the respondent be restrained from receiving it either personally or through his agent. *Sansom v. Sansom*, 48 Law J. Rep. P. D. & A. 25; Law Rep. 4 P. D. 69.

(2) *Revival of suit for taxation of.*

41.—Petitioner obtained a decree absolute for dissolution of marriage. The co-respondent was condemned in costs, but as he was out of the jurisdiction, no application was made for an order for taxation. The petitioner died after the decree absolute. On the return of the co-respondent to this country, after a lapse of more than six years, the Court made an order



for the taxation of costs against him, on the application of the executor of the petitioner. *Hankes v. Hankes*, 45 Law J. Rep. P. D. & A. 41; Law Rep. 1 P. D. 137.

#### DOCK.

[See HARBOUR.]

#### DOCK MASTER.

[See SHIPPING LAW, E 22.]

#### DOCK WARRANT.

*Title to goods: principal and surety.* [See SALE, 24.]

#### DOCUMENTS.

[See PRODUCTION OF DOCUMENTS.]

*Solicitor's lien on.* [See SOLICITOR, 29-36.]

#### DOG LICENSE.

[Provisions and regulations as to dog licenses. 41 & 42 Vict. c. 15, ss. 17-23, and 42 & 43 Vict. c. 21, s. 26.]

By 30 Vict. c. 5, s. 8, "If any person keep a dog without having in force a license granted under this Act authorising him so to do, he shall forfeit the sum of five pounds." By section 5, "Every license shall commence on the day on which the same shall be granted, and shall terminate on the 31st December following." The license, which is issued under section 5, purports to be "from" the date thereof until the 31st of December. An excise officer called at the respondent's house, and seeing there a dog for which a license ought to have been taken out under section 5, preferred an information under section 8, to answer which the respondent was summoned before a magistrate. At the hearing of the summons the respondent produced a license which he had taken out half-an-hour after the officer had called, and contended that such license was an answer to the information, as the law would not consider the fraction of a day:—Held, that as the offence was alleged to have been committed the same day as the license was taken out, the Court could, consistently with sections 5 and 8, look at the order of events, and consequently the offence which had already been committed could not be purged by a license subsequently taken out. And, further, that the form of the license was not inconsistent with section 5. *Campbell v. Strangeways*, 47 Law J. Rep. M.C. 6; Law Rep. 3 C.P. D. 105.

#### DOMICIL.

(A) ACQUISITION OR CHANGE OF.

(B) LAW OF COUNTRY OF DOMICIL WHEN APPLICABLE.

#### (A) ACQUISITION OR CHANGE OF.

1.—A man changes his domicile of origin by choosing a new domicile, that is, by voluntarily fixing his sole or chief residence in a country not being the country of origin, with an intention of continuing to reside there for a period not limited as to time. *King v. Foxwell*, 45 Law J. Rep. Chanc. 693; Law Rep. 3 Ch. D. 518.

Naturalisation is neither essential to, nor conclusive of, domicile; it is important as evidence of an intention to reside permanently. *Ibid.*

K., an Englishman, emigrated to the U.S., in 1851, where he carried on a shoemaker's trade; in 1856 he was admitted as a citizen of the U.S. He buried his first wife in America, and remarried there in 1866:—Held, that he had acquired an American domicile of choice. *Ibid.*

A man having acquired a domicile of choice, may put an end to it of choice, without it being incumbent on him to acquire another domicile of choice, because his domicile of origin thereupon becomes his domicile. *Ibid.*

K. left America in 1867, without the intention of returning, and lived an unsettled life in England, where he made his will. He died suddenly in Jersey, in 1871:—Held, that his English domicile of origin had reverted. *Ibid.*

Bill filed by K.'s widow to set aside the will, on the ground that K. was a domiciled American at the date of his death, and that the will was bad by American law, dismissed, but under the circumstances, without costs. *Ibid.*

2.—There is nothing in the status of a Peer of Parliament to prevent his obtaining a foreign domicile by residence in a foreign country. *Hamilton v. Dallas*, 45 Law J. Rep. Chanc. 15; Law Rep. 1 Ch. D. 267.

If an Englishman has acquired a *de facto* domicile in France, property as to which he may die intestate will be distributed according to the French law, although he has not been admitted by the authorisation of the Government to enjoy civil rights in accordance with article 13 of the Code. *Ibid.*

3.—Testator, born in Scotland, emigrated to Queensland, where he bought a station and resided for four years. He afterwards bought land and built a house in New South Wales, where he resided with his wife and family till his death, which occurred suddenly at the station in Queensland, and he was buried there by his own wish:—Held, that testator had abandoned his domicile of origin, and had acquired a domicile of choice in New South Wales. *Platt v. The Attorney-General of New South Wales*, 47 Law J. Rep. P.C. 26; Law Rep. 3 P.C. 336.

4.—Where the whole course of conduct of a foreigner shewed that he had permanently settled in this country, mere verbal expressions of an intention by him to return to his own country were disregarded, and his domicile was held to be English. *Doucet v. Geoghan* (App.), Law Rep. 9 Ch. D. 441.

[And see DIVORCE, 1, 2.]

H H

## (B) LAW OF COUNTRY OF DOMICIL WHEN APPLICABLE.

5.—The personal capacity of parties to enter into the contract of marriage depends upon their domicile, and where both parties had a foreign domicile, and, by the law of their domicile, their marriage was invalid by reason of consanguinity, a marriage which was contracted in England, and which would have been valid according to English law, was held invalid. *Sottomayor v. De Barros* (App.), 47 Law J. Rep. P. D. & A. 23; Law Rep. 3 P. D. 1.

Two Portuguese subjects, whose domicile was Portugal, and whose marriage in Portugal would have been invalid without a Papal dispensation, on the ground of consanguinity, they being first cousins, contracted in 1866 a marriage in England. At that time they were of the respective ages of sixteen and fourteen, and the petitioner, the lady, alleged that her marriage was entered into under pressure, and only with the purpose of saving some of her father's property from the consequences of a bankruptcy. The marriage was never consummated. In 1874 a petition to have the marriage declared void was presented by the lady:—Held (reversing the decision of the Judge of the Divorce Court, 46 Law J. Rep. P. D. & A. 43; Law Rep. 2 P. D. 81), that the marriage being invalid according to the law of the country of domicile of the parties, must be declared null and void here. *Simonin v. Mallao* (2 Sw. & Tr. 67) distinguished. *Ibid.*

[And see DIVORCE, 13.]

*Action for rent of foreign property.* [See PRACTICE, W 44.]

*Sootch assets: limited administration.* [See ADMINISTRATION, 30.]

*Sootch irregular marriage.* [See DIVORCE, 12.]

*Sootch settlement: construction of.* [See CONFLICT OF LAWS, 3.]

*Shareholder: articles of association: service at domicile of election.* [See COMPANY, E 7.]

*Succession duty: British settlement.* [See SUCCESSION DUTY, 5.]

*Will of naturalised British subject made in England according to English law.* [See PROBATE, 17.]

## DONATIO MORTIS CAUSA.

1.—Testator being resident at St. Remo, in Italy, in his last illness drew cheques on his London bankers, payable to order, and gave them to his wife, who indorsed them to her bankers at St. Remo, and paid them into their bank. The cheques were not presented for payment in London till after the testator's death:—Held, that the cheques were good *donationes mortis causa*, and that the widow was entitled to the proceeds out of the testator's estate. *Rolls v. Pearce*, 46 Law J. Rep. Chanc. 791; Law Rep. 5 Ch. D. 730.

2.—M., while in contemplation of death,

signed a cheque for £500L, part of a larger sum on deposit at seven days' notice, and gave it to A. that he might give notice and get cash for the donor's wife. M. died before the notice expired:—Held, that there was not a good *donatio mortis causa*. M., while in contemplation of death, gave his bills of exchange to A. to realise when due for M.'s wife. M. died before the bills became due:—Held, there was a good *donatio mortis causa*. *Voal v. Voal* (27 Beav. 303) followed. *In re Mead. Austin v. Mead*, 50 Law J. Rep. Chanc. 30; Law Rep. 15 Ch. D.

## DOUBLE INSURANCE.

[See INSURANCE, 13.]

## DOUBLE PORTIONS.

[See PORTIONS, 3, 4.]

## DOWER.

The widow of a testator whose only real estate was conveyed to him with a declaration against dower is not entitled to priority over other legatees in respect of an annuity bequeathed to her by her husband "in lieu bar and satisfaction of dower." *Roper v. Roper*, Law Rep. 3 Ch. D. 714.

*Mortgage by husband and wife entitled to dower: wife's right to redeem.* [See HUSBAND AND WIFE, 59.]

## DRAIN.

[See NUISANCE, 10, 12, 18; PUBLIC HEALTH ACT, 30-34.]

## DRAINAGE.

[Amendment of the law relating to the drainage and improvement of land in Ireland. 41 & 42 Vict. c. 59, and 43 & 44 Vict. c. 27.]

By rule 6 of Part II. of the schedule to the Land Drainage Act 1861 (24 & 25 Vict. c. 133), a drainage board of a drainage district "may delegate any of their powers to committees consisting of such member or members of their body as they think fit," and by rule 8 of Part II. of the schedule "a committee may meet and adjourn as they think proper, and questions at any meeting shall be determined by a majority of the votes of the members present; and in case of an equal division of votes the chairman shall have a second or casting vote." Where, pursuant to the above power, a drainage board appointed a committee of three of their members to act in any case of emergency, it was held that such committee could not divide a drainage district amongst them, so as to enable any one of its members, in the absence of the others, to lawfully execute any of the powers of the Act which had been delegated to the committee by such drainage board. *Cook v. Ward*, 46 Law J. Rep. C.P. 554; Law Rep. 2 C.P. D. 255.

*Expenses of: landlord and tenant.* [See LEASE, 15.]

*Land Drainage Act.* [See PUBLIC HEALTH ACT, 17.]

*Settled estate, of: costs allowed out of capital.* [See SETTLED ESTATES ACT, 8.]

## DRAMATIC COPYRIGHT.

[See COPYRIGHT, 8.]

## DRUNKARD.

[Provisions for the control and cure of habitual drunkards. 42 & 43 Vict. c. 19.]

## DUPLEX QUERELA.

[See CHURCH AND CLERGY, 32.]

## EARLDOM.

[See PEERAGE.]

## EASEMENT.

[And see LIGHT AND AIR, WAY, WATERCOURSE.]

### (A) ACQUISITION OF.

- (a) *Right to support.*
- (b) *Right to attach sign-board to another's house.*
- (c) *Implied grant: unity of ownership.*
- (d) *User.*

### (B) OBSTRUCTION OF.

- (a) *Access of air.*
- (b) *Support.*

### (A) ACQUISITION OF.

#### (a) *Right to support.*

1.—The right to the support for buildings from adjoining land is not a right of property. Such right cannot be claimed under the Prescriptions Acts, but may be acquired by prescription at common law, or by presumption of a lost grant arising from twenty years' open and uninterrupted enjoyment. *Angus v. Dalton and the Commissioners of Her Majesty's Works and Public Buildings* (App.), 48 Law J. Rep. Q.B. 225; Law Rep. 4 Q.B. D. 162; on appeal from the Queen's Bench Division, 47 Law J. Rep. Q.B. 163; Law Rep. 3 Q.B. D. 85.

Per Cotton, L.J., and Thesiger, L.J. (*dissentiente* Brett, L.J.), such presumption cannot be rebutted by proof that no such grant in fact was ever made. Per Brett, L.J., proof that such grant has never in fact been made is an absolute rebuttal of the presumption. *Ibid.*

One of two adjoining houses having been, twenty-seven years before the accident, altered internally by the plaintiffs (the owners) so as to rest chiefly on a pillar built on the edge of their land, and contiguous to the land on which the adjoining house of the defendants stood, fell

down in consequence of excavations made by the defendants on the site of their house which they had pulled down, and by reason of the pillar being deprived of the lateral support previously afforded by the soil under the surface of the adjoining land of the defendants. In an action by the plaintiffs to recover damages for the loss caused by the fall of their house, the Judge at the trial directed a verdict for the plaintiffs:—Held (in the Queen's Bench Division, by Cockburn, L.C.J., and Mellor, J., *dissentiente* Lush, J.), that the mere enjoyment of the lateral support for the twenty-seven years did not give to the plaintiffs a right to such support as against the adjoining owner, no grant having been made or assent given, and none being to be implied. By Lush, J.—That the house of the plaintiffs had acquired the status of an ancient building; and as mere absence of assent will not prevent a right to support being acquired, the defendants were responsible for the whole of the damage done, of which the excavation made was the sole cause. *Ibid.*

But, on appeal, Held (by Cotton, L.J., and Thesiger, L.J.), that the case must go down for a new trial, to determine whether the burden which had been put upon the servient tenement was such as the owner could reasonably be expected to be aware of and provide for. By Brett, L.J., that judgment should be entered for the defendants. *Ibid.*

Held also (by Cotton, L.J., and Thesiger, L.J., affirming *Bower v. Peate*, 45 Law J. Rep. Q.B. 446; Law Rep. 1 Q.B. D. 321), that where a principal has employed a contractor to do work which is in its nature dangerous to adjoining property, the employer is bound to see that proper means are adopted to prevent injurious consequences, and cannot discharge himself of his liability by employing a competent contractor and directing him to use proper precautions. *Ibid.*

#### (b) *Right to attach sign-board to another's house.*

2.—An easement in respect of an inn to have a sign-board attached to the side of another house held to have been acquired by prescription. *Moody v. Steggles*, 48 Law J. Rep. Chanc. 639; Law Rep. 12 Ch. D. 261.

#### (c) *Implied grant: unity of ownership.*

3.—The principle of law that where the owner of an estate has been in the habit of using *quasi* easements of apparent and continuous character over the one part for the benefit of the other part of his property, and aliens the *quasi* dominant part to one and the *quasi* servient to another, the respective alienees will, in the absence of express stipulation, take the land burdened or benefited by the qualities which the previous owner had a right to attach to them, applies, even though the owner were not in actual possession of both parts of the

property at the time of alienation. *Barnes v. Loach*, 48 Law J. Rep. Q.B. 756; Law Rep. 4 Q.B. D. 494.

If the alteration in a dominant tenement or in the mode of using an easement is not of such a nature that the tenement is substantially changed or the burden on the servient tenement materially increased, an easement is not destroyed in consequence of the alteration. *Ibid.*

4.—On a grant of part of a tenement, or of one of two adjoining tenements belonging to the same grantor, no reservation of easements will be implied in favour of the grantor, except easements of necessity; but there will pass by implication to the grantee all continuous apparent easements—that is, all such easements as are necessary to the reasonable enjoyment of the property granted, and have in fact been enjoyed during the unity of ownership. The principle laid down by the Court in *Pyer v. Carter* (1 Hurl. & N. 916; 26 Law J. Rep. Exch. 258), that there is no distinction between implied reservation and implied grant is overruled by *White v. Bass* (7 Hurl. & N. 722; 31 Law J. Rep. Exch. 283), and other authorities; but, *semble*, the decision itself may be supported on the ground that it was a case of reciprocal mutual easements between the two tenements, and would be an authority for an *idem per idem* case. A workshop and an adjoining vacant piece of land belonged to S. T. The side of the workshop facing the piece of land had in it three windows, not ancient windows, which received their light from over the piece of land. S. T. put all the property up to auction in several lots under certain conditions, not providing for any reservation. He sold and conveyed the piece of land to the plaintiff without expressly reserving any right to light in respect of the windows, and shortly afterwards sold and conveyed the workshop to the defendant under the same conditions. The plaintiff claimed the right to build on the land so as to obstruct the windows, and the defendant claimed the access of light to the windows from over the plaintiff's land as an apparent continuous easement necessary for the enjoyment of his property. In an action to try the right,—Held (affirming the decision of Bacon, V.C.), that no right to light in respect of the windows was impliedly reserved to S. T. under the conveyance to the plaintiff, it not being a case of necessity, and consequently the latter could build and obstruct the windows. *Wheeldon v. Burrows* (App.), 48 Law J. Rep. Chanc. 853; Law Rep. 12 Ch. D. 31.

*White v. Bass* (*ubi supra*) approved and followed.

*Pyer v. Carter* (*ubi supra*) discussed.

#### (d) User.

User not physically preventible nor actionable cannot found an easement: nuisance: noise and vibration: injunction. [See NUISANCE, 1.]

### (B) OBSTRUCTION OF.

#### (a) Access of air.

5.—The defendants raised the wall of their house so as to overtop the chimneys of the adjoining houses of the plaintiff, and piled timber upon their roof, causing the plaintiff's chimneys to smoke:—Held, that the plaintiff had no cause of action, on the grounds, first, that the free access of air to the plaintiff's premises was not an easement for which he could prescribe either by statute or at Common Law; and, secondly, that no nuisance had been caused by the defendants, since the smoke which caused the annoyance to the plaintiff was produced by the plaintiff on his own premises. *Bryant v. Lefever* (App.), 48 Law J. Rep. C.P. 380; Law Rep. 4 C.P. D. 172.

#### (b) Support.

*Injunction: qua timet: mining operations under adjoining lands.* [See INJUNCTION, 21.]

[And see MINES, 4-7.]

### EAST INDIA COMPANY.

*Trust fund: separate use of married woman.* [See PENSION.]

*Compulsory retirement of military officers.* [See CROWN 8.]

### ECCLIASTICAL COMMISSIONERS.

*Limitations: succession of ecclesiastical commissioners to estates of corporations sole.* [See LIMITATIONS, STATUTE OF, 1.]

### ECCLIASTICAL CORPORATION.

*Sale of land for redemption of land tax.* [See LAND TAX, 1.]

### ECCLIASTICAL LAW.

[See CHURCH AND CLERGY.]

### EDUCATION.

[See ELEMENTARY EDUCATION ACTS; INFANT, 22-25.]

### EJECTMENT.

1.—The assignee of the reversion of a lease containing the usual power of re-entry to the lessor and his assigns in case of any breach of covenant by the lessee, may maintain ejectment, in the event of a breach of the general covenant to repair, without having previously given notice to the lessee that he had become entitled to the reversion. *Sealock v. Harston*, 45 Law J. Rep. C.P. 125; Law Rep. 1 C.P. D. 106.

2.—By writ of ejectment dated the 3rd of August, 1874, and in the form given by the Common Law Procedure Act, 1833, the plaintiff

claimed to have been entitled to lands from the 25th of December, 1867. The defendant suffered judgment by default, and an action for mesne profits having been brought against him, he paid into Court the amount of mesne profits as from the date of the writ of ejectment, and, as to a portion of the time between the 3rd of August and the 25th of December, pleaded a plea shewing title to the land in himself. The plaintiff replied an estoppel, setting forth the writ of ejectment and judgment. On demurrer,—Held, that the modern form of judgment for the plaintiff to "recover possession of the land" is an estoppel only as to the plaintiff's title at the time of action brought, and not as to the duration of his title; and that, therefore, the replication was bad. *Harris v. Mulhern*, 45 Law J. Rep. Exch. 244; Law Rep. 1 Ex. D. 31.

*Action in County Court: hereditaments of greater value than 20l.* [See COUNTY COURT, 1.]

#### EJUSDEM GENERIS.

[See *BOGUE AND VAGABOND*; *WILL*, CONSTRUCTION, E 13, 14, 15.]

#### ELDEST SON.

[See *WILL*, CONSTRUCTION, L 20.]

#### ELECTION.

- (A) TO TAKE UNDER OR AGAINST INSTRUMENT.
- (B) TO TAKE PROPERTY IN CONVERTED OR UNCONVERTED STATE.

- (A) TO TAKE UNDER OR AGAINST INSTRUMENT.

1.—The doctrine of election or compensation explained. *Pickersgill v. Rodger*, Law Rep. 5 Ch. D. 163.

Where a testatrix shewed by her will a plain intention to dispose of property comprised in certain irrevocable appointments,—Held, that the various persons claiming under her will were put to their election as between the benefits conferred on them by the deeds and those conferred on them by the will. *Ibid*.

Where a son to whom real estate is devised by a testator predeceases the testator his estate is in the same position, *quoad* the will of the testator, as if he had survived him, and consequently legatees disappointed under the will can enforce compensation against such estate under the doctrine of election. *Ibid*.

2.—The rule of election, by which a person taking a benefit under any instrument must also accept the burden laid on him by it, applies in the case of deeds as well as of wills, and where one of the properties is not bound by the instrument, as well as between properties which

are bound by it, and although no intention that the party should be put to election appear on the face of the instrument, or by necessary implication from its terms or language. *Codrington v. Codrington* (H.L.), 45 Law J. Rep. Chanc. 660; Law Rep. 7 E. & I. App. 854.

3.—A father on the marriage of his daughter covenanted to settle a share of his property at his decease so that (in the events which happened) her children became entitled as tenants in common. The covenantor by his will gave legacies to A., one of such children, and to B. and C., the son and daughter of another, who and whose husband were dead:—Held, that A., B. and C. were put to their election, A. whether he would take his legacy or his share under the covenant, B. and C. whether they would take their legacies or their interest in the covenant derived through their parents as heirs and next-of-kin. *Bennett v. Holdsworth*, 46 Law J. Rep. Chanc. 646; Law Rep. 6 Ch. D. 671.

4.—Certain cottages were settled on A. for life, remainder to his wife B. in fee. A. devised these cottages to B. for life, with remainder to C. in fee. C. sold his reversion to X., and B. sold the cottages to Y. in fee without notice of A.'s devise. After B.'s death:—Held, that she must be taken to have elected to take the cottages against the will, and that her estate was liable to pay compensation to X. to the extent of the benefits received by her under the will. *Rogers v. Jones*, Law Rep. 3 Ch. D. 688.

- (B) TO TAKE PROPERTY IN CONVERTED OR UNCONVERTED STATE.

[See *TRUST*, E 5, 6.]

*Married woman: purchase-money of real estate sold by order of court.* [See *PARTITION*, 22.]

*Way of necessity: right of election in grantor.* [See *WAY*, 1.]

#### ELEGIT.

*Writ of: secured creditor.* [See *BANKRUPTCY*, D 23.]

#### ELEMENTARY EDUCATION ACTS.

- (A) QUALIFICATION AND ELECTION OF SCHOOL BOARD.
- (B) BORROWING POWERS OF SCHOOL BOARD.
- (C) COMPULSORY POWERS AS TO ATTENDANCE OF CHILDREN.

[Provisions for elementary education. 39 & 40 Vict. c. 79.]

[Promotion of intermediate education in Ireland. 41 & 42 Vict. c. 66.]

[Further provisions as to by-laws respecting the attendance of children at school under the Elementary Education Acts. 43 & 44 Vict. c. 28.]

**(A) QUALIFICATION AND ELECTION OF SCHOOL BOARD.**

1.—The personation of a voter at the election of members of a school board is made an offence by the second schedule to the Act of 1873, 36 & 37 Vict. c. 86, which applies the Ballot Act of 1872 to such election, but does not apply it to the voting upon a resolution for application for a school board under section 12 of 33 & 34 Vict. c. 75. The personation of a voter at a poll for passing a resolution for application for a school board is not an offence under the Elementary Education Acts, and a regulation of the Education Department of the Privy Council constituting such personation a misdemeanour punishable on summary conviction will not support a conviction, it being a regulation *ultra vires*, and one not made valid by section 84 of 33 & 34 Vict. c. 75. *Reg. v. Sankey*, 47 Law J. Rep. M.C. 96; Law Rep. 3 Q.B. D. 379.

2.—Where a member of a school board having absented himself during six successive months from all meetings of the board, ceased by the operation of rule 14 of the first part of the second schedule of the Elementary Education Act, 1870, to be a member of the school board, and his office thereupon became vacant, and was filled up by the election of another person,—Held, that he was not disqualified from being a candidate and being elected at the next triennial election of members of that school board; the disqualification in rule 12 of the same schedule only attaching at most so as to preclude his being eligible for the intermediate vacancy which his own default had caused. *Reg. v. Turmine*, 48 Law J. Rep. Q.B. 5; Law Rep. 4 Q.B. D. 79.

3.—The Corrupt Practices Municipal Act, 1872 (35 & 36 Vict. c. 60), does not apply to a school board election, and therefore such election cannot be questioned by petition under that Act. *In re The West Bromwich School Board*, 49 Law J. Rep. C.P. 641; Law Rep. 5 C.P. D. 191.

**(B) BORROWING POWERS OF SCHOOL BOARD.**

4.—The power of school boards to borrow is defined and limited by the express enactment of the Act under which they are constituted, so that a school board has no power to borrow money to defray current expenses when the school fund is not sufficient, and interest on such a temporary loan ought not to be allowed in the accounts of a school board. So held by the Court of Appeal, reversing the decision of the Queen's Bench Division (48 Law J. Rep. Q.B. 729; Law Rep. 4 Q.B. D. 477). *Reg. v. Reed* (App.), 49 Law J. Rep. Q.B. 600; Law Rep. 5 Q.B. D. 488.

**(C) COMPULSORY POWERS AS TO ATTENDANCE OF CHILDREN.**

5.—The proviso in section 74 of the Elementary Education Act, 1870, precludes a school board from using its power so as to interfere

with the arrangements already made by the Factory Acts. A school board is, therefore, not entitled to enforce its by-laws as to the hours of attendance by children, against a child who, though not obeying such by-laws, is attending an efficient elementary school pursuant to the Factory Acts. *Mellor v. Denham*, 48 Law J. Rep. M.C. 113; Law Rep. 4 Q.B. D. 241.

6.—Where a parent is summoned under subsection 2 of section 12 of 39 & 40 Vict. c. 79 (the Elementary Education Act, 1876), to answer a charge of a second case of non-compliance with an attendance order made upon him, in order to prove the previous adjudication of non-compliance it is not necessary to produce a signed copy of the previous conviction in accordance with 34 & 35 Vict. c. 112. s. 18, but it may, upon the hearing of such charge, be proved by the production by the clerk of the Court of the book containing a memorandum of such adjudication, and by the evidence of the school board officer who heard such previous adjudication made upon the person so summoned. *The School Board for London v. Harrey*, 48 Law J. Rep. M.C. 130; Law Rep. 4 Q.B. D. 461.

7.—The offence created by section 11 of 39 & 40 Vict. c. 79 (the Elementary Education Act, 1876) of habitually neglecting to provide efficient elementary instruction for a child, and upon which the consequences specified in section 12 may follow, is distinct from that of neglecting to cause a child to attend school dealt with by by-laws made under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), and by section 24 of the Elementary Education Act, 1873 (36 & 37 Vict. c. 86), and therefore section 50 of the Act of 1876 does not give to a school board or local authority any discretion in cases of habitual neglect as to instituting proceedings in any other mode than that prescribed in section 11. *Ex parte The School Board for London; in re Murphy*, 46 Law J. Rep. M.C. 193; Law Rep. 2 Q.B. D. 397.

Where on the application of a school board for a summons under a by-law the magistrate was satisfied that the facts brought the case within the terms of section 11 of 39 & 40 Vict. c. 79,—Held, that he rightly refused to issue a summons under the by-law, and that the school board were bound to apply for one under section 11. *Ibid.*

8.—Where the by-laws of a school under the Elementary Education Act, 1870, s. 74, required the attendance of children at school during all the time the schools were opened, and the schools were open more than ten hours per week:—Held, that the by-laws were not contrary to section 14 of the Workshops Regulation Act, 1867, and could be enforced against children employed in workshops. *Bury v. Cherryholm* (Div. App.), Law Rep. 1 Ex. D. 487.

9.—Section 74 of the Elementary Education Act, 1870, enables a school board to make by-laws for certain purposes, and, amongst them for the purpose of imposing penalties, recoverable in a summary manner, for breach of any

by-law. Section 92 provides that any penalty recoverable summarily under the Act may be recovered before justices in manner directed by the 11 & 12 Vict. c. 43 (Jervis' Act), and the Acts amending the same. Upon an information against the respondent to recover a penalty for breach of one of the by-laws of a school board justices stated a case for the opinion of the Queen's Bench Division, who gave judgment for the respondent:—Held, on appeal, that this judgment was in a "criminal cause or matter" within section 47 of the Judicature Act, 1873, and therefore that the appeal would not lie. *Mellor v. Denham* (App.), 49 Law J. Rep. M.C. 89; Law Rep. 5 Q.B. D. 467.

## EMBEZZLEMENT.

- (A) VENUE.  
 (B) WILD RABBITS: GAMEKEEPER KILLING, IN ORDER TO SELL.  
 (C) PROCEEDS OF CHEQUE.  
 (D) CHATTEL OR VALUABLE SECURITY.

—  
(A) VENUE.

1.—The prisoner was employed as a country traveller. It was his duty to collect outstanding accounts, and to remit the money so collected "at once" to his employers in Middlesex. The prisoner collected an account at York which he never remitted. The prisoner subsequently sent a letter from Doncaster to his employers, which they received in Middlesex and which amounted in effect, as the jury found, to a denial of the collecting of the money at York:—Held (Huddleston, B., *dissentiente*), that in an indictment against the prisoner for embezzling the money so collected at York, the venue was well laid in the county of Middlesex. *Reg. v. Rogers* (C.C.R.), 47 Law J. Rep. M.C. 11; Law Rep. 3 Q.B. 28.

2.—It was the duty of the prisoner, a commercial traveller, to remit daily to his employers the moneys which he collected without reduction. The prisoner on the 1st and 2nd of March, 1878, collected at Newark two sums of money, which he did not remit or account for. There was no evidence that the prisoner returned to Grantham, where he resided, on either of those days. In the first week in April, one of his employers went to Grantham and saw the prisoner, and taxed him with receiving moneys and not accounting to them for them. The prisoner thereupon handed to his employer a list of the moneys he had collected and not accounted for, including the above two sums. He was indicted and convicted at the borough of Grantham Quarter Sessions for embezzling the above two sums of money:—Held (Manisty, J., *adbitante*), that there was no evidence of embezzlement within the borough of Grantham. *Reg. v. Treadgold*, 48 Law J. Rep. M.C. 102,

## (B) WILD RABBITS: GAMEKEEPER KILLING, IN ORDER TO SELL.

3.—The prisoner being employed as a gamekeeper, and having no authority to kill rabbits for his own use, killed and removed wild rabbits in and from a wood belonging to his master with the intention of selling them. The killing, removing and selling were one continuous act:—Held, that the prisoner was not guilty of embezzlement. *Reg. v. Read* (C.C.R.), 47 Law J. Rep. M.C. 50; Law Rep. 3 Q.B. D. 131.

## (C) PROCEEDS OF CHEQUE.

4.—It was the duty of the prisoner as head manager of a fire insurance company at the head office to receive remittances and cheques sent to the head office from the managers of district branches. These cheques were usually drawn on the local bank and made payable to the prisoner's order. On receipt it was also part of the prisoner's duty to indorse them and hand them over to the cashier, who paid them into the company's bankers and accounted for them in the books. The prisoner received two cheques for the company from district managers of the amounts respectively of 400*l.* and 200*l.* Instead of handing them over to the cashier, he indorsed and cashed the cheques through private friends of his own, and later in the day paid the amount, namely, 600*l.*, to the cashier to be put against his salary account which was overdrawn to that amount. The cashier did so, and returned him I.O.U.s to that amount. After some interval of time the fraud was discovered. The prisoner was indicted for embezzling the two sums of 400*l.* and 200*l.*:—Held, that the prisoner had been guilty of embezzlement of the money notwithstanding that the cash was paid to him by his friends on his own account. *Reg. v. Gale* (C.C.R.), 46 Law J. Rep. M.C. 134; Law Rep. 2 Q.B. D. 141.

## (D) CHATTEL OR VALUABLE SECURITY.

5.—The prisoner, an insurance broker, was entrusted with certain policies of insurance on a ship by the owner of the ship after a loss had occurred, for the purpose of collection. He received the moneys due from the insurers in cheques to his own order, which he indorsed and paid into his own bankers to his own credit, but he failed either then, or at any time afterwards, to pay the amount to the ship owner, and two months later filed a petition for liquidation. The jury found that the policies were entrusted to the prisoner for a special purpose, namely, that he should receive, and when received, forthwith pay over the moneys to the ship owner, and that the prisoner had no authority to sell, negotiate, transfer or pledge the policies, and in violation of good faith converted the proceeds to his own use:—Held, that whether or not a policy of insurance could be considered as a chattel or valuable security within the section, the prisoner had not committed an offence

against the 24 & 25 Vict. c. 96, s. 75. *Reg. v. Tatlock*, 46 Law J. Rep. M.C. 7; Law Rep. 2 Q.B. D. 187.

Cockburn, C.J., and Kelly, C.B., doubted whether a policy of insurance is a chattel or valuable security within the section, but held it to be necessary that at the time of the receipt of the money the prisoner should have intended to have converted it to his own use, and that the statute cannot be applied to a case where, as here, the money is to be retained by the prisoner, and accounted for only after an interval of time by settlement of accounts in the way of business. *Amphlett, B., and Bramwell, B.*, held that the policies of insurance were valuable securities, but were entrusted to the prisoner not for a special purpose within the second part of the section, but that the case was within the first part of the section, and as there was no writing the conviction must be quashed. *Ibid.*

#### EMPLOYER'S LIABILITY.

[Employer made liable in certain cases for injury to servant by defect in machinery, &c., or negligence of fellow-servant. 43 & 44 Vict. c. 42.]

#### EMPLOYERS AND WORKMEN ACT.

[See MASTER AND SERVANT, 1-3.]

#### EMPLOYMENT.

*Common.* [See MASTER AND SERVANT, 5-8.]

*Scops of.* [See MASTER AND SERVANT, 12.]

#### ENCROACHMENT.

*On waste of manor.* [See COPYHOLDS, 2.]

#### ENDOWED SCHOOLS ACT.

1.—The "Endowed Schools Act, 1869," by section 13, provides, "It shall be the duty of the commissioners to provide, in any scheme, for saving or making due compensation for such interest as any teacher or officer in any endowed school, appointed to his office before the passing of the Endowed Schools Act, 1868, may have." The appellant was appointed master of an endowed school before 1868. He held his office at the will of a majority of the governors of his school. After the passing of the Act of 1869 a scheme was adopted under the Act, by which the appellant's office was injuriously affected:—Held, that the appellant had a vested interest in his office within the meaning of this Act, and was therefore entitled to compensation. *Carver v. Allyn's College, Dulwich*, 45 Law J. Rep. P.C. 28; Law Rep. 1 App. Cas. 68 (*nom. In re Dulwich College*).

2.—Inhabitants and ratepayers of a parish having a right under a founder's deed to have their children taught free of expense in a school,

but having no child whose status is injured by a scheme, have not a "vested interest" within the meaning of section 39 of the Endowed Schools Act, 1869. *In re Shaftoe's Charity*, 47 Law J. Rep. P.C. 98; Law Rep. 3 App. Cas. 872.

3.—A deed of foundation permitting persons to remain at school after manhood does not make such endowment or any part of it other than an educational endowment within the meaning of sections 5 and 24 of the Endowed Schools Act, 1869. *In re Hodgson's School*, 47 Law J. Rep. P.C. 101; Law Rep. 3 App. Cas. 857.

The appointment of the rector of a parish for the time being an *ex-officio* governor of a school is not a provision respecting the religious opinions of the governing body within the meaning of section 19 of the Act. *Ibid.*

#### ENDOWMENT.

*Religious tests.* [See UNIVERSITY.]

#### ENFRANCHISEMENT.

[See COPYHOLDS, 4.]

#### ENJOYMENT IN SPECIE.

[See TENANT FOR LIFE, 9-11.]

#### ENTAIL.

[See FINES AND RECOVERIES; SCOTCH LAW, 7-9.]

A married woman having an estate tail settled to her separate use without power of anticipation as to the income, may by a disentailing deed enlarge her estate tail into a fee simple, and limit the fee to her separate use, with a power to dispose of it so as to defeat her husband's title by the curtesy, notwithstanding the bankruptcy of her husband. *Cooper v. Macdonald* (App.), 47 Law J. Rep. Chanc. 373; Law Rep. 7 Ch. D. 288.

*Restrictions on barring: invalidity of.* [See PRACTICE, W 48.]

#### ENTERTAINMENT.

[See PUBLIC ENTERTAINMENT.]

#### ENTRY.

*Forcible.* [See MALICIOUS PROSECUTION, 2.]

#### EQUITABLE ASSETS.

[See HUSBAND AND WIFE, 43.]

#### EQUITABLE ASSIGNMENT.

1.—A debtor wrote to his creditor, who was pressing for payment, a letter as follows, "I hereby transfer to you 500 tons of coal lying at



my wharf, the proceeds to be handed to you till the debt is liquidated." Held, a good equitable assignment. *Ex parte Montagu; in re O'Brien* (App.), Law Rep. 1 Ch. D. 554.

The debtor having the next day filed a liquidation petition, and the creditor having on the following day (without notice of the petition) demanded possession of the goods and been refused,—Held, that the goods were not in the order and disposition of the debtor with consent of the true owner. *Ibid.*

2.—A letter expressed to be a binding assignment upon trusts, by way of voluntary settlement, of certain policies of life assurance (before such policies were at law assignable) and accompanied with delivery of those of the policies which were in the assignee's possession,—Held, to be an effectual equitable assignment, although the writer expressed his intention of subsequently executing a deed to vest the policies in the assignee jointly with another person not yet selected, as trustees, and although some of the policies (being in mortgage to the office) were not handed over, and no notice of the assignment was given to the office. It was the duty of the assignee, not of the assignor, to give notice to the office. The letter contained an undertaking by the assignor (which was not performed) to discharge the mortgage:—Held, that the assignment could be given effect to independently of this undertaking. *In re King's Estate. Sewell v. King*, 49 Law J. Rep. Chanc. 73.

*Bill of Exchange: consignment of goods.* [See BILL OF EXCHANGE, 24.]

*Bankruptcy of assignee.* [See BANKRUPTCY, F 18.]

*Debt to become due: payment to original creditor after notice.* [See DEBTOR AND CREDITOR, 1.]

*Future rent of lands: letter by landlord directing tenants to pay to a third person.* [See STAMP, 4.]

### EQUITABLE MORTGAGE.

[See MORTGAGE, 35–39.]

### EQUITY TO A SETTLEMENT.

[See HUSBAND AND WIFE, 18–22.]

### ESTATE TAIL.

[See ENTAIL.]

*Gift of.* [See WILL CONSTRUCTION, I 4, K 11, 18.]

### ESTOPPEL.

#### (A) BY RECORD.

(a) *Res judicata.*

(b) *Trustee in liquidation electing not to proceed with action.*

#### (B) BY DEED.

#### (C) IN PARS.

#### (A) BY RECORD.

(a) *Res judicata.*

1.—The widow and administratrix of a man who was alleged to have died in consequence of a railway accident, brought an action against the railway company, under Lord Campbell's Act (9 & 10 Vict. c. 98) for the benefit of herself and his children, and recovered damages. She afterwards brought another action, suing again as administratrix, for the benefit of the estate, to recover costs of medical attendance, &c., during his lifetime. The defendants having raised again certain issues which had been determined against them in the former action, she replied that they were estopped from so doing:—Held, that they were not estopped, as the two actions were not brought by her in the same right, the action under Lord Campbell's Act being a statutory action in which she sued as trustee for a specific class of persons, and therefore not brought in the same right as an ordinary action by an administratrix. *Bradshaw v. The Lancashire and Yorkshire Railway Company* (44 Law J. Rep. C.P. 148; Law Rep. 10 C.P. 189) discussed. *Leggott v. The Great Northern Railway Company*, 45 Law J. Rep. Q.B. 557; Law Rep. 1 Q.B. D. 599.

2.—By 2 & 3 Vict. c. 71. s. 40, metropolitan police magistrates are empowered upon a complaint to them of the unlawful detention of goods of less value than 15*l.*, to summon the person complained of, and to enquire into the title thereto, or to the possession thereof, and to order the goods to be delivered up to the owner thereof, either absolutely or upon certain terms, provided that no such order shall bar any person from recovering possession of the goods so delivered by action at law. To an action for the conversion of goods the defendant pleaded an estoppel, setting up 2 & 3 Vict. c. 71. s. 40, and alleging that the plaintiff had complained of the detention of the goods to a metropolitan police magistrate, who summoned the defendant before him, and after enquiring into the title to the goods, dismissed the summons, and thereby adjudicated in favour of the defendant. On demurrer:—Held that such dismissal and adjudication did not bar the action, and that therefore the plea was bad. *Dover v. Child*, 45 Law J. Rep. Exch. 462; Law Rep. 1 Ex. D. 172.

*Judgment in ejectment: estopped only as plaintiff's title at time of action brought.* [See EJECTMENT, 2.]

[And see RES JUDICATA.]

(b) *Trustee in liquidation electing not to proceed with action.*

3.—A trustee in liquidation proceedings who has elected under section 142 of the Common Law Procedure Act, 1852, not to proceed with an action brought by the debtor before the filing of the petition in liquidation, is not thereby

estopped from bringing a fresh action for the same cause. Affirming the judgment of the Court below (46 Law J. Rep. Exch. 33). *Bennett v. Gamgee* (App.), 46 Law J. Rep. Exch. 204; Law Rep. 2 Ex. D. 11.

#### (B) BY DEED.

4.—Covenants for title in a mortgage without recitals do not amount to an estoppel against persons claiming under a mortgagor who has no title at the date of the mortgage, but subsequently acquires a title. *The General Finance, Mortgage and Discount Company v. The Liberator Permanent Benefit Building Society*, Law Rep. 10 Ch. D. 15.

#### (C) IN PAIS.

5.—The plaintiff having agreed with C., an auctioneer, to buy a house which belonged to the defendant, paid a deposit, and signed a memorandum, stating, "I have purchased the property . . . and have paid 70*l.* as a deposit, . . . and agree with the vendor to pay the remainder of the purchase-money." . . . The memorandum was signed by the plaintiff and by C., "as agent for the vendor," and "as auctioneer." There was no further description of who the vendor was. Afterwards the defendant's solicitors duly sent the abstract of title. The plaintiff's solicitors received it and made requisitions, stating that they did so "without prejudice to any question that may arise as to the contract." Ultimately the plaintiff repudiated the contract, on the ground that the memorandum did not disclose the name of the vendor, and brought an action for return of the deposit. The defendant was always ready to carry out the contract:—Held, first, that the plaintiff's conduct in receiving and enquiring into the abstract of title estopped him from denying the validity of the contract. Secondly, that the plaintiff could not sue for return of the deposit on the ground of failure of consideration, inasmuch as the money was paid under full knowledge of the terms of the memorandum, and the defendant was always willing to carry out the contract. *Thomas v. Brown*, 45 Law J. Rep. Q.B. 811; Law Rep. 1 Q.B. D. 714.

Semble (per Mellor, J.), that the contract was not sufficient to satisfy the Statute of Frauds, the vendor not being sufficiently described. *Casson v. Roberts* (31 Beav. 683; 32 Law J. Rep. Chanc. 105), commented on. *Ibid.*

6.—The defendants sold goods to B. & Co., and at the same time handed to B. & Co. two documents, each as follows: "We hereby undertake to deliver to your order indorsed hereon twenty-five tons merchantable zinc off your contract of this date." Before delivery B. & Co. became insolvent and unable to pay the defendants, whereupon the defendants retained the goods by virtue of their lien as unpaid vendors of insolvent purchasers. B. & Co. resold the goods to the plaintiffs, and indorsed and handed to them the two documents above referred to,

In an action by the plaintiffs against the defendants for refusing to deliver the goods, it was held, that inasmuch as the defendants were entitled to set up their lien as against B. & Co., and inasmuch as the two documents were only undertakings to do something, and not representations of any fact, the defendants were not estopped by them from setting up their lien as against the plaintiffs, and were therefore entitled to retain the goods. *Farmilos v. Bain*, 45 Law J. Rep. C.P. 264; Law Rep. 1 C.P. D. 45.

*Certificate of company that shares are fully paid up.* [See COMPANY, D 61.]

*Conduct: liability of railway company for loss of goods by felonious act of their servant.* [See CARRIER, 5.]

*Conduct: solicitors: moneys intrusted for investment.* [See SOLICITOR, 12.]

*Doctrine of, explained.* [See WILL CONSTRUCTION, I 7.]

*Invalid transfers of stock: issue of stock: certificate by company.* [See COMPANY, D 91.]

*Representation inducing contract.* [See FRAUDS, STATUTE OF, 19.]

*Scrip certificates purporting on their face to be transferable by delivery: effect of deposit of.* [See SCRIP CERTIFICATE, 1.]

### EVASIVE DENIAL.

[See PRACTICE, W 9-14.]

### EVIDENCE.

#### (A) ADMISSIBILITY.

(a) *Parol evidence to explain or vary written instrument.*

(1) *To interpret deed: ambiguity.*

(2) *To explain will.*

(3) *To prove contents, alterations, or revocation of will.*

(4) *To vary promissory note.*

(5) *To prove usage of trade.*

(b) *Deceased persons.*

(1) *Admissions or declarations by.*

(2) *Entries by.*

(c) *Entries in banker's books.*

(d) *Public document.*

(e) *Entry by agent in diary.*

(f) *Post-dated cheque.*

(g) *Of title to land.*

(h) *Of legitimacy or illegitimacy.*

(i) *Depositions in suits between strangers.*

(k) *In action for fraud or misrepresentation.*

#### (B) SUFFICIENCY AND EFFECT.

(a) *Admissions.*

(b) *Breach of promise of marriage: corroborative evidence.*

(c) *Proof of contents of lost will.*

(d) *Foreign law: competency of witness.*

(e) *Pedigree, to prove.*

(f) *Chancel: evidence of acts of ownership.*

- (g) *Circumstantial evidence.*
- (h) *In particular cases.*
- (C) PROCEDURE.
  - (a) *Admission of documents, effect of.*
  - (b) *De bene esse.*
  - (c) *Witnesses abroad.*
  - (d) *Evidence on commission.*
- (D) IN CRIMINAL CASES.
  - (a) *Witness too ill to travel.*
  - (b) *False pretences: letters.*
  - (c) *Refreshing memory: time book: limited company.*
  - (d) *Precious conviction.*
  - (e) *Breach of the peace: disqualified person.*

[Entries in banker's book proved by affidavit admissible in evidence (sec. 3). Copies of entries in any account books used by a bank may be proved by affidavit as evidence of such entries without production of the originals (sec. 4). Banks not compellable to produce books unless specially ordered by a Judge (sec. 8). 39 & 40 Vict. c. 48.]

[Amendment of the law of evidence in certain cases of misdemeanour. 40 & 41 Vict. c. 14.]

[Judicial notice to be taken of orders in council and rules of committee of council under Crown Office Act, 1877. 40 & 41 Vict. c. 41. ss. 3, 5.]

[Copies of entries in bankers' books to be received as *prima facie* evidence of such entries. 42 Vict. c. 11.]

#### (A) ADMISSIBILITY.

- (a) *Parol evidence to explain or vary written instrument.*

##### (1) *To interpret deed: ambiguity.*

1.—The plaintiff granted by deed to the defendants a license to use a patented invention for manufacture of rifles, on payment of a royalty, which the defendants covenanted to pay, for every rifle manufactured or produced "under the powers hereby granted." At the time the deed was entered into, as well as previously, the defendants had been manufacturing arms, under contracts, for the British Government, in accordance with the plaintiff's patent, and without paying royalties, under the belief that they were legally entitled to do so; and the deed itself, as the plaintiff knew, was intended by the defendants to apply only to rifles exclusive of those manufactured for the Government. Some years afterwards it was decided that the right of the Crown to the free use of a patent did not extend to manufacturers fulfilling Government contracts, and the plaintiff thereupon brought his action under the deed to recover royalties on all arms so manufactured from the time that the deed was entered into:—Held, that he was not entitled to recover, for though the terms of the license would, *prima facie*, be taken to include every exercise of the patented invention, the words, "under the powers hereby granted," contained a latent

ambiguity, which admitted of parol evidence to shew that the deed was not intended to apply to rifles manufactured for the Government:—Held, also (per Cockburn, L.C.J., and Lush, J.), that irrespective of the construction to be put on the deed, there was a good equitable defence to the claim. *Roden v. The London Small Arms Company (Lim.)*, 46 Law J. Rep. Q.B. 213.

##### (2) *To explain will.*

2.—Testator appointed several executors of his will, amongst them one described as "Percival— of Brighton, Esq., the father:—" Held, that the words were capable of bearing an intelligible meaning, and that extrinsic evidence was admissible to shew who was meant by the description. *In the goods of the Chevalier François de Rosas*, 46 Law J. Rep. P. D. & A. 6; Law Rep. 2 P. D. 66.

- (3) *To prove contents, alterations, or revocation of will.*

*Declarations of testator admissible to shew what were constituent parts of will at time of execution.* [See WILL FORMALITIES, 24.]

*Evidence of alterations in will before execution.* [See WILL FORMALITIES, 16.]

[And see No. 25 *infra*.]

##### (4) *To vary promissory note.*

*Bill of exchange: blank acceptance: drawing and indorsement by apparent drawer forged.* [See BILL OF EXCHANGE, 6.]

##### (5) *To prove usage of trade.*

3.—By a charter party, made at Riga, the plaintiff's ship was to proceed, with a cargo of timber, to Liverpool, and to deliver at such dock there as ordered on arrival. On arrival at Liverpool the ship duly entered into dock, but, in consequence of the crowded state of the dock, was unable for some days to obtain a berth alongside the quay from which she was allowed to discharge:—Held, that in an action for demurrage evidence was admissible tending to shew that, by the custom of the port of arrival, timber ships were not considered to have arrived until they had obtained a discharging berth within the dock. *The Steamship Company, Norden v. Dempsey*, 45 Law J. Rep. C.P. 764; Law Rep. 1 C.P. D. 654.

4.—In an action for wages by an apprentice, upon an indenture, whereby the defendant agreed to find unto the plaintiff sufficient meat, drink and certain yearly wages, "lodging, and all other necessaries," during the term of apprenticeship, the defendant pleaded a set-off of sums paid for clothes and washing for the plaintiff, and sought to shew a usage in his particular business for the master to supply such items in the first instance, and to deduct the sums paid in respect thereof from the wages of the apprentice:—Held, that even if such a usage were proved, it would be repugnant to the

express terms of the contract, and that the evidence was therefore inadmissible. *Abbott v. Bates* (App.), 45 Law J. Rep. C.P. 117; Law Rep. 1 C.P. D. 654.

(b) *Deceased persons.*

(1) *Admissions or declarations by.*

5.—Declarations of a deceased person, claiming a limited interest under a particular will of property of which he was in possession, are admissible to prove the fact that such will had a legal existence, and that certain persons were named executors therein. *Sly v. Sly*, 46 Law J. Rep. P. D. & A. 63; Law Rep. 2 P. D. 91.

The original will was lost. A document purporting to be a copy of it was found amongst the papers of the solicitor of one of the executors named in the will, and the copy was also in the handwriting of the solicitor's clerk, whose name appeared in the copy as that of one of the attesting witnesses:—Held, that the copy was admissible as evidence of the contents of the will. *Ibid.*

6.—R., in the year 1818, took possession of a small strip of unenclosed land by the side of a lane, adjoining enclosures belonging to G. In 1836 an Enclosure Act was passed, giving power to enclose waste and commonable lands. The commissioners appointed by this Act awarded to H. W. G., who was tenant for life of G.'s land under his will, one allotment, which included the land encroached upon by R., and another of a similar character, and he accepted the award, but took no steps to eject R. In 1874 the plaintiff, who had come into possession of the estate as remainderman, brought ejectment. It was admitted that, if G. was entitled in 1818, the defendant had a good title under the Statute of Limitations, but that, if H. W. G. first became entitled under the award, then the plaintiff was in time to claim:—Held, that the presumption was that G. was entitled in 1818 as adjoining owner, but that this presumption was rebutted by the fact that H. W. G. had in 1836 accepted an award of this and other similar land, making thereby an admission against his interest, which admission, he being dead, was evidence to shew that, when he accepted the award, he was not entitled to the land. *Gery v. Redman*, 45 Law J. Rep. Q.B. 267; Law Rep. 1 Q.B. D. 161.

7.—Statements of a deceased vendor, made at the time of sale to indicate the property sold, are, for the purpose of its identification, admissible in evidence. *Parrott v. Watts*, 47 Law J. Rep. C.P. 79.

The Plaintiff claimed, under a surrender of copyhold lands in 1845, to be in possession of a certain piece of waste land within the manor of M., purchased by him from B., the then tenant in possession, who was also the plaintiff's predecessor in title, and the surrenderor under the deed of surrender. In order to identify the land claimed with a parcel of land described in the deed of surrender as "the common piece on

the Mind," the plaintiff stated that at the time of the purchase, B., since deceased, went over the land with him, and pointed out to him "the common piece on the Mind." On objection to this evidence,—Held, that it was admissible, as a declaration accompanying and explaining an act. *Ibid.*

(2) *Entries by.*

8.—In an action for indemnity in respect of shares purchased in the name of the plaintiff as trustee, the plaintiff desired to prove that the shares were purchased for A., one of the defendants, by his stockbroker. The stockbroker having died, the plaintiff tendered in evidence an entry in the stockbroker's daybook, proved to be in his handwriting, and shewing that the shares were purchased by him for the defendant A. on the Stock Exchange. It appeared that the entries in the daybook were regularly made in the ordinary course of business as memoranda of the sales and purchases effected by the stockbroker during the day, which were afterwards copied from the daybook into the ledger:—Held, that the entry in the daybook was not admissible within the rule as to entries made by a deceased person against his pecuniary interest, because it might, according to the turn of the market, be available for the advantage of the stockbroker, as well as against him, nor within the rule as to entries made in the ordinary course of business, inasmuch as it did not appear that the daybook was kept or the entry therein made by the broker in the discharge of any duty by him. *Massey v. Allen*, 49 Law J. Rep. Chanc. 76; Law Rep. 13 Ch. D. 558.

9.—Entries in a log by a deceased seaman in the course of his duty, but not contemporaneous with the facts entered, and not against his interest, are not admissible in evidence. Depositions of a deceased seaman taken by a Receiver of Wreck in the course of his duty are not admissible as evidence in an action of damage. *The Henry Cowen*, 47 Law J. Rep. P. D. & A. 83; Law Rep. 3 P. D. 156.

10.—Entries made by a deceased person in his private cash-book of the receipt of interest from J. W. and referring to a loan to him,—Held, to be evidence against J. W. of the fact of the loan, on the principle that the entries of the receipt of interest were *prima facie* against the interest of the person who made them. *Witham v. Taylor*; *Taylor v. Witham*, 45 Law J. Rep. Chanc. 798; Law Rep. 3 Ch. D. 605.

*Reg. v. The Inhabitants of Lower Heyford* (2 Smith's Leading Cases, p. 300, 6th ed.) followed. *Doe v. Vowles* (1 Moo. & R. 261) disapproved. *Ibid.*

[And see No. 12 infra.]

(c) *Entries in bankers' books.*

11.—Copies of entries in bankers' books were admitted as evidence in favour of a customer against a third party. *Harding v. Williams*, 49 Law J. Rep. Chanc. 661; Law Rep. 14 Ch. D. 197.

(d) *Public document.*

12.—A report made by a public department to the Government in discharge of their duty, and in answer to a reference to them, is not admissible as evidence of the facts stated in such report. An action was brought by S., whose claim depended upon the question whether A. M. (No. 1) was identical with A. M. (No. 2), who was born in 1744, at Quarto, near Genoa. S. tendered in evidence a document which came from the public archives at Genoa, being a report of a public department called the *Giunta della Marina* to the Genoese Senate, in answer to a reference directed by the Senate to enquire as to the fitness of A. M. (No. 1) for the post of diplomatic agent in London. There was evidence that this department was a permanent office, whose duty it was to entertain such references and to report thereon. Their report stated his fitness, and also that A. M. (No. 1) was a native of Quarto, about forty-five years of age (which would identify him with A. M. (No. 2), born in 1744), and that these facts had been ascertained from persons well acquainted with him. The Senate on that report appointed him to the post:—Held (affirming the decision of Malins, V.C.), that such document could not be admitted as evidence of the place of birth and age, either on the ground of its being a public document coming from the proper custody, or as an entry of a contemporaneous fact by a person whose duty it was to make an entry of that particular fact at the time. To make an entry by a deceased person evidence of a fact, it must be, first, an entry of a transaction effected by the person who makes the entry; second, an entry made at the time of the transaction, or near to it; third, an entry made in the usual course and routine of business by that person; fourth, that the person making the entry had at that time no interest to misstate what had occurred, per Brett, L.J. *Polini v. Gray*; *Sturla v. Freccia* (App.), 49 Law J. Rep. Chanc. 41; Law Rep. 12 Ch. D. 41; affirmed on appeal by the House of Lords, 50 Law J. Rep. Chanc. 86.

The practice with regard to admission of evidence before the Committee of Privileges, and as to admissibility of heralds' visitations, discussed. *Ibid.*

*Advertisements of Queen Elizabeth.* [See CHURCH AND CLERGY, 33.]

(e) *Entry in diary of agent.*

13.—An entry in a diary kept by an agent is not admissible to prove a fact therein stated, unless it is shewn that it was the duty of the agent to make the whole entry. *Trotter v. Maclean*, Law Rep. 13 Ch. D. 574.

(f) *Post-dated cheque.*

14.—A cheque payable to bearer on demand, and having the stamp proper for such an instrument affixed, is admissible in evidence in an action by the holder upon it after it has become

due, although it was post-dated to his knowledge at the time he received it. *Gatty v. Fry*, 46 Law J. Rep. Exch. 605; Law Rep. 2 Ex. D. 265.

(g) *Evidence of title to land.*

15.—A sealed copy of a Tithe Commutation Map is not receivable in evidence on a question of ownership of land. *Wilberforce v. Hearfield*, 46 Law J. Rep. Chanc. 584; Law Rep. 5 Ch. D. 709.

*Action to recover demised land: evidence of title.* [See CHARITY, 24.]

(h) *Of legitimacy or illegitimacy.*

16.—Evidence of a husband on question of non-access, and consequent illegitimacy of some of the children born during the marriage, held to be admissible, but not to be acted upon unless corroborated by other evidence. *In re Rideout's Trusts* (39 Law J. Rep. Chanc. 192), followed. *In re Yearwood*, 46 Law J. Rep. Chanc. 478; Law Rep. 5 Ch. D. 545.

17.—Proceedings were instituted by a board of guardians to compel a husband to support a child born of his wife during marriage. The husband opposed the proceedings on the ground that the child was illegitimate by reason of the adultery of the wife:—Held, not to be "a proceeding instituted in consequence of adultery," within the meaning of the Evidence Further Amendment Act, 1869 (section 3), so as to make the husband competent to give evidence tending to prove the fact of non-access. *In re Rideout's Trusts* (39 Law J. Rep. Chanc. 192; Law Rep. 10 Eq. 41) and *In re Yearwood* (see last case) considered. *The Guardians of the Poor of Nottingham Union v. Tomkinson*, 48 Law J. Rep. M.C. 171; Law Rep. 4 C.P. D. 843.

18.—A will was admitted as evidence of the illegitimacy of the testator's reputed son. *Murray v. Milner*, 48 Law J. Rep. Chanc. 775; Law Rep. 12 Ch. D. 845.

19.—In an action to determine the right to letters of administration, the issue being as to the legitimacy of certain persons, copies of registers of baptism in India transmitted to the India Office were held to be admissible. *The Queen's Proctor v. Fry*, 48 Law J. Rep. P. D. & A. 68; Law Rep. 4 P. D. 230.

*Marriage by repute.* [See MARRIAGE, 2.]

*Paternity, presumption of.* [See PRESUMPTION, 3.]

(i) *Depositions in suit between strangers.*

20.—Depositions in the custody of the Court, which were taken in a former suit to perpetuate testimony, were ordered to be published, on the application of one of the parties to a subsequent suit, the other of whom was a stranger to the former suit, and the time for taking evidence in the second suit was extended in order to give both parties an opportunity of considering the information so obtained; the Court being of opinion that though the depositions might not themselves be evidence, they

might be the means of supplying valuable information to both parties. *Vane v. Vane* (App.), 45 Law J. Rep. Chanc. 589; Law Rep. 2 Ch. D. 124.

(k) *In action for fraud or misrepresentation.*

21.—In an action for damages for misrepresentation on sale of goods, where a misrepresentation by the defendant, knowing the same to be untrue, was proved,—Held, that the defendant could not be asked, on examination in chief, whether he believed such representation to be true. *Hine v. Campion*, Law Rep. 7 Ch. D. 344.

22.—The plaintiff sought to recover from a life assurance company the premium he had paid for insuring his life with the company, on the ground that he had been induced to effect such insurance by the fraud of a person who had various fictitious names, and who, with the knowledge and connivance of the company, pretended that he would lend the plaintiff money if he so insured his life with the company, but who, when such insurance was effected, imposed such conditions on the plaintiff before he would lend the money as had the effect intended by him of preventing the loan from being made. In support of such case the plaintiff produced at the trial evidence of other persons who had in a similar way been induced to insure their lives with the said company under the pretence of a loan which, in like manner, was never made, and which evidence went to shew that the transaction with the plaintiff was one of a class of transactions of the same nature:—Held, that such evidence was admissible. *Blake v. The Albion Life Assurance Society*, 48 Law J. Rep. C.P. 169; Law Rep. 4 C.P. D. 94.

*Misrepresentation by auctioneer: evidence of what took place at sale.* [See WAY, 4.]

(B) SUFFICIENCY AND EFFECT.

(a) *Admissions.*

23.—Where the plaintiff had not given evidence the defendants were allowed to put in letters written by the plaintiff to a third person containing admissions though they had not been pleaded. *Stewart v. Gladstone*, 47 Law J. Rep. Chanc. 423; Law Rep. 10 Ch. D. 626.

*Confession by respondent in divorce suit.* [See DIVORCE, 36.]

(b) *Breach of promise of marriage: corroborative evidence.*

24.—In an action for breach of promise of marriage, to corroborate the promise alleged by the plaintiff, a witness was called who deposed that she had overheard the plaintiff say to the defendant, "You always promised to marry me, and you never keep your word," and that the defendant had not then denied the promise:—Held (by the Court of Appeal, reversing the judgment of the Common Pleas Division), that this was "material evidence in support of

the promise of marriage" within 32 & 33 Vict. c. 68. s. 2. *Bessela v. Stern* (App.), 46 Law J. Rep. C.P. 467; Law Rep. 2 C.P. D. 265.

(c) *Proof of contents of lost will.*

25.—The testator, possessed of considerable real and personal estate, duly made and executed a holograph will, to which, at different times, he added eight codicils. The will and codicils were kept in a common box accessible to the inmates of the house. Upon the testator's death, the will was missing, and was never found. Thereupon, a daughter of the testator wrote out the contents of the will from memory, there being no draft or copy of it. The daughter had lived with the testator all her life; he had constantly consulted her about the will and explained its provisions to her, and she had from time to time assisted him to make and alter it. It was admitted that there were some ulterior limitations of the real estate, and some small legacies which the daughter could not remember, but her veracity and honesty of purpose were not impugned by those who opposed probate. By the alleged will the daughter took a considerable share in the testator's property, and particularly in the residuary personal estate. Her statement of the will was, in some degree, corroborated as to the reality by the codicils, and as to the personalty by other papers of the testator's found in the box, and also by his verbal declarations made after the execution of the will to his friends and relatives, but there was no direct corroboration of the residuary bequest to the daughter. The Court, being satisfied that there was sufficient evidence to rebut the presumption of the testator's having destroyed the will "*animo revocandi*," and being also satisfied that the contents of the will were substantially as stated by the daughter,—Held (affirming the decree of the President of the Probate Division, 45 Law J. Rep. P. D. 1), that probate of the will as written down by the daughter should be granted. *Sugden v. Lord St. Leonards* (App.), 45 Law J. Rep. P. D. & A. 49; Law Rep. 1 P. D. 154.

The Court also, overruling the case of *Quick v. Quick* (3 Sw. & Tr. 442),—Held (Mellish, L.J., dissenting), that declarations made by the testator, whether before or after the execution of the will, were admissible as evidence of its contents. *Ibid.*

(d) *Foreign law: competency of witness.*

26.—A witness whose knowledge of the law of a foreign country is derived solely from having studied it, is incompetent to prove the operation or effect of such law. *In the goods of Bonelli*, 45 Law J. Rep. P. D. & A. 42; Law Rep. 1 P. D. 69.

(e) *Pedigree, to prove.*

27.—The plaintiff, in an action for the recovery of land, claiming through the paternal grandmother of the purchaser, proved his own descent from the grandmother, and accounted

for the paternal ancestors of the purchaser and their descendants, as far back as his grandfather; but did not further exhaust the male line or preferential female branches, except by shewing that the heir-at-law had been advertised for in newspapers, and that reasonable enquiries had been made, and no heir found. The defendants, by producing wills and other documents, proved the existence of other members of the family, whose descendants, had they existed, would have had a prior claim to the plaintiff:—Held (on appeal from the Exchequer Division, 45 Law J. Rep. Ex. 795), that there was evidence from which the jury might find in favour of the plaintiff. *Greaves v. Greenwood* (App.), 46 Law J. Rep. Exch. 252; Law Rep. 2 Ex. D. 289.

Stricter proof is required of the exhaustion of branches of a family in recent than in early times; very slight evidence being sufficient in the case of remote branches. *Ibid.*

*Of marriage by repute.* [See MARRIAGE, 2.]

(f) *Chancel: evidence of acts of ownership.*

28.—The church of St. Nicholas, Arundel, regarded as one building, is a cross church, with a nave and aisles, a central tower, transepts rather shorter than would be usual in a church of such proportions, and eastward of the central tower and transepts, a building called the Fitzalan Chapel, which occupies the place commonly filled by the parish chancel, but which has never been used as such:—Held (by Lord Coleridge, C.J.), on motion for judgment, on evidence of numerous acts of ownership by the plaintiff and his ancestors for more than three hundred years in respect of such chapel, to the exclusion of the vicar and his parishioners, and on documentary title, beginning from the time of the founder in the fourteenth century, not inconsistent with such rights of ownership, that the said Fitzalan Chapel was the private property of the plaintiff, and not the parochial chancel of the church. *The Duke of Norfolk v. The Rev. George Arbuthnot*, 48 Law J. Rep. C.P. 737; Law Rep. 4 C.P. D. 290; affirmed on appeal, 49 Law J. Rep. C.P. 782; Law Rep. 5 C.P. D. 390.

(g) *Circumstantial evidence.*

29.—In considering circumstantial evidence all the circumstances must be examined and compared. The Court derives much aid from the opposing criticisms of counsel. *In re the Belhaven and Stanton Peerage* (H.L. Sc.), Law Rep. 1 App. Cas. 278; and see *The Mar Peerage Case* (H.L. Sc.), Law Rep. 1 App. Cas. 1.

(h) *In particular cases.*

*Bankruptcy: disclaimer: notice sent by registered letter.* [See BANKRUPTCY, F 49.]

*Death, presumption of.* [See PRESUMPTION, 1.]

*Dedication of highway: onus.* [See HIGHWAY, 2.]

*Interference with right of common.* [See COMMON, 5.]

*Negligence by plaintiff: estoppel: negligence not in course of the transaction.* [See NEGLIGENCE, 22.]

*Of intention to keep mortgage alive.* [See MORTGAGE, 21.]

*Onus of proof: winding up: purchase of shares by director.* [See COMPANY, H 77.]

*Publication of rate.* [See HIGHWAY, 3.]

### (C) PROCEDURE.

(a) *Admission of documents: effect of.*

30.—The admission of documents as evidence in an action does not make them evidence in the action unless they are read or put in and marked by the registrar at the trial. *Watson v. Rodwell* (App.), 48 Law J. Rep. Chanc. 209; Law Rep. 11 Ch. D. 150.

(b) *De bene esse.*

31.—A suit was instituted in 1815 for a declaration of title to mines and minerals, and witnesses were examined by commission *de bene esse* in that year, but nothing had been done in the suit since 1818. In modern suits for, in effect, the same purpose, the evidence had been closed, and the suits were ready to be set down for hearing. On motion in all the suits publication of the ancient evidence was allowed, and an order was made as in *The Duke of Hamilton v. Meynal* (2 Dick. 788; 2 Ves. Sen. 497). *Moggridge v. Hall*. *Lady Llanover v. Homfray*. *Phillips v. Lady Llanover*, Law Rep. 13 Ch. D. 380.

(c) *Witnesses abroad.*

32.—A cause in the paper for hearing was ordered to stand over, on application on behalf of the plaintiff, who was at Calcutta, and sixteen days afterwards the plaintiff took out a summons to have evidence taken abroad, but the Court, on the ground of such delay and former delay on the plaintiff's part, refused his application with costs. *Stewart v. Gladstone*, 47 Law J. Rep. Chanc. 154; Law Rep. 7 Ch. D. 394.

(d) *Evidence taken on commission.*

33.—Where in an action a commission had issued to take evidence abroad, and both parties being represented, secondary evidence had been received of the contents of a written document without objection,—Held, that it was not competent to one of the parties afterwards, upon the hearing of the reference of the cause before an arbitrator, to dispute the admissibility of the evidence so taken and returned by the commissioners in the depositions. *Robinson & Company v. Davies & Company*, 49 Law J. Rep. Q.B. 218; Law Rep. 50 Q.B. 26.

*Privilege of witness: statement by witness in judicial proceedings.* [See LIBEL, 5.]

[And see BANKRUPTCY, M 45, 46; COMPANY, H 88-91; PRACTICE, K.]

## (D) IN CRIMINAL CASES.

(a) *Witness too ill to travel.*

**34.**—A woman may from pregnancy alone be "so ill as not to be able to travel," and her deposition therefore be admitted in evidence under 11 & 12 Vict. c. 42. s. 17. *Reg v. Welings* (C.C. R.), 47 Law J. Rep. M.C. 100; Law Rep. 3 Q.B. D. 426.

(b) *False pretences: letters.*

**35.**—The prisoner inserted an advertisement in a newspaper offering employment to persons who would transmit him one shilling's worth of postage stamps, and giving an address. The advertisement contained false statements, and upon his being apprehended six envelopes addressed to him and containing a reply to the advertisement, and a shilling's worth of postage stamps were found upon him. Two hundred and eighty-one other letters contained in a sealed bag were produced on the trial by a clerk from the post-office, and on the bag being opened the letters were taken out and read, and appeared to be addressed to the prisoner replying to his advertisement, and enclosing each one shilling's worth of postage stamps. These 281 letters had been stopped and opened by the post-office authorities before delivery to the prisoner, and had never been in his possession, or their contents brought to his knowledge; nor was there any proof as to their authenticity or otherwise:—Held, that they were admissible against the prisoner on an indictment charging him with obtaining, and attempting to obtain, money by false pretences from four persons other than the writers of the letters. *Reg. v. Cooper* (C.C. R.), 45 Law J. Rep. M.C. 15; Law Rep. 1 Q.B. D. 19.

(c) *Refreshing memory: time book: limited company.*

**36.**—Entries made in a time book of a colliery by the time-keeper may be referred to by the pay clerk to refresh his memory, if the pay clerk has seen the entries at the time of the time-keeper calling them out at pay time, in order to prove that the pay clerk paid certain sums at the pay time. *Reg. v. Langton* (C.C. R.), 46 Law J. Rep. M.C. 136; Law Rep. 2 Q.B. D. 296.

In order to satisfy the allegation in an indictment laying the property in a limited company, it is not necessary to prove the incorporation of the company by the certificate of incorporation, but it is sufficient to shew that the company acted and carried on business in fact as such company. *Ibid.*

(d) *Proof of previous conviction.*

**37.**—A party to a cause who gives evidence in support of his case may be cross-examined as to whether he has ever been convicted of a felony or misdemeanour, and if he denies or refuses to answer it, the opposite party may

prove such conviction under section 25 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), although the fact of such conviction be altogether irrelevant to the matter in issue in the cause. *Ward v. Sinfield*, 49 Law J. Rep. C.P. 696.

(e) *Breach of the peace: disqualified person.*

*Breach of the peace: person complained of, disqualified from giving evidence.* [See JUSTICE OF THE PEACE, 12.]

*Bigamy: evidence of marriage.* [See BIGAMY.]

*Perjury: institution of suit.* [See PERJURY, 2.]

## EXCESSIVE APPOINTMENT.

[See POWER, 15, 16.]

## EXCHANGE.

*Power of, partition under.* [See POWER, 24.]

*Of livings.* [See CHURCH AND CLERGY, 3.]

*Of land tax.* [See INCLOSURE, 1.]

## EXCHEQUER.

*Right of Crown to bring proceedings into.* [See CROWN, 5.]

## EXCISE.

*Duty on gold plate.*

A person who had taken out a license to deal in plate, under 30 & 31 Vict. c. 90, at the lower rate of duty, 2l. 6s., which, by the terms of the Act, does not extend to the sale of an article, composed wholly or in part of gold, "where the gold shall be of the weight of two ounces or upwards," sold, as a gold chain, a chain weighing more than two ounces, but containing less than two ounces of pure gold:—Held, under 30 & 31 Vict. c. 90. ss. 1, 3, 5, that he had dealt in plate without a proper license, inasmuch as the Act did not mean, by "gold" of the weight of two ounces or upwards, pure gold. *Young v. Cook*, 47 Law J. Rep. M.C. 28; Law Rep. 3 Ex. D. 101.

## EXCLUSIVE POWER.

[See POWER.]

## EXECUTION CREDITOR.

[See JUDGMENT.]

[See BANKRUPTCY, C 12, D 21, 23; COMPANY, H 46, 47, 87.]

## EXECUTOR.

## (A) APPOINTMENT OF.

(a) *Executor according to the tenor.*

(b) *Appointment void for uncertainty.*



## (B) RIGHTS, POWERS AND DUTIES.

- (a) *Right of retainer of own debt.*
- (b) *Set-off of debt against legacy.*
- (c) *Right of, to surplus as against Crown.*
- (d) *Right of, to maintain trespass against person interfering with assets.*
- (e) *Right to pay creditors in full.*
- (f) *"Executorship" or "testamentary" expenses.*
- (g) *Compromise by executors of debt due by one of them.*

## (C) LIABILITIES OF.

- (a) *Executor de son tort.*
- (b) *Advertisement for creditors.*
- (c) *Conversion of speculative securities.*
- (d) *Occupation rent.*
- (e) *Overpayment of residuary legatee.*
- (f) *Following assets: right to sue residuary legatee without joining executor.*
- (g) *Loss of assets.*
- (h) *Carrying on testator's business.*

## (A) APPOINTMENT OF.

- (a) *Executor according to the tenor.*

1.—A testatrix appointed the executors of her will in the terms following: "I appoint my said sister S. B. my executrix, only requesting that my nephews F. P. and J. A. B. will kindly act for or with this dear sister"—Held, that F. P. and J. A. B. were executors according to the tenor. *In the goods of Brown*, 46 Law J. Rep. P. D. & A. 31; Law Rep. 2 P. D. 110.

2.—Where a testator gave to A. and B. all his real and personal estate, to apply the same after payment of debts to the payment of legacies.—Held, that A. and B. were executors according to the tenor. *In the goods of William Bell*, Law Rep. 4 P. D. 85.

- (b) *Appointment void for uncertainty.*

3.—B., by his will, left all his property to his three sisters therein named, or to such of them as were alive at the time of his decease, and appointed "either one of my three sisters my sole executrix." Two of the three sisters predeceased the testator, and on his death A., the surviving sister, applied for a grant of probate of the will as executrix. The Court rejected the motion, holding the appointment of "either of my three sisters" to be void for uncertainty. *In the goods of Blackwell*, 46 Law J. Rep. P. D. & A. 29; Law Rep. 2 P. D. 72.

## (B) RIGHTS, POWERS AND DUTIES.

- (a) *Right of retainer of own debt.*

4.—In an administration action an order was made in chambers, on an application by the plaintiffs in the presence of the executor, directing an insurance office to pay into Court to the credit of the action certain policy moneys due to the testator. On further consideration

of the action, the executor, who was a creditor of the testator, claimed to retain his debt out of the moneys so paid in, in priority to the costs of the action and the debts of the creditors.—Held (reversing the decision of Hall, V.C.), (48 Law J. Rep. Chanc. 248; Law Rep. 10 Ch. D. 727), that the payment into Court in the presence of the executor must be treated as a payment to him, and payment into Court by him, and that as an order to pay into Court never prejudiced the rights of an executor, the executor still had the right of retainer, and that it was not incumbent on the executor to get inserted in the order directing the payment into Court any words preserving his right. *Richmond v. White* (App.), 48 Law J. Rep. Chanc. 798; Law Rep. 12 Ch. D. 321.

5.—In an administration suit an executor has no right of retainer in respect of a debt proved by a creditor under the decree, and subsequently bequeathed to him by the creditor. *Jones v. Evans*, 45 Law J. Rep. Chanc. 751; Law Rep. 2 Ch. D. 420.

6.—Under the Married Woman's Property Act, 1870, the separate earnings of a deceased married woman are equitable assets distributable *pari passu* amongst all her creditors, and her executor is therefore not entitled to retain his own debt out of such separate earnings in priority to her other creditors. *In re Poole's Estate. Thompson v. Bennett*, 46 Law J. Rep. Chanc. 803; Law Rep. 6 Ch. D. 739.

7.—A mortgagee, who is also executor of a deceased mortgagor, cannot retain the amount of a simple contract debt due to himself out of surplus proceeds of sale in his hands as against specialty creditors of the mortgagor. *Talbot v. Frere*, Law Rep. 9 Ch. D. 568.

- (b) *Set-off of debt against legacy.*

8.—A legacy given to executors in trust had been invested in the names of the executors and tenant for life.—Held, that as against a mortgagee the executors could not retain the dividends to satisfy a debt from the tenant for life to their testator's estate. *Ballard v. Marsden*, 49 Law J. Rep. Chanc. 614; Law Rep. 14 Ch. D. 374.

- (c) *Right of, to surplus as against Crown.*

9.—A testatrix, by her will dated in 1878, after directing her just debts and funeral expenses to be paid by her executors, appointed her friend and medical adviser, R., and her friend, C., solicitor, her executors, and gave a number of legacies, including one of 1,000*l.* to R., and another of 100*l.* to C., and revoked all other wills made by her. The testatrix died in 1878, without any next-of-kin, possessed of large personal estate.—Held, that the executors, R. and C., were absolutely entitled as against the Crown to the personal estate for their own benefit. *In re Knowles; Roose v. Chalk*, 49 Law J. Rep. Chanc. 625.

(d) *Right of, to maintain trespass against person interfering with assets.*

10.—The defendant, the wife of H. G.'s brother, was present in his house at H. G.'s death, and put away certain jewellery belonging to him in a cupboard, with the *bona fide* object of protecting it. The jewellery disappeared:—Held, that the defendant's act amounted to a trespass, and the executor of H. G. was entitled to nominal damages. *Kirk v. Gregory*, 45 Law J. Rep. Exch. 186; Law Rep. 1 Ex. D. 55.

Semble, if the articles had reasonably required protection, and the act of the defendant had been a reasonable precaution for that purpose, the trespass would have been justified. *Ibid.*

*Statutory fraud: survival of cause of action to administratrix.* [See ACTION, 1.]

(e) *Right to pay creditors in full.*

11.—An executor in passing his accounts was allowed payment in full of creditors after notice of an administration action. A plaintiff can only prevent such payment by applying immediately after issue of writ. *In re Radcliffe. The European Assurance Society v. Radcliffe*, Law Rep. 7 Ch. D. 733.

(f) *"Executorship" or "testamentary" expenses.*

12.—There is no difference in a will between the terms "executorship expenses" and "testamentary expenses," and the former will include all such expenses as are properly incident to the duty of an executor, just in the same way as "testamentary expenses." *Sharp v. Lush*, 48 Law J. Rep. Chanc. 231; Law Rep. 10 Ch. D. 468.

"Executorship expenses" held to include the costs of an administration suit, the funeral expenses of the testator, the payment of rent of a house inhabited by him, and a charge for warehousing specific legacies. *Ibid.*

*Duty of executor whose testator holds shares in joint-stock bank.* [See TRUST, D 13.]

(g) *Compromise by executors of debt due by one of them.*

13.—A., an executor, who was a debtor to his testator's estate, and also entitled to a share of residue, duly agreed with his co-executors to set off the estimated value of his share of residue against his debt *pro tanto*. He afterwards became insolvent, and agreed by way of compromise to pay 5s. in the pound, secretly, however, arranging with some of the creditors to pay them further sums; but in carrying out this compromise the agreement for set-off was disregarded, and A.'s debt treated as fully payable and his share in the residue as revived:—Held, that the agreement for set-off extinguished A.'s debt *pro tanto*, and also A.'s share in the residue, so far as such share did not exceed or fall short of its estimated value. Held also, that the agreement of compromise was a

breach of trust and void as against legatees, and fraudulent as respected A., and that the secret arrangement, though legally binding, vitiated the contract. Held, further, that A. was liable to the estate for the full amount of what would have been due from him if the compromise had never been made, and the co-executors were severally liable for so much of the said amount as would or might have come to their hands but for their wilful neglect and default. *De Cordova v. De Cordova* (P.C.), Law Rep. 4 App. Cas. 692.

(C) LIABILITIES OF.

(a) *Executor de son tort.*

14.—B. was manager of some iron works, and as such lived in a house in the neighbourhood. B. died intestate and insolvent on the 22nd of June, 1877. Shortly after his decease and before letters of administration could be taken out, the widow was required to vacate the premises, and it became necessary to remove the furniture which belonged to the deceased. Accordingly, part of it was taken by her to a smaller house, and afterwards purchased by her, and the residue sold by auction. The proceeds of the auction, as well as the valuation price of the goods retained by the widow, were duly handed over to the administrator afterwards appointed. Actions having been brought both against the widow and the auctioneer, charging them respectively as executors *de son tort*,—Held, that they were not liable, on the ground that there had been no wrongful intermeddling with the assets, or dealing with them in such a way as denoted a usurpation of the functions of an executor. *Peters v. Leeder; Sams v. Borquet*, 47 Law J. Rep. Q.B. 573.

15.—A testator died in this country, having appointed executors in Australia. There were some assets of the testator's in the hands of H. G. & Co. in England. The plaintiff, a creditor of the testator, brought an action against the executors here for the administration of the estate; and also against H. G. & Co. as executors *de son tort*. The plaintiff alleged that the executors had not proved the will. He did not specifically state that H. G. & Co. were executors *de son tort*, or that the estate was insolvent, or that there was collusion, fraud or waste with respect to it. He merely stated acts shewing generally that H. G. & Co. had got in part of the assets without due authority; that they meant to transmit them to the executors in Australia, who had not done their duty; and then prayed an injunction to restrain H. G. & Co. from parting with the assets in their hands, except under the order of the Court. H. G. & Co. demurred to the action:—Held, that the demurrer must be overruled with costs. *In re Lovett. Ambler v. Lindsay*, 45 Law J. Rep. Chanc. 768; Law Rep. 3 Ch. D. 198.

(b) *Advertisement for creditors.*

16.—The 29th section of 22 & 23 Vict. c. 35 is equally for the protection of executors and

administrators against the after-claims of next-of-kin, as against the after-claims of creditors; therefore, a notice pursuant to that section, to "creditors and others," to send in their claims, will include next-of-kin. *Newton v. Sherry*, 45 Law J. Rep. C.P. 257; Law Rep. 1 C.P.D. 246.

A girl of eighteen left her home, and went to America, where she changed her name, and remained, without communicating with her relatives. Nineteen years after she returned to England, and then heard that her mother, who was her sole surviving parent, was dead, and that letters of administration had been taken out and the estate distributed by S., who, before doing so, had entered into the usual administration bond. She procured an assignment of the bond, and sued the defendants for not properly administering the estate according to law. The defendants claimed protection on the ground that S. had, before administering the estate, issued notices to "creditors and others," pursuant to 22 & 23 Vict. c. 35. s. 29, to send in their claims, which they had advertised in the London papers, and that the plaintiff had not sent in her claim:—Held, that under the circumstances, the notices were properly advertised, and the defendants were protected. *Ibid.*

(c) *Conversion of speculative securities.*

17.—The estate of a testator consisted in part of three second mortgage bonds of an American railway company, for the nominal sum of 1,000 dollars each. A month after his death the market price was 153½ per bond. After this the price fell continuously, and sixteen months after the testator's death the executors sold two of the bonds for 52½ a piece. A suit to administer the estate was instituted by three out of the four residuary legatees, and when the suit came to a hearing, nearly three years after the testator's death, the third bond, which still remained unsold, was worth in the market only 10½. One of the residuary legatees had pressed the executors to sell the bonds; the other three had assented, or had not objected, to the postponement of the sale:—Held, that, under the circumstances, the executors had exercised a reasonable discretion, and were not liable to make good the loss sustained by the estate. *Buxton v. Buxton* (1 Myl. & Cr. 80) followed. *Marsden v. Kent* (App.), 46 Law J. Rep. Chanc. 497; Law Rep. 5 Ch. D. 698.

(d) *Occupation rent.*

18.—Executors directed to sell real estate who permit one of their number to hold stores and buildings at less than a fair occupation rent are chargeable with such rent. *De Cordova v. De Cordova* (P.C.), Law Rep. 4 App. Cas. 692.

(e) *Overpayment of residuary legatee.*

[See ADMINISTRATION, 42.]

(f) *Following assets: right to sue residuary legatee without joining executor.*

19.—Where a testator's estate has been distributed and the residue paid to the residuary legatee, an unpaid creditor of the testator may sue the residuary legatee for payment of his debt out of such residue, without joining the executor as defendant. *Hunter v. Young* (App.), 48 Law J. Rep. Exch. 689; Law Rep. 4 Ex. D. 256.

The statement of claim shewed that the defendant was the residuary legatee and personal representative of the residuary legatee of S. W. who was indebted to the plaintiff, that the estate of S. W. had been distributed, and that the residue had been paid by the executors to the defendant, and claimed payment of the debt out of such residue:—Held, on demurrer (by Bramwell, L.J., and Thesiger, L.J., *dubitante*, Baggallay, L.J., reversing the decision of Cleasby, B.), that the statement of claim shewed a good cause of action against the defendant, and that it was not necessary to join the executor of S. W. as a defendant. *Ibid.*

(g) *Loss of assets.*

20.—An executor is not liable for loss of the testator's assets come to his hands unless he has been guilty of wilful default. The rule is the same both at law and in equity. *Job v. Job*, Law Rep. 6 Ch. D. 562.

(h) *Carrying on testator's business.*

21.—If a trader directs his executor to carry on his trade, and to employ a certain portion of his estate for that purpose, although the executor is personally liable for debts incurred in carrying on the trade in accordance with the trusts of the will, he has the right to resort for indemnity to the portion of the estate set apart for that purpose, but no further, and the creditors of the business are entitled to stand in the place of the executors and to have the benefit of his rights so as to obtain payment of their debts. The above rule, however, does not apply where the executor is indebted to the trust estate directed to be used in carrying on the trade of the testator; and in such case, the executor not being entitled to any indemnity from the assets unless he first makes good his default, the creditors will be in no better position than the executor, and are not entitled to have their debts paid out of the assets set apart for the business unless the executor's default is first made good. If in such a case the claim of a creditor against the estate is disallowed by the chief clerk, the proper mode for him to establish the same is to proceed by way of petition and not by summons. *In re Johnson*. *Shearman v. Robinson*, 49 Law J. Rep. Chanc. 745; Law Rep. 12 Ch. D. 548.

*Executor adopting suit held personally liable for costs.* [See COSTS, 57.]

## EXECUTORY DEVISE.

1.—Testator devised houses to his four sons, share and share alike, with a proviso against division or alienation without their respective consent, and in case of no such distribution being made certain executory gifts over were made:—Held, that the executory devise was void. *Shaw v. Ford*, 47 Law J. Rep. Chanc. 531; Law Rep. 7 Ch. D. 669.

An executory devise, which would defeat or abridge an estate in fee, and alter the course of devolution, and can only take effect at the moment of devolution, is void. *Ibid*.

An executory devise, which would defeat an estate, and would take effect on the exercise of a right incident to that estate, is void. *Ibid*.

2.—Testator devised hereditaments to T. for life, and after his decease to his eldest son if he should have attained the age of twenty-one years, or so soon as he should arrive at that age, and in default of his having a son, he gave the same to the eldest son of H. T. died, leaving an infant son. One of the Vice-Chancellors held that the infant son was entitled to an estate for life, contingently on his attaining the age of twenty-one, and that in the meantime the rents and profits, from the death of T., were undisposed of. But upon appeal it was held that he took a vested estate in fee, with an executory devise to T. in tail, if his son should die under twenty-one. *Andrew v. Andrew* (App.), 45 Law J. Rep. Chanc. 232; Law Rep. 1 Ch. D. 410.

## EXECUTORY LIMITATIONS.

*Accumulation of rents.* [See WILL CONSTRUCTION, D 10.]

## EXMOUTH MARKET ACT.

[See MARKET, 2.]

## EXONERATION OF CHARGES.

[Extension of the application of the Acts 17 & 18 Vict. c. 113, and 30 & 31 Vict. c. 69, to hereditaments of every tenure. 40 & 41 Vict. c. 34.]

[See ADMINISTRATION, 13-16.]

## EXPLOSIVE SUBSTANCES.

[Power to prohibit exportation or importation of arms, ammunition, gunpowder, &c. 39 & 40 Vict. c. 36, s. 43; 42 & 43 Vict. c. 21, s. 8.]

## EXPROPRIATION.

*Canadian lands.* [See COLONIAL LAW, 8-11.]

## EXTENSION OF PATENT.

[See PATENT.]

## EXTENSION OF TIME.

[See PRACTICE.]

## EXTRADITION.

1.—Upon a rule for a *habeas corpus* to discharge a prisoner arrested under the Extradition Acts, 1870 and 1878, on the ground that the warrant whereon he was arrested did not sufficiently describe the offence, it appeared that the warrant (which was a warrant issued by a metropolitan police magistrate without the order of a Secretary of State) described the offence as "the commission of crimes against bankruptcy law":—Held, that the warrant sufficiently described the offence. *In re Terras*, 48 Law J. Rep. Exch. 214; Law Rep. 4 Ex. D. 63.

2.—By the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 2, Her Majesty is empowered, in cases where an arrangement has been made with any foreign state for the surrender to such state of any fugitive criminals, to direct, by Order in Council, that the Act shall apply in the case of such foreign state, and may limit the operation of the order, and render the operation thereof subject to such conditions and exceptions as may be deemed expedient. By section 6, where the Act applies in the case of any foreign state, any fugitive criminal of that state who is in any part of Her Majesty's dominions is liable to be apprehended and surrendered in manner provided by the Act. In 1874 a treaty was made, in pursuance of the above statute, between the British Government and the Swiss Government, by which, however, it was expressly provided, *inter alia*, that no subject of the United Kingdom shall be delivered up by the Government of the United Kingdom, and an Order in Council was subsequently issued which recited the treaty and declared that the Act should be in force as regards Switzerland. W., a British subject, was in custody on a charge of theft, alleged to have been committed in Switzerland, for the purpose of being handed over to the Swiss Government:—Held, that the prisoner was entitled to be discharged, inasmuch as the treaty contained an express exception in favour of British subjects, and the provisions contained in the Extradition Act could only apply so far as they were consistent with the terms of the treaty. *Reg. v. Wilson*, 48 Law J. Rep. M.C. 37; Law Rep. 3 Q.B. D. 42.

3.—An attachment issued by the High Court of Justice for disobedience of an order of the Court in a civil action is not an offence within the meaning of the 19th section of the Extradition Act, 1870. Where, therefore, a party to an action in the Chancery Division was arrested in Paris for a crime under the Extradition Act, and while in prison in England was served with an attachment for disobedience to an order in the action:—Held (affirming the decision of Bacon, V.C.), that the attachment was valid, and that the prisoner was not entitled to his

discharge until he had cleared his contempt, although he had been acquitted of the criminal charge. *Poolley v. Whetham* (App.), Law Rep. 15 Ch. D. 435.

The 19th section of the Extradition Act is not confined to political offences, but applies to all criminal charges. *Ibid.*

If a warrant under the Extradition Act is obtained, not for the *bona fide* purpose of punishing a person for a crime, but with the indirect object of making him amenable to an attachment in a civil action, the Court will relieve against such an abuse of the process of the Court. *Ibid.*

#### EXTRA-PAROCIAL PLACE.

[See HIGHWAY, 3.]

#### FACTOR'S ACTS.

[Amendment of the Factor's Acts. 40 & 41 Vict. c. 39.]

1.—The plaintiff bought tobacco of H., a tobacco merchant and broker. The tobacco was left in a bonded warehouse, and the dock warrants were left in the possession of H., and no entry of the plaintiff's name as owner was made in the books of the dock company. H. afterwards, in fraud of the plaintiff, obtained advances by pledging the tobacco to the defendants, who took the dock warrants and obtained fresh ones from the dock company:—Held, that the plaintiff had not entrusted H. with the documents of title as factor or agent within 6 Geo. 4. c. 94. s. 2, and that the plaintiff had not been guilty of such negligence in leaving the dock warrants in the hands of H., as to disentitle him to recover the value of the tobacco from the defendants. [See now Statute 40 & 41 Vict. c. 39.] *Johnson v. The Crédit Lyonnais. Johnson v. Blumenthal* (App.), 47 Law J. Rep. C.P. 241; Law Rep. 3 C.P. D. 83.

2.—A. carried on business in his own name as agent for B. under an agreement which was not made public; dealt with goods of B. in his possession as if he were absolute owner, accounting to B., and accepted bills drawn on him by B. on the understanding that they were to be protected by B. On the bankruptcy of A. and B.,—Held, that A. had a lien upon the goods in his hands to the extent of the bills accepted by him and unpaid. *Ex parte Buck; in re Favous*, Law Rep. 3 Ch. D. 796.

3.—Semble 32 & 33 Vict. c. 71. s. 15 (the reputed ownership clause) applies to goods in the possession of a factor, unless it is notorious that he is merely a factor.

3.—B., a leather merchant in London, agreed to pay A., a tanner in Canada, 1½d. per pound for every hide tanned by A. in the mode of the country, and A. was to procure freight and send back the hides. B. sent out a large number of the hides; they were tanned, and freight was procured for them, but in the meantime A. had obtained advances from the T. Bank on his own

account on bills, and hypothecated the hides to the bank as security for such advances, engaging to hand over the bills of lading if his bills of exchange were not duly honoured. They were not duly honoured, and the bank (who had acted in entire ignorance of the transactions between B. and A.) claimed to retain the bills of lading and the hides until their demands were satisfied:—Held, that under the circumstances of the case, A. could not, under any law, English or Canadian, claim to be a factor or agent of B. entitled to pledge B.'s goods, and that consequently the bank could not set up any title to the goods as derived from him against the real owners. *The City Bank v. Barrow* (H.L.), Law Rep. 5 App. Cas. 664.

Where there is a legal power to sell, a purchaser may obtain from the vendor a good title, even as against the true owner, but that cannot extend by implication to a pledge. *Ibid.*

*Sale by factor as principal: right of set-off.* [See PRINCIPAL AND AGENT, 8.]

#### FACTORY.

[The law relating to Factories and Workshops, consolidated and amended. 41 Vict. c. 16.]

*Education of children employed in: bye-law of School Board compelling attendance.* [See ELEMENTARY EDUCATION ACTS, 5.]

#### FACULTY.

[See CHURCH AND CLERGY, 1.]

#### FALSA DEMONSTRATIO.

[See LEGACY, 5; MORTGAGE, 35; WILL CONSTRUCTION, D 1, 2; 6, 7, 8.]

#### FALSE IMPRISONMENT.

[And see MALICIOUS PROSECUTION.]

1.—The plaintiff, who was sentenced by a magistrate to be imprisoned, first, for "one calendar month;" and secondly, "for fourteen days, to commence at the expiration of the imprisonment previously adjudged," was taken into the custody of the defendant (the Governor of Coldbath Fields Prison) during the afternoon of the 31st of October, 1877, and finally released at 9 a.m. on the 14th of December. The plaintiff complained that he had therefore been imprisoned for a longer period than he was liable to be detained, and he accordingly brought this action for false imprisonment:—Held, per Denman, J., that the plaintiff was not strictly entitled to his discharge until midnight on the 14th of December, and that therefore he had not been detained illegally. *Migotti v. Colville*, 48 Law J. Rep. M.C. 48. Affirmed on appeal, 48 Law J. Rep. C. P. 695; Law Rep. 4 C.P. D. 233.

2.—The defendant, the governor of a gaol,

held the plaintiff in custody under a warrant of committal for contempt. The plaintiff had been committed for disobedience to an order to pay money into Court. The plaintiff, by a written notice to the defendant, demanded his release at the end of one year's imprisonment, according to 32 & 33 Vict. c. 62. s. 4; but the defendant detained him in custody until he was discharged by order of the Court:—Held (in an action for false imprisonment) that the defendant was not bound to enquire into the nature of the contempt, and was protected by the warrant. *Greaves v. Keene*, Law Rep. 4 Ex. D. 73.

*Notice of action for wrongful arrest under 24 & 25 Vict. c. 96. s. 113.* [See ACTION, 8.]

### FALSE PRETENCES.

1.—A travelling hawker, representing himself to be a tea dealer of Leicester, induced the wife of a licensed victualler to purchase some lb. packages, by representing them to be good tea, and producing samples of good tea and comparing it with some taken from the packages. The packages contained, in fact, only one quarter in weight of tea, the rest being sand, quartz, earth, oxide of iron, unfit for drink and injurious to health. The mixture was known in the trade as lie tea, and had been purchased by the defendant at a much less price than that for which he sold it. The jury found that the prisoner knew the real nature of the packages, and that they contained not tea but a mixture of articles unfit for drink, and that he knowingly and falsely pretended that they contained good tea:—Held, that the conviction was right. *Reg. v. Foster*, (C.C. R.), 46 Law J. Rep. M.C. 128; Law Rep. 2 Q.B. D. 301.

2.—A prisoner was convicted upon an indictment which charged that he obtained eight tons of potatoes by falsely pretending that he was a dealer in potatoes, and in a large way of business, and in a position to do a good trade in potatoes, and was able to pay for large quantities of potatoes as and when the same might be delivered to him. The only evidence was the following letter by the prisoner to the prosecutor, and upon which the prosecutor acted: "Please send me one truck of Regents and one truck of Rocks as samples, at your prices named in your letter. Let them be good quality, then I am sure a good trade will be done for both of us. I will remit you the cash on arrival of goods and invoice. P.S.—I may say if you use me well I shall be a good customer. An answer will oblige, saying when they are put on:—" Held, that the words used in the letter naturally and reasonably conveyed the false pretences alleged in the indictment; that it was for the jury to say whether the letter was capable of bearing the meaning attached to it, and the jury having found that it was so, the conviction was right. *Reg. v. Cooper* (C.C. R.), 46 Law J. Rep. M.C. 219; Law Rep. 1 Q.B. D. 19.

3.—In an indictment for obtaining money by false pretences a previous conviction for felony may be charged, and on a conviction upon both charges the least sentence of penal servitude which can be awarded is for seven years. *Reg. v. Deane* (C.C. R.), 46 Law J. Rep. M.C. 155; Law Rep. 2 Q.B. D. 305.

*Conviction: sale of goods: passing of property.* [See SALE, 15.]

### FALSE REPRESENTATION.

*Sale of animals: contagious disease.* [See CONTAGIOUS DISEASES ACT, 1.]

*Liability of principal for fraudulent misrepresentation by agent.* [See PRINCIPAL AND AGENT, 3.]

### FAMILY.

*Meaning of word.* [See WILL CONSTRUCTION, H 16-18.]

### FAMILY ARRANGEMENT.

[See POWER, 21.]

### FATHER.

[See INFANT, PARENT AND CHILD.]

### FEE-FARM RENT.

[See LIMITATIONS, STATUTE OF, 9.]

### FEEES.

*Counsel's.* [See WITNESS.]

*Fee on taking account.* [See COURT FEES.]

*Right of Registrar of County Court to.* [See COUNTY COURT, 29.]

### FELLOWSHIP.

*Mandamus to admit to examination for.* [See UNIVERSITY.]

### FELONY.

*Arrest by constable without warrant in his possession: offence not felony: justification of person resisting arrest.* [See ARREST.]

*By servants of carrier.* [See CARRIER, 5.]

*Compounding: consideration for bill of exchange.* [See BANKRUPTCY, B 11.]

*Proof in bankruptcy: admissibility of proof for sum embezzled without prosecution of felon.* [See BANKRUPTCY, D 37.]

*Trial: deaf and dumb person.* [See TRIAL.]

### FENCE.

[See NEGLIGENCE, 4; RAILWAY, 27, 28.]

## FERRY.

The owner of an ancient ferry has no right of action for disturbance against a person opening a new highway to meet a public need (e.g. a railway), though such new highway crosses the water near the ancient ferry, and diverts from it a part of the traffic. Consequently, where such new highway or railway has been made under an Act of Parliament, the owner of an ancient ferry disturbed by it is not entitled to compensation under the Lands Clauses Consolidation Act, 1845. *Hopkins v. The Great Northern Railway Company* (App.), 46 Law J. Rep. Q.B. 265; Law Rep. 2 Q.B. D. 224.

Semble, that an action for disturbance of an ancient ferry will lie only where such disturbance is caused by another ferry and not otherwise. *Ibid.*

The injury to an ancient ferry caused by the diversion of traffic to a bridge erected near, arises, not from the construction, but from the user of the bridge, and therefore no compensation can be obtained under the Lands Clauses Consolidation Act, 1845, in respect of such injury. *Ibid.*

*Reg. v. The Cambrian Railway Company* (40 Law J. Rep. Q.B. 169) overruled. *Newton v. Cubitt* (31 Law J. Rep. C.P. 246) followed. *Ibid.*

## FEU CONTRACT.

[See SCOTCH LAW, 24.]

## FIERI FACIAS.

[See SHERIFF.]

## FINES.

*Building society.* [See FRIENDLY SOCIETY, 34.]

*On renewal of lease.* [See TENANT FOR LIFE, 15.]

## FINES AND RECOVERIES ACT.

An equity of redemption was devised to trustees, to the use of the trustees and their heirs during the life of A., upon trust for A. for life, for her separate use, remainder to the use of the first and other sons of A. successively in tail male, remainders over:—Held, that A. was the owner of the prior estate for life within the meaning of section 22 of the Fines and Recoveries Act; and was therefore properly joined as protector of the settlement in a disentailing assurance by B., who was the first tenant in tail in remainder. *In re Dudson* (App.), 47 Law J. Rep. Chanc. 632; Law Rep. 8 Ch. D. 628.

## FIRE INSURANCE.

[See INSURANCE, 13-15.]

## FISH.

*Selling, within town.* [See PUBLIC HEALTH ACT, 39.]

## FISHERY.

[Amendment of the Salmon Fishery Act, 42 & 43 Vict. c. 26.]

[Amendment of the law relating to the fisheries of oysters, crabs and lobsters and other Sea Fisheries, 40 & 41 Vict. c. 42.]

[Fresh-water fish protected, 41 & 42 Vict. c. 39.]

[The law relating to Elver fishing amended, 39 & 40 Vict. c. 34.]

[The law relating to salmon fisheries in England and Wales amended, 39 & 40 Vict. c. 19.]

[Prohibition of the use of dynamite or other explosives for the purpose of catching or destroying fish in public fisheries, 40 & 41 Vict. c. 65.]

1.—In support of a claim for a several fishery, extending over the whole of Lough Neagh, a non-tidal lake, documentary evidence was given by the plaintiffs (who had never had actual physical or mechanical possession), commencing with a grant dated 1660 from Charles II., and continued by leases and other documents to the claimants. No evidence was given of the title of the Crown to the soil or fishing of the lake. The defendants set up a claim of right in the public, and produced evidence in support of it. The judge at the trial withdrew the case from the jury, and gave a verdict for the plaintiff:—Held, that the case was one of fact and not of law, and ought to have been left to the jury with proper directions. *Bristow v. Cornician* (H.L. Ir.), Law Rep. 3 App. Cas. D 41.

Per Lord Blackburn: There is no authority to shew that the Crown is of common right entitled to land covered with water where the water is not running water forming a river, but still water forming a lake. *Dictum* of Wightman, J., in *Marshall v. The Ulster Steam Navigation Company* (3 B. & S. 742) not approved. *Ibid.*

2.—The plaintiffs, an incorporated body, claimed to be possessed of a several fishery in a tidal navigable river, and in support of their title produced charters of confirmation and grant, and proved acts of immemorial user, from which the Court, drawing inferences of fact, held a *prima facie* title to the soil and several fishery to be established, raising the presumption of a legal origin—that is, a grant before Magna Charta. The defendants claimed, as free inhabitants of ancient tenements in the borough of Saltash, to have from time immemorial, without interruption, and as of right, the privilege of dredging for oysters in the *locus in quo*, from the 2nd day of February to Easter Eve in each year, and carrying away the same without stint, for sale or otherwise. They also claimed to have exercised the above privilege as free inhabitants of the borough, and as subjects of the realm;

and they also claimed a general right to dredge for oysters as subjects of the realm:—Held, that no right in the defendants, as subjects of the realm, could be established, as it would be inconsistent with a several fishery in the plaintiffs, who would take nothing by their grant, and would be destructive of the fishery. Held, further, that the other claims of the defendants founded on immemorial user could not be established, for that they were made in respect of a fluctuating body, and would have to be supported by the presumption of a lost royal grant, which alone would have the effect of incorporating such body, and that such a presumption could not be made when antagonistic to the existing rights of the plaintiffs. *Lord Rivers v. Adams* (48 Law J. Rep. Exch. 47; Law Rep. 3 Ex. D. 361) followed. *The Mayor and Free Burgesses of the Borough of Saltash v. Goodman*, 49 Law J. Rep. C.P. 565; Law Rep. 5 C.P. D. 431.

3.—The plaintiff, lord of the manor, claimed the exclusive right to fish in part of a river which was formerly locally situate within the manor, but which by gradual alteration of its course now flowed over land of the defendant. The manor had been granted by the Crown to the predecessors in title of the plaintiff with the right of fishery in all its waters; afterwards certain lands of the manor were enfranchised, and now became vested in the defendant. At the time of the enfranchisement the river flowed wholly within the manor, but since then its course had gradually changed, approaching nearer and nearer to the defendant's land, until some portion of that land became part of the river bed. This part could be identified. The changing of the river course and consequent shifting of the bed was so gradual as not to be perceptible from day to day, but only by comparing its position of recent years with its position many years before:—Held, that the plaintiff had an exclusive right of fishery which extended over that part of the river flowing over the defendant's land. *Foster v. Wright*, 49 Law J. Rep. C.P. 97; Law Rep. 4 C.P. D. 438.

### FIXTURES.

[Fixtures or crops not to be deemed to be separately assigned when the land passes by the same instrument. 41 & 42 Vict. c. 31, s. 7.]

#### *Mortgage of leaseholds.*

1.—By an indenture dated the 3rd of October, 1865, a shipbuilding yard and works held under a lease for 999 years, were assigned to the debtor, to hold, as to the leasehold premises, for the residue of the term, and as to the machinery and tenant's fixtures absolutely. The recitals stated the purchase-money to be 2,000*l.* for the leasehold premises, and 500*l.* for the tenant's fixtures. The debtor borrowed the purchase-money from his bankers, and deposited with them as security the indentures of lease and assignment, without any memorandum. Hereafter erected considerable new machinery, and

carried on business on the premises till 1876, when he became bankrupt, having incurred a further debt to his bankers:—Held, first, that the equitable security created by the deposit did not comprise tenant's fixtures. Secondly, that the tenant's fixtures could not be assigned by the leaseholder so as to defeat the claim of the trustee, except by compliance with the Bills of Sale Act. Thirdly, that the equitable mortgage was a security for the bankers' subsequent advances by virtue of their general lien upon the deeds. *Ex parte Tweedy; in re Trethowan*, 46 Law J. Rep. Bankr. 43; Law Rep. 5 Ch. D. 559.

When leasehold property is equitably mortgaged by simple deposit of deeds, the application as to trade fixtures of the Bills of Sale Act is not excluded. *Ibid.*

2.—Assignment by way of mortgage of a parcel of ground held by underlease, together with the steam saw mills and buildings thereon, and the steam engines, boilers, fixed and movable machinery, plant, implements and utensils, then or thereafter fixed to or placed upon, or used in or about the premises; to hold the said hereditaments, and such of the machinery, plant, utensils, and premises as were in the nature of landlord's fixtures, and could not lawfully be removed by the lessee, unto the mortgagee, his executors, administrators and assigns, for the residue of the term; and as to such of the machinery and premises as were in the nature of tenant or trade fixtures, and could lawfully be removed by the lessee thereof, unto the mortgagee, his executors, administrators and assigns absolutely. There was power to the mortgagee to sell the premises thereby assigned, or any part or parts thereof, either together or in parcels:—Held, that the mortgage not being registered as a bill of sale was void against a trustee in bankruptcy as to the trade fixtures. *In re Belick; ex parte Alexander*, 46 Law J. Rep. Bankr. 30; Law Rep. 4 Ch. D. 503.

#### *Mortgage in fee.*

3.—A portable engine and boiler brought on to colliery premises to be used in sinking a new shaft, and for the purpose of steadying the machinery bolted to a wooden framework, and then the frame embedded in a layer of wet mortar laid upon a brick foundation, passed to the mortgagee of the realty as affixed to the freehold, and could not be seized by the judgment creditors of the mortgagor. *Cross v. Barnes*, 46 Law J. Rep. Q.B. 479.

#### *Disclaimer: tenant's fixtures.*

4.—The right of a tenant to tenant's fixtures is a qualified right, and is dependent on the tenant removing them during the term, or during some period after its termination in which he may be considered as still in possession under the landlord. *In re Davies; ex parte Stephens & Company*, 47 Law J. Rep. Bankr. 22; Law Rep. 7 Ch. D. 127.



When a trustee in bankruptcy disclaims a lease, then, as under section 23, the disclaimer relates back to the adjudication, the trustee has no interest in the lease, and no right to the tenant's fixtures, which pass to the landlord. *Ibid.*

*Quære*, whether if the trustee sold the fixtures he could not afterwards disclaim. *Ibid.*

*Implied covenant: sub-lease.*

5.—A covenant in a lease by which the lessee agrees at the expiration of the lease to deliver up to the lessors "all landlord's fixtures," does not imply a representation and covenant on the part of the lessors that the lessee is to be at liberty without hindrance from anyone to remove during the term trade fixtures, and that the lessors have not entered into covenants inconsistent with such right. *Porter v. Drew*, 49 Law J. Rep. C.P. 482; Law Rep. 5 C.P. D. 143.

[And see BILL OF SALE, 11.]

FORCIBLE ENTRY.

[See MALICIOUS PROSECUTION, 2.]

FORECLOSURE.

[See MORTGAGE, 40-57.]

FOREIGN ATTACHMENT.

[See ATTACHMENT, 13.]

FOREIGN BILL.

[See BILL OF EXCHANGE, 14, 19.]

FOREIGN GOVERNMENT.

1.—The bond of a foreign Government creates nothing but a debt of honour, and the promise contained in it cannot be enforced in the Courts of this country against English agents of the Government who have funds belonging to it in their hands, even though the Government, after notice of an action by the bondholder against the agents, makes no claim to the funds. If such an action against the agent could be maintained, it would amount to an assumption of a jurisdiction over the foreign Government. As the foreign Government cannot be sued in the Courts of this country, neither can its agents be sued in the absence of the principals. *Twyeross v. Dreyfus* (App.), 46 Law J. Rep. Chanc. 510; Law Rep. 5 Ch. D. 605.

2.—Where bondholders have subscribed money for a particular purpose (such as the construction of a railroad), and part of that money has been placed in the hands of trustees, whose duty it is to pay portions of the money as portions of the intended railroad are constructed, if no such railroad nor any portion of it is constructed, and its construction becomes impracticable, the bondholders are entitled to demand repayment of what remains in the trustees' hands. Where

there is a right dependent on the practicability of doing a certain work, the question of its practicability is not to be determined solely by physical or financial reasons, but conditions previously stipulated (especially where the interests and the rights of third parties are concerned) must be considered. Accordingly, where a loan was raised to make a railroad in a foreign country, such loan being raised on the faith of a prospectus which set forth, as a security to the bondholders, the grant of a concession by the foreign Government, in virtue of which the bondholders would have the benefit of the customs duties imposed by that Government on goods passing along the railroad, and the foreign Government, finding the railroad not made, revoked its concession.—Held, that the loss of the security which the concession had afforded to the bondholders entitled them to treat the scheme as a failure, and to demand the return of their subscriptions. *The National Bolivian Navigation Company v. Wilson* (H.L.), Law Rep. 5 App. Cas. 177.

A foreign Government granted a concession, on the terms of which a company was formed and a loan raised, and bondholders constituted. The Government afterwards revoked the concession:—Held, that its right to do so could not be questioned in any legal proceedings in this country. *Ibid.*

*Stocks of: investment clause.* [See TRUST, B 4.]

FOREIGN JUDGMENT.

1.—When a foreign tribunal, professing to act pursuant to the law of the country where it exists, has pronounced a decision not warranted thereby, and not being a judgment *in rem*, an English Court is not bound to give effect to the decision. *Meyer v. Ralli*, 45 Law J. Rep. C.P. 741; Law Rep. 1 C.P. D. 358.

2.—If the law of a foreign country be that the shareholders of a company there established are subject to the provisions in the articles of association, and if the articles of such a company provide that all litigation *inter socios* shall be submitted to the jurisdiction of a certain tribunal in such country, and that, unless a shareholder with whom such litigation shall arise elects a domicile within the jurisdiction, such election shall be made for him, and process validly served at such elected domicile, then a judgment for calls against a shareholder duly obtained in his absence upon process served in the manner specified will bind such shareholder, though he be an English subject, neither resident nor domiciled in such foreign country, and though he may have had no actual notice or knowledge of the proceedings; and judgment may be recovered against him in this country in an action upon the foreign judgment so obtained. *Copin v. Adamson* (App.), 45 Law J. Rep. Exch. 15; Law Rep. 1 Ex. D. 17.

The existence of such provisions in the articles of association of the company in which the defendant has become a shareholder amounts to

an agreement on his part to be bound by a judgment so obtained. But quare, whether, if such service were good by the general law relating to companies in such foreign country, any such express agreement to be bound by the judgment would be necessary beyond the fact of becoming a shareholder in the company subject to such law. *Ibid.*

3.—R., a Swiss subject, entered into an agreement with the plaintiffs, French subjects residing in France, when he was in France on a temporary visit, he being then domiciled in Switzerland but residing in England. The plaintiffs afterwards obtained judgment against R. in a French Court for breach of the agreement. He was not in France at the commencement of or at any time during the action, and he had no notice of the proceedings, though the plaintiffs knew his address in England, where he was then still residing:—Held, that the judgment could not be enforced by an English Court. *Schibsbey v. Westenholz* (40 Law J. Rep. Q.B. 73; Law Rep. 6 Q.B. 155) considered. *Rousillon v. Rousillon*, Law Rep. 14 Ch. D. 351.

The principles on which the Court acts in enforcing foreign judgments considered. *Ibid.*  
*Foreign judgment by default: pleading in bar.*  
 [See ADMIRALTY, 18.]

#### FOREIGN JURISDICTION.

[Extension and amendment of the Foreign Jurisdiction Acts. 41 & 42 Vict. c. 67.]

#### FOREIGN LAW.

1.—Bill of discovery to obtain inspection of documents in the defendant's possession in England in aid of proceedings about to be taken for recovery of land in India:—Held, that the property being in India and the defendant capable of being sued there, an English Court was not the proper tribunal. *Reiner v. The Marquis of Salisbury*, Law Rep. 2 Ch. D. 378.

2.—A foreign company issued debentures which purported to charge land in Italy. A subsequent mortgagee perfected his security according to Italian law, but the debentures were not so perfected. An Italian Court gave priority to the mortgagee:—Held, that this decision was right, but that if an English Court had taken a different view it could not have interfered with the jurisdiction of the Italian Court. *Norton v. The Florence Land and Works Company*, Law Rep. 7 Ch. D. 332.

3.—Legal proceedings in England to recover a debt contracted in India are not barred by the Indian Statute of Limitations, Art. XIV. 1859. *Finch v. Finch*, 45 Law J. Rep. Chanc. 816.

An ordinary administration decree in a legatee's suit operates as a judgment in favour of creditors; so that time under the Statute of Limitations begins to run from the date of decree. *Ibid.*

English rate of interest only was allowed on a debt contracted in India from the time of the death of the debtor. *Ibid.*

*English ship: damage: foreign suit.* [See CONFLICT OF LAWS, 1.]

*Foreign sovereign: jurisdiction over: removal of property from this country.* [See PATENT, 29.]

#### FOREIGN LOAN.

*Script: negotiability of.* [See SCRIPT CERTIFICATE, 2.]

[And see BOND; FOREIGN GOVERNMENT.]

#### FOREIGN PATENT.

[See PATENT, 16, 18, 26.]

#### FOREIGN SHIP.

[See ADMIRALTY, 1, 63; SHIPPING LAW, H, F 2.]

*Immunity from arrest.* [See ADMIRALTY, 3.]

#### FOREIGN WILL.

[See PROBATE, 19.]

#### FORESHORE.

1.—By the charter of 11 Edw. 3 and the Act 21 & 22 Vict. c. 109, the Duke of Cornwall became entitled to all the rights of the Crown in the foreshore of the whole county. *The Mayor, &c., of Penryn v. Holm*, 46 Law J. Rep. Exch. 506; Law Rep. 2 Ex. D. 528.

2.—Acts of possession for the prescriptive period and following on barony titles (containing no express grant of foreshore nor any specific boundaries) to lands in Scotland situated on both sides of a navigable tidal river:—Held, to constitute a right of property in the foreshore. *The Lord Advocate v. Lord Blantyre* (H.L. Sc.), Law Rep. 4 App. Cas. 770.

[And see CROWN, 2.]

#### FOREST OF DEAN.

1.—The plaintiffs and the defendant possessed adjoining collieries in the Forest of Dean, which were gales subject to 1 & 2 Vict. c. 43, and the rules made thereunder. The defendant's gale being drained by a steam engine, he was bound by rule 19 to work the engine, so as to prevent the water of his gale from falling into the plaintiffs' gale. The defendant stopped his engine, whereby the plaintiffs' gale was flooded and damaged. Section 29 of the Act provides that a person working his gale contrary to the rules shall be liable to forfeit it and may be evicted by Her Majesty; and in addition thereto "the compliance with such rules may be enforced by and on behalf of Her Majesty, or by any other person, by injunction of Her Majesty's Court of Exchequer, or otherwise, in

such manner as the said Court shall on application think fit":—Held, that the plaintiffs had a statutory private right which had been violated by non-compliance with the rules on the part of the defendant; that section 29 gave no specific remedy for such breach of duty, and that the plaintiffs were therefore entitled to maintain an action at Common Law to recover damages. *Ross v. Price*, 45 Law J. Rep. Exch. 777; Law Rep. 1 Ex. D. 269.

2.—By 1 & 2 Vict. c. 43. s. 23, free miners shall have the exclusive right of having gales granted to them to open mines in the Forest of Dean, and it shall be lawful for such free miners to sell, transfer, assign, or dispose of such gales, and section 60 enacts that the gavelleur or deputy gavelleur shall grant gales to free miners in the order of their application. In 1872 D., a free miner, applied for a gale. In 1873 the deputy gavelleur gave notice of his intention to grant the gale to D., but D. died before the grant could be perfected, having by will given all his real and personal estate to certain trustees who were not free miners:—Held, reversing the decision of one of the Vice-Chancellors, that D. had not acquired any transmissible interest, and the grant could not be made to his devisees. *James v. The Queen* (App.) 46 Law J. Rep. Chanc. 516; Law Rep. 5 Ch. D. 153.

#### FORFEITURE.

- (A) ON BANKRUPTCY OR ALIENATION.
- (B) ON CHANGE OF RELIGION: REMOTENESS.
- (C) FOR BREACH OF COVENANT.

##### (A) ON BANKRUPTCY OR ALIENATION.

1.—The testator bequeathed a sum of stock to trustees, upon trust, after the death of a tenant for life, to divide the income equally among the sons of his sister, with a declaration that in the event of any one of such sons assigning or otherwise disposing of the life interest thereinbefore given, or if by act or operation of law he should be personally deprived of the benefit of the said bequest, his life interest should immediately cease and determine; and on such event occurring, the said income should be paid to the person or persons entitled to the same under the bequest thereafter contained. After the death of the testator, a son of the sister was adjudicated bankrupt; but he obtained an annulment of the bankruptcy before the death of the tenant for life:—Held, that there was no forfeiture of his life interest. *In re Parnham's Trusts*, 46 Law J. Rep. Chanc. 80.

2.—Proviso for forfeiture and gift over of a life interest in a residuary estate, "if the legatee should be declared bankrupt,"—Held, not to take effect where the legatee's bankruptcy (which had been in existence to the knowledge of the testatrix at the date of her will and of her death) was annulled before anything had become actually payable and available for payment in respect of the gift. In the construction

of such provisions there is a leaning in favour of that interpretation which will give effect to the testator's general intention of personally benefiting the legatee. *In re Parnham's Trusts* (see last case) distinguished. *Ancona v. Waddell*, 48 Law J. Rep. Chanc. 115; Law Rep. 10 Ch. D. 157.

3.—The testator gave residuary estate to his son, if, at the decease of testator's wife, he should not . . . have committed or done any act, matter or thing which would make such surplus payable, or transferable to, or vested in, or chargeable for the benefit of any other person, in case such surplus had been given to him absolutely, and without any condition or contingency; but if he should, at any time before the decease of the testator's wife, have committed, &c. . . . then upon certain trusts declared in the will for A.'s wife and children. A., during his mother's life, mortgaged his interest to R., "subject to the proviso or condition contained in the will." This mortgage was paid off and A.'s interest was re-assigned. Subsequently he mortgaged by deed this same interest to R. for 5,000*l.*, subject as aforesaid, R. agreeing to accept, in discharge of the mortgage debt and interest, immediate payment of 1,500*l.* and A.'s bond for 4,500*l.* on his mother's death. The payment was made and the bond was given, and the seal and attestation clause were thereupon cut off, and the deed thus mutilated handed back by R.'s solicitor to A., but no re-assignment was made of A.'s interest. A. died insolvent in 1870, his mother died in 1877. In an action brought by A.'s only son, claiming under the gift over,—Held, that, both upon the terms of the assignment as well as the principle of the cases, A.'s interest had not been forfeited, and therefore passed to his personal representative. *Samuel v. Samuel*, 47 Law J. Rep. Chanc. 716; Law Rep. 12 Ch. D. 152.

##### (B) ON CHANGE OF RELIGION: REMOTENESS.

4.—The donee of an exclusive power of appointment amongst her children (given to her by the will of a testatrix) in exercise of the power appointed amongst her children, giving to two daughters life interests only; and directed that "if either during her lifetime or after her decease any son or daughter of hers should marry a person who did not profess the Jewish religion, or should marry a person not born a Jew or Jewess, although converted to Judaism and professing the Jewish religion, or should forsake the Jewish religion and adopt the Christian or any other religion," then such son or daughter should forfeit all share in the appointed funds, and in case of forfeiture, the share forfeited should accrue and go over to the others or other of the children living at the time of the forfeiture. L., one of the daughters to whom a life interest was given, after the death of her mother, became a Christian and subsequently married a Christian. J., one of

the sons, became a Christian in the lifetime of his mother, but without her knowledge. L. and J. were both unborn at the time of the death of the donor of the power:—Held, first, that the forfeiture clause was not void as being against public policy; secondly, that the clause, so far as it concerned J., was not void for remoteness and was effectual, and that therefore the share of J. was never vested in him; thirdly, that the forfeiture clause must be read together with the gift over, and so far as it applied to a forfeiture after the death of the appointor, was void for remoteness as to the shares of unborn children, whether given absolutely or for life only, and that, therefore, the share of L. was not forfeited. *Hodgson v. Halford*, 48 Law J. Rep. Chanc. 548; Law Rep. 11 Ch. D. 959.

#### (C) FOR BREACH OF COVENANT.

5.—A landlord suing in respect of breaches of covenants agreed to be inserted in a lease contracted for, claimed an injunction and possession; his pleadings stated that he was willing to grant the lease:—Held, that forfeiture was waived by the pleadings. *Evans v. Davis*, 48 Law J. Rep. Chanc. 223; Law Rep. 10 Ch. D. 747.

Semble, a forfeiture for non-performance of covenants does not apply to breaches of negative covenants. *Ibid*.

*Building contract: forfeiture of implements and materials.* [See CONTRACT, 35.]

*Of crown land.* [See COLONIAL LAW, 38, 39.]

*Of gale by free minor.* [See FOREST OF DEAN, 1.]

*Of shares.* [See COMPANY, D 83–86; H 60.]

*Of ship under Merchant Shipping Act.* [See MERCHANT SHIPPING ACTS, 3.]

#### FORGERY.

The prisoner in payment for a pony and cart purchased by him from the prosecutor, drew a cheque, in the presence of the prosecutor, upon a bank in which he, the prisoner, had no account, in the name of William Martin, his real name being Robert Martin, and gave it to the prosecutor as his, the prisoner's, own cheque drawn in his own name. The prosecutor received it in the belief that it was drawn in the prisoner's own name:—Held, that as the prisoner gave the cheque entirely as his own, his subscribing it by a fictitious name did not make it a forgery, the credit having been wholly given to himself, without any regard to the name, or any relation to a third person. *Dunn's Case* (1 L. C. C. 59) followed. *Reg. v. Martin*, 49 Law J. Rep. M.C. 11; Law Rep. 5 Q.B. D. 34.

#### FRANCHISE.

*Ancient market: rival market: nuisance: interlocutory injunction.* [See INJUNCTION, 25.]

#### FRAUD.

##### (A) LIABILITY FOR FRAUDULENT ACTS.

- (a) *Acts of agent.*
- (b) *Constructive notice: fraud on bankruptcy laws.*
- (c) *Assignment of chattels in fraud of creditors: estoppel.*
- (d) *Person privy to fraud setting up fraud as a defence.*

##### (B) RIGHTS OF DEFRAUDED PARTY.

- (a) *Setting aside deed or contract.*
- (b) *Impeaching legal proceedings.*
- (c) *Transferee for value, as against.*

##### (A) LIABILITY FOR FRAUDULENT ACTS.

###### (a) *Acts of agent.*

1.—The appellants employed the respondent as their agent to make advances on goods. The respondent employed a sub-agent to make such advances, with power to draw on the appellants for the amount. The sub-agent fraudulently drew on the appellants for an amount not advanced:—Held, that such sub-agent was acting within his authority, and that the respondent was liable for the act of his sub-agent. *Swire v. Francis*, 47 Law J. Rep. P.C. 18; Law Rep. 3 App. Cas. 107.

###### (b) *Constructive notice: fraud on bankruptcy laws.*

2.—Bills of exchange were offered for discount on behalf of the drawer, and after an interval for enquiries, in which the bill discount counter "received information that the acceptors (who were woollen cloth manufacturers) would be unable to pay the bills in full, as they were in difficulties, but that they were possessed of assets, and that there was a fair prospect of his being able to obtain payment of part of the amount," he gave 200*l.* for the bills, which were four in number, and to the amount of 1,700*l.* in all, one for 227*l.* falling due with a month. As to the solvency of the drawer (who was the commission agent in London of the acceptors), it did not appear that enquiry was made,—Held (by James, L.J., Mellish, L.J., and Baggallay, J.A., reversing the decision of Bacon, C.J.), that the circumstances affected the discount counter with notice of the fact, which was that the bills were a fraudulent concoction to raise money for the acceptors. Therefore, in the bankruptcy of the acceptors that the discount counter could not prove on the bills, but he was allowed (Baggallay, J.A., *dubitante*) to prove for the 200*l.* he had paid. *Ex parte Gordon; in re Gomersall* (App.), 45 Law J. Rep. Bankr. 1; Law Rep. 1 Ch. D. 137; affirmed on appeal to the House of Lords, 47 Law J. Rep. Bankr. 1; Law Rep. 2 App. Cas. 616.

Per Mellish, L.J.—A sale to an insolvent person at such a price that the vendor will be

paid the full value by a dividend, is an obvious fraud on the bankruptcy laws. *Ibid.*

*Ex parte King, Cooke's Bankrupt Laws* (8th ed.), p. 176, observed upon. *Ibid.*

(c) *Assignment of chattels in fraud of creditors: estoppel.*

3.—The plaintiff, with the privity of the defendant, who was one of his creditors, assigned and delivered certain goods to A. in order to defeat his creditors generally. The defendant, without the knowledge of the plaintiff, obtained a bill of sale of the goods from A., and under this bill of sale took possession of the goods. Before any fraud was accomplished upon the creditors the plaintiff claimed the goods from the defendant:—Held (affirming the decision of the Court below, 45 Law J. Rep. Q.B. 163), that he was not estopped by his fraudulent assignment from claiming the property in the goods. *Taylor v. Bowers* (App.), 46 Law J. Rep. Q.B. 39; Law Rep. 1 Q.B. D. 291.

(d) *Person privy to fraud setting up fraud as defence.*

4.—A person entering into a contract with a company cannot set up the fraud of the directors to which he was a party against the company. *The Odessa Tramways Company v. Mendel* (App.), 47 Law J. Rep. Chanc. 505; Law Rep. 8 Ch. D. 235.

Part of an agreement can be separately enforced if an intention to separate the parts appear in the agreement. *Ibid.*

The fact that an agreement is carried out by two instruments affords a presumption that the contracts in the two instruments are separable. *Ibid.*

M. agreed in writing to take shares in a company, the directors at the same time by a separate instrument agreed to pay M. 4,000*l.* for services rendered. In an action for calls against M., the defence stated that the two transactions were made in pursuance of an agreement to issue shares, in breach of the company's articles, below par:—Held, that the defence was untenable. *Ibid.*

(B) RIGHTS OF DEFRAUDED PARTY.

(a) *Setting aside deed or contract on ground of fraud.*

5.—To a defence in an action for personal injuries, of a release by deed, it was replied that the execution of the deed by the plaintiff was procured by the defendants fraudulently representing for that purpose that his injuries were of a trivial and temporary nature, and that if they should afterwards turn out to be more serious than he then anticipated, he would still, even though he had executed the deed, be in a position to obtain and would obtain further compensation from the defendants:—

Held, on demurrer, that there was a fraudulent misrepresentation of fact alleged sufficient to avoid the deed as against the plaintiff, who had been thereby induced to accept it. *Hirschfeld v. The London, Brighton and South Coast Railway Company*, 46 Law J. Rep. Q.B. 94; Law Rep. 2 Q.B. D. 1.

And Semble, that the deed would equally have been avoided by the second allegation that the fraudulent misrepresentation had been as to the legal effect of the deed which the plaintiff was thereby induced to sign. *Ibid.*

6.—Contracts impeachable on the ground of fraud are not void, but voidable only at the option of the injured party, subject to the condition that the other party, if the contract be rescinded, can be replaced in his former position. *Clarke v. Dickson* (E. B. & E. 148) approved. *Urguhart v. Macpherson* (P.C.) Law Rep. 3 App. Cas. 831.

7.—An incoming partner set aside the agreement for partnership on the ground of misrepresentation:—Held, that he was entitled, subject to the satisfaction of partnership debts, to a lien on the partnership assets, both for purchase-money and partnership disbursements. *Mycock v. Beatson*, 49 Law J. Rep. Chanc. 127; Law Rep. 13 Ch. D. 384.

8.—In 1869 the Government of St. Domingo granted to Hartmont & Co. a concession for fifty years of the phosphate of lime on Alto Vela. Hartmont & Co. became trustees of the concession for themselves, Lawson & Son and Ogle, and those persons formed a committee to get up a company for the working of the island. In April, 1871, Engelbach and Keir, on behalf of the intended company, contracted with Lawson & Son as the ostensible vendors for the purchase from them of the concession for 65,000*l.*, of which sum Engelbach and Keir were to receive 15,000*l.*, distributable at the direction of Hartmont & Co. On the 8th of May, 1871, the company was registered; and on the 29th the concession was sold to it for 65,000*l.*, but without any proper investigation of title. Hartmont & Co. were then aware that the concession was either voidable or void for breach of the conditions on which it was originally granted. Forsyth acted as the solicitor of Lawson & Son and of the company in the transaction. The Dominican Government afterwards cancelled the concession, and re-granted it to other parties. A bill was then filed against Hartmont & Co. and the several persons implicated in forcing the concession on the company, charging frauds in various shapes:—Held, that the plaintiffs were entitled to a decree for the whole amount against Hartmont & Co. and the estate of Lawson & Son, together with the costs of the suit, for which also Elmslie, Forsyth & Co. (the firm of which Forsyth was a member), and others of the defendants, were declared jointly and severally liable. *The Phosphate Sewage Company (Lim.) v. Hartmont*, 45 Law J. Rep. Chanc. 465; Law Rep. 5 Ch. D. 394.

*Action to recover back money obtained by fraud: admissibility of evidence of similar acts with other persons.* [See EVIDENCE, 22.]

*Concealment of want of title by lessor of mines: right of defendant to repudiate lease.* [See MINES, 16.]

*Contract of suretyship: uberrima fides not required.* [See PRINCIPAL AND SURETY, 1.]

*Damages: sale induced by fraud.* [See DAMAGES, 3.]

*Debt incurred by fraud: right of creditor to sue liquidating debtor.* [See BANKRUPTCY, H 6.]

*Fraudulent item in account: opening settled account.* [See ACCOUNT, 1.]

*Position of parties changed.* [See COMPANY, D 2.]

(b) *Impeaching legal proceedings.*

9.—After probate of a will has been granted, the Chancery Division has no jurisdiction to entertain a suit to set aside testamentary dispositions on the ground of fraud in obtaining the execution of the will, the Probate Division having exclusive jurisdiction in the matter. *Meluish v. Milton* (App.), 45 Law J. Rep. Chanc. 836; Law Rep. 3 Ch. D. 27.

*Decree impeached on ground of fraud: right to maintain action impeaching decree.* [See PRACTICE, B 4.]

(c) *Transferee for value, as against.*

10.—Trover for conversion of goods supplied by the plaintiffs to one Blenkarn. Blenkarn had taken premises at 37 Wood Street, and in ordering the goods had signed his name in such a way as to induce the plaintiffs to believe that he was a member of a well-known firm of Blenkiron & Co., in Wood Street. For this fraud he was afterwards tried, and convicted of obtaining the goods under false pretences. Before his conviction, however, the defendants had honestly bought the goods in question from him, and had sold them again:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. Q.B. 33; Law Rep. 2 Q.B. D. 96, in reversal of a decision of the Queen's Bench Division, 45 Law J. Rep. Q.B. 381; Law Rep. 1 Q.B. D. 348), that the property in the goods had never passed from the plaintiffs, who were consequently entitled to recover their value from the defendants. *Lindsay v. Cundy* (H.L.), 47 Law J. Rep. Q.B. 481; Law Rep. 3 App. Cas. 459.

*Action by shareholder on behalf of himself and other shareholders: parties.* [See COMPANY, F 4.]

*Concealed fraud: Statute of Limitations, when beginning to run.* [See LIMITATIONS, STATUTE OF, 14.]

*Creditors, fraud on.* [See BANKRUPTCY, B 1, 20; COMPANY, D 24; DEED, 1.]

*Misrepresentation by auctioneer: evidence: right of way.* [See WAY, 4.]

*Pleading: insufficient allegation.* [See PRACTICE, W 55.]

*Pledge: redelivery obtained by fraud: right of pledges against innocent transferee for value.* [See PLEDGE.]

*Proof in bankruptcy: partnership debt incurred by fraud: right of election of defrauded creditor.* [See BANKRUPTCY, D 16, 17.]

FRAUDS, STATUTE OF.

(A) DEMISE FOR LESS THAN THREE YEARS.

(B) CONTRACT OR SALE OF LANDS.

(a) "Interest in land," what is.

(b) Description of parties.

(c) Description of subject-matter.

(d) Auctioneer's book: memorandum not referring to conditions of sale.

(e) Signature of party.

(f) Contract by agent.

(g) Contract contained in several documents.

(h) Part performance.

(C) CONTRACT NOT TO BE PERFORMED WITHIN A YEAR.

(D) CONTRACT FOR SALE OF GOODS OVER 10%.

(E) PLEADING STATUTE.

(A) DEMISE FOR LESS THAN THREE YEARS.

1.—Action to recover a quarter's rent due under the following agreement, not under seal: "A. agrees to let and B. to take" certain premises "from the 14th of February next to the following Midsummer twelve months, with a right at the end of that term for the tenant by a month's previous notice to remain on for three years and a half more":—Held (reversing the decision of the Exchequer Division, 46 Law J. Rep. Exch. 242; Law Rep. 2 Ex. D. 318), that the agreement constituted a valid demise of the premises from the 14th of February to the following Midsummer twelvemonths, followed, but not invalidated, by an invalid collateral agreement as to the tenant's option to remain on. *Hand v. Hall* (App.), 46 Law J. Rep. Exch. 603; Law Rep. 2 Ex. 355.

2.—An agreement in writing "to let from year to year, and for so long as the lessor has power to let," creates only a tenancy from year to year, which is terminable by a legal six months' notice to quit, though the power of the lessor to let the premises has not come to an end. *Wood v. Beard* (App.), 46 Law J. Rep. Exch. 100; Law Rep. 2 Ex. D. 30.

(B) CONTRACT OR SALE OF LANDS.

(a) *Interest in land, what is.*

3.—The tenant's fixtures of over 10% in value having been sold by the tenant's trustee in bankruptcy to the plaintiff, and re-sold by him to the defendant, who was the landlord of the premises,—Held, that no memorandum of this

latter sale was necessary under the Statute of Frauds, it being neither a sale of an interest in land, under the 4th section of the Statute of Frauds, nor of goods and chattels, under the 17th section. *Lee v. Gaskell*, 45 Law J. Rep. Q.B. 540; Law Rep. 1 Q.B. D. 700.

4.—The plaintiff verbally agreed to sell to the defendant trees growing upon the plaintiff's land, "to be got away as soon as possible." The defendant thereupon cut down some of the trees, and lopped off the stumps and branches. The plaintiff afterwards countermanded the sale, but the defendant cut down the remaining trees and carried them away:—Held, that as the trees were to be felled forthwith after the agreement to buy them, the contract did not relate to an interest in land within the 4th section of the Statute of Frauds; that the contract was for the sale of goods, and that there had been a sufficient acceptance and actual receipt to satisfy the 17th section. *Marshall v. Green*, 45 Law J. Rep. C.P. 153; Law Rep. 1 C.P. D. 85.

(b) *Description of parties.*

5.—A contract for the sale of land did not name the vendor, but described him as "a trustee selling under a trust for sale":—Held (reversing the decision of Hall, V.C.), that this description was sufficient to satisfy the Statute of Frauds. *Catling v. King* (App.), 46 Law J. Rep. Chanc. 384; Law Rep. 5 Ch. D. 660.

The defence of the Statute of Frauds cannot now be raised by demurrer. *Ibid.*

6.—The defendants wrote and signed a letter beginning with the word "Sir," and offering to take the lease of a theatre for a fixed term at a fixed rent. This letter they delivered to W., for delivery to the lessor. W. delivered it, and as lessor's agent wrote and sent to the defendants a letter containing an acceptance of the offer by the owner; but this letter was not signed by the defendants nor referred to in any subsequent writing of theirs; the lessor brought an action for specific performance:—Held, that the lessor being only described as "Sir" in any writing signed by the defendants, there was no binding contract under the Statute of Frauds, and the action was dismissed with costs. *Williams v. Jordan*, 46 Law J. Rep. Chanc. 681; Law Rep. 6 Ch. D. 517.

7.—An estate was bought by eight persons, of whom R. and C. were two, as a joint speculation, and conveyed to R. and C. in trust for the eight. In 1871 and in 1873 the eight owners offered parts of the estate for sale, subject to conditions which merely described the vendors as the "proprietors in possession." Subsequently M. made a verbal offer to the agent of the eight owners to buy a part remaining unsold. The agent told M. that he must buy subject to the conditions of 1871, and promised to lay his offer before the proprietors. The agent wrote to M. saying, that "the proprietors" had accepted his offer subject to the conditions, and that he had requested the solicitors

"to forward to him the agreement for purchase." M. wrote a letter referring to the offer and introducing a stipulation, which was agreed to in another letter by the agent. A formal agreement was prepared by the solicitors and forwarded to M., who refused to sign it or complete the purchase:—Held (reversing the decision of the Court of Appeal, 46 Law J. Rep. Chanc. 737; Law Rep. 5 Ch. D. 648; on appeal from the Master of the Rolls, 46 Law J. Rep. Chanc. 228), that the correspondence between M. and the agent of the vendors amounted to a binding contract within the Statute of Frauds. Held also, that the vendors were sufficiently described as the proprietors. *Chinnock v. The Marchioness of Ely* (4 De Gex. J. & S. 638; 34 Law J. Rep. Chanc. 399) distinguished. *Rositer v. Miller* (H.L.), 48 Law J. Rep. Chanc. 10; Law Rep. 3 App. Cas. 1124.

(c) *Description of subject matter.*

8.—A statement that "A. was authorised to act as agent in and about" a purchase is not sufficient averment of authority to purchase. *The Vale of Neath Colliery Company v. Furness*, 45 Law J. Rep. Chanc. 276.

The words, "the property," in reference to a colliery, are not sufficient description of colliery plant and stock on which to found an action for specific performance. *Ibid.*

A. wrote "to confirm" a previous verbal offer of 6,000*l.* for property. B. accepted the offer in writing, coupled with the words, "I will send draft contract in due course":—Held, there was no contract contained in the writings. *Ibid.*

(d) *Auctioneer's book: memorandum not referring to conditions of sale.*

9.—Land was sold by auction according to certain particulars and conditions of sale. The only memorandum of the sale was an entry made by the auctioneer in his sale book, specifying the property, the price and the name of the vendor, and in which the auctioneer wrote the name of the purchaser. This entry contained no reference to the conditions of sale. In an action for specific performance by the vendor,—Held, that the entry was not a sufficient memorandum within section 4 of the Statute of Frauds, and that therefore the action could not be maintained. *Rishton v. Whatmore*, 47 Law J. Rep. Chanc. 629; Law Rep. 8 Ch. D. 467.

(e) *Signature of party.*

10.—A letter containing proposed terms of a contract between A. B., the sender and the sendee, written out by the sender, upon paper bearing a printed heading, "Memorandum from A. B.," was held to be a sufficient note in writing to charge A. B. A memorandum of a contract is sufficiently signed within the 4th section of the Statute of Frauds if it contains the terms of the contract and the name of the party charged, and is given by him to the other

party under circumstances which shew a recognition of the name as it stands for his own. *Tourret v. Cripps*, 48 Law J. Rep. Chanc. 567.

11.—A signature to a letter which referred to and accompanied an engrossment, which engrossment contained a recital of a contract, held not to satisfy the requirement of section 4 of the Statute of Frauds. *Mundy v. Asprey*, 49 Law J. Rep. Chanc. 216; Law Rep. 13 Ch. D. 855.

(f) *Contract by agent.*

12.—A contract for the purchase of land made by an agent in his own name, vests the equitable estate in the principal, and may be established by him against the agent and persons claiming under him, although the agent be appointed merely by parol. *Cave v. Mackenzie*, 46 Law J. Rep. Chanc. 564.

The plaintiffs appointed by parol W. F. M. as their agent to purchase land on their behalf. W. F. M. entered into a contract for the purchase of the land in his own name, and then assigned the benefit of the contract to J. T. M. for valuable consideration. In an action by the plaintiffs against W. F. M. and J. T. M. to establish the agency, the vendor not being a party,—Held, that the appointment of W. F. M. was an agency within the 4th section of the Statute of Frauds, and not a trust or confidence within the 7th section, and therefore was not required to be evidenced by writing. Held also, that the plea of purchase for value without notice raised by J. T. M. was of no avail, inasmuch as the prior equitable title vested in the plaintiffs by force of the contract. *Ibid.*

13.—A., on behalf of himself and S., entered into a verbal agreement with W. for the purchase of certain freehold premises for 950*l.* On the following day W. went to his solicitors and informed them of the agreement, and authorised them to act as his solicitors in the business, and to prepare a formal contract, and they on the same day wrote to A.'s solicitor, saying, "W. has been with us to-day, and stated that he had arranged with your client A. for the sale to the latter of the 'Golden Lion' for 950*l.*" :—Held, in a suit by A. and S. for specific performance, that the authority given by W. to his solicitors to act in the matter, authorised them to communicate the terms of the verbal agreement to A.'s solicitor, and that the letter written by them constituted a binding contract, of which specific performance would be decreed. *Smith v. Webster*, 45 Law J. Rep. Chanc. 430. (But see next case.)

14.—The vendor's solicitors wrote to the purchaser's solicitor: "Mr. W., of the 'Golden Lion,' Worksoy, has been with us to-day, and stated that he had arranged with your client, Mr. A., for the sale to the latter of the 'Golden Lion,' for 950*l.* We therefore send herewith draft contract for your perusal and approval" :—Held, that the solicitors' only authority was to prepare the contract, and that if they had been duly authorised agents to

sign a memorandum of the contract, the letter was not such a memorandum. *Smith v. Webster* (App.), 45 Law J. Rep. Chanc. 528; Law Rep. 3 Ch. D. 49.

[And see *BROKER*, 4.]

(g) *Contract contained in several documents.*

15.—The plaintiffs being desirous of renewing an engagement as managers of the defendant's dock, a draft agreement was drawn up by the defendant's solicitors, and afterwards settled by G., a member of the firm. Objections, however, were raised by the plaintiffs; and at a board meeting of the defendant company, A. (a director), having authority to act on behalf of the company, drew up a paper which was intended to represent the ultimatum of the board with reference to the objections raised by the plaintiffs. The paper so drawn up concluded with the words, "All other provisions as in draft," and the proposed terms were accepted by the plaintiffs at a subsequent board meeting. G., ignorant of the terms proposed by A., had meanwhile altered the draft so as to embody what he believed was the result of the negotiations between the parties; but these alterations were not identical with the proposals contained in the paper drawn by A. After the acceptance above mentioned a resolution was carried that the agreement be approved, &c., which was written on G.'s draft, and signed by the chairman. At the next board meeting a resolution, which the secretary had entered in the minute book, was read and signed by the chairman to the effect that the plaintiffs, having agreed to the terms of the draft agreement, "submitted to them by the board, the said agreement be engrossed in duplicate, signed, sealed and executed" :—Held, that there was a memorandum of an agreement such as would satisfy the Statute of Frauds. *Jones v. The Victoria Graving Dock Company (Lim.)*, 46 Law J. Rep. Q.B. 219; Law Rep. 2 Q.B. D. 314.

A signature to a document which contains the terms of a contract is available for the purpose of satisfying the Statute of Frauds, though put *alio intuitu*, and not in order to attest or verify the contract. *Ibid.*

16.—The plaintiff signed the following memorandum: I agree to purchase the three plots of land in R. Street, H., for 310*l.*, and to pay as a deposit and in part payment of the purchase-money, 31*l.* The defendant signed and gave to the plaintiff the following receipt: Received of G. L. 31*l.* as a deposit on the purchase of three plots of land at H. :—Held, that the two documents sufficiently referred to one another to constitute a memorandum of the contract within section 4 of the Statute of Frauds. *Long v. Millar*, 48 Law J. Rep. Q.B. 596; Law Rep. 4 C.P. D. 450.

17.—Money expended on the alteration of premises, for the leasing of which an agreement has been entered into, but which is incapable



of being enforced by reason of the Statute of Frauds, may be recovered back as on a failure of consideration. *Pulbrook v. Lawes*, 45 Law J. Rep. Q.B. 178; Law Rep. 1 Q.B. D. 284.

The plaintiff, by letter, proposed to take a lease for seven, fourteen or twenty-one years of one of the defendant's houses, conditionally on certain alterations being made. A correspondence ensued between the parties, and it was ultimately agreed that the alterations should be carried out, the plaintiff undertaking to contribute a sum of money towards them. By the defendant's consent some of the alterations were executed by the plaintiff's workmen. Eventually the plaintiff was unable, owing to the defendant's fault, to take the house:—Held, that though he was unable to recover damages occasioned through not having a lease granted, by reason of the letters not disclosing an agreement such as to satisfy the Statute of Frauds, he was, nevertheless, entitled to recover on a *quantum meruit* for the loss incurred in making the alterations. *Hodgson v. Johnson* (1 E. B. & E. 186; 28 Law J. Rep. Q.B. 88) commented on. *Ibid.*

*Acceptance: reference to formal contract.* [See CONTRACT, 20.]

*Contract contained in letters.* [See CONTRACT, 18.]

*Incorporation of plan.* [See SPECIFIC PERFORMANCE, 13.]

#### (h) Part performance.

18.—A. being the owner of a leasehold house, subject to a mortgage payable by instalments, in contemplation of the marriage of his daughter, verbally promised the daughter and her intended husband, that in the event of their marriage taking place, the house should be the wedding present of his daughter, and that they should take possession of it on their marriage. The marriage took place, and the daughter and her husband immediately entered into possession of the house. A. during his lifetime regularly paid the instalments in respect of the mortgage as they fell due, and at his death there remained still due 110%.—Held (the Court being satisfied on the evidence that the promise, as stated above, was given), that the promise to give the house, having been followed by possession, which was a sufficient part performance to take the case out of the Statute of Frauds, the agreement was valid, and was binding on A. and on his estate, and that the daughter was entitled to have the house assigned to her free from incumbrances. *Ungley v. Ungley*, 46 Law J. Rep. Chanc. 189; Law Rep. 4 Ch. D. 73; affirmed on appeal, 46 Law J. Rep. Chanc. 854; Law Rep. 5 Ch. D. 887.

19.—In an action for the title-deeds of a farm, the jury found that the defendant was induced to serve the plaintiff's predecessor in title for many years as his housekeeper without wages, and to give up other prospects by the

promise made by him to her to make a will leaving her a life estate in the farm:—Held, that the facts found amounted to a contract to leave the farm by will to the defendant, and that the defendant having served as stipulated was entitled to judgment, although the contract was not in writing. *Alderson v. Maddison*, 49 Law J. Rep. Exch. 801; Law Rep. 5 Ex. D. 293 [reversed on appeal, but not yet reported]. [And see No. 22 infra.]

#### (C) CONTRACT NOT TO BE PERFORMED WITHIN A YEAR.

20.—The plaintiff, a solicitor, sued the defendants, a joint stock company, for breach of contract, alleging in his declaration that it was agreed between him and them that he (the plaintiff) should be employed by the defendants as, and appointed by the defendants to the office of solicitor of and for the company, upon the terms that the defendants would, so long as the plaintiff should continue to act as, and hold the office of solicitor to the defendants, employ the plaintiff to transact all the legal business of the company for the usual fees and charges, and that the plaintiff should not be removed from his office unless for misconduct. In the articles of association, which were prepared by the plaintiff, there was a clause that "Mr. W. E. (the plaintiff) shall be the solicitor for the company, and shall transact all the legal business of the company for the usual fees and charges, and shall not be removed from his office except for misconduct." The articles were signed by seven persons, who became directors. The plaintiff held shares in the company. For some time after the incorporation of the company the plaintiff was employed by them to transact all their business, and his name alone appeared on the prospectus as the solicitor to the company. Subsequently other solicitors were also employed, and their names appeared in the prospectus together with the name of the plaintiff, although he protested against their appointment. Finally the defendants ceased to employ the plaintiff, which was the breach of contract declared on:—Held, that there was no evidence to support the declaration, for the contract, if any, was one not to be performed within the space of one year, and was therefore within section 4 of the Statute of Frauds, and there was no memorandum in writing to satisfy the terms of the section, because the articles, made *alio intuitu*, formed a contract only between the members of the company *inter se*, and not between the company and the plaintiff. Per Amphlett, B., neither was there evidence of a contract made by the directors under the express or implied authority of the defendants, so as to be binding upon the company by section 37 of the Companies Act, 1867, although not under seal. *Eley v. The Positve Government Security Life Assurance Company (Lim.)*, 45 Law J. Rep. Exch. 58; Law Rep. 1 Ex. D. 20. See this case on appeal,

45 Law J. Rep. Exch. 451; Law Rep. 1 Ex. D. 88; COMPANY, D 42.

21.—Where a servant contracted to serve his master in the way of his trade for a term of three years, and if he should leave the service not to engage in a like service within a certain area, and at the expiration of the said term made a contract in like terms except as to the period of employment, it was held that the latter contract was for an indefinite term of service during the joint lives of the master and servant, and was *prima facie* a contract not to be performed within a year within the Statute of Frauds, and must be in writing. *Darcy v. Shannon*, 48 Law J. Rep. Exch. 459; Law Rep. 4 Ex. D. 81.

22.—Under section 4 of the Statute of Frauds, a parol contract not to be performed within a year is not void, though no action can be brought upon it; and no fresh contract can be implied from acts done in pursuance of and during the existence of such contract. *Britain v. Rossitor* (App.), 48 Law J. Rep. Exch. 362.

The equitable doctrine of part performance taking contracts out of the operation of section 4 of the Statute of Frauds cannot be extended by the High Court of Justice, under section 24, sub-section 7, of the Judicature Act, 1873, beyond the limits to which it was confined by the Courts of Equity. It is, therefore, applicable only to contracts for the sale and purchase of lands, and not to a contract of service. *Ibid*.

#### (D) CONTRACT FOR SALE OF GOODS OVER 10L.

[See Nos. 3, 4, *supra*.]

#### (E) PLEADING STATUTE.

23.—Where a defendant relies on the Statute of Frauds as a defence to an action, he must not only state in his statement of defence that he relies on such statute, but the facts which make the statute applicable must distinctly appear on the pleadings. To an action for goods sold and delivered and for work and labour, a statement that the defendant would avail himself of the statute 29 Charles 2, cap. 3, without stating facts which would bring the case within the statute, was ordered to be struck out as embarrassing. *Pullen v. Snellus*, 48 Law J. Rep. C.P. 394.

[And see No. 5 *supra*.]

#### FRAUDULENT CONCEALMENT.

[See DEBTOR'S ACT, 19.]

#### FRAUDULENT CONVEYANCE OR ASSIGNMENT.

1.—In the administration of the estate of a deceased person a security given by him to a particular creditor will not be set aside on the ground of preference, if the object was pay-

ment, although the deceased person was at the time of giving the security insolvent to his own knowledge. *Middleton v. Pollock*; *ex parte Elliott*, 45 Law J. Rep. Chanc. 293; Law Rep. 2 Ch. D. 104.

E. placed a sum of money in the hands of her solicitor for investment. He died insolvent without investing the money, and after his death a declaration of trust was found among his papers, addressed to E., by which he declared himself trustee of some leasehold property whereof he was mortgagee, and of a bill indorsed by himself to E. to secure the repayment of the sum:—Held, as between E. and the general creditors of the solicitor's estate, that the transaction was *bona fide* within 13 Eliz. c. 5. *Ibid*.

2.—C., a trader, on the occasion of his marriage with P., executed a settlement, which recited that he was indebted to P. in the sum of 20,000*l.*, and in which he covenanted that he would pay this sum to the trustees of the settlement to hold upon the trusts thereof, and the settlement contained a declaration that as soon as C. should become owner in fee of certain property the trustees should lend this sum to him upon mortgage of this property. About two years after, C. having become owner in fee of the property, executed a mortgage of it to the trustees, but no money ever actually passed. Three years after the mortgage, C. became bankrupt, and the plaintiff was his trustee. The recital that the 20,000*l.* was owing to P. was untrue, and the evidence shewed that the settlement was a scheme by C. to defraud his creditors, but that P. was ignorant of the false recital, and had been no party to the fraud:—Held (affirming the decision of the Vice-Chancellor of the Palatine Court), that the false recital did not vitiate the settlement, that there was no necessity for actual payment of the money, and that, the covenant having been made for the good consideration of marriage, and the mortgage having been executed in pursuance of the covenant, the settlement and mortgage were valid against C.'s creditors. *Kevan v. Cramford* (App.), 46 Law J. Rep. Chanc. 729; Law Rep. 6 Ch. D. 29.

P. joined with her husband in her defence to the suit:—Held (varying the order of the Vice-Chancellor), that this was no reason for depriving her of the costs of the suit. *Ibid*.

C. carried on another business in partnership with R.; this was also in bankruptcy, and the trustee of R. asked for certain enquiries to be directed in the suit as to his right to the mortgaged premises:—Held (varying the order of the Vice-Chancellor), that as the plaintiff's suit had wholly failed, no such enquiries could be directed between the co-defendants. *Ibid*.

The settlement contained trusts giving a life interest in the 20,000*l.* to C. after the death of P., but with a clause in defeasance of this gift on C.'s bankruptcy:—Held (varying the order of the Vice-Chancellor), that this was a future contingent right with respect to which

the Court would not make any declaration. *Ibid.*

3.—An insolvent trader executed a deed by which he conveyed all his property to trustees who were, *inter alia*, to carry on his business and realise his estate in such manner as they might deem expedient, and out of the proceeds thereof, after making certain payments, to apportion the residue equally among such of his creditors as executed or assented to the deed. It was further provided that if within a given time any creditor neglected or refused to assent to the deed, his dividends should be paid by the trustees to the debtor. It was admitted that the deed was executed for the purpose of defeating any execution that might prevent the equal distribution of the debtor's property among his creditors.—Held, that the deed was fraudulent and void under 13 Eliz. c. 5. *Spencer v. Slater*, 48 Law J. Rep. Q.B. 204; Law Rep. 4 Q.B. D. 13.

4.—K. & Co. sent a cheque for 2,000*l.* to S. & Co. to provide funds to meet certain bills at maturity, which had been drawn by K. & Co. upon and had been accepted by S. & Co., who kept an account at the Bank of England for the purpose of meeting their acceptances. The cheque was by mistake paid into another bank, where S. & Co. had their general banking account, and such bank refused to allow them to withdraw it. Before the bills matured, S. & Co., finding themselves insolvent, drew a cheque for the 2,000*l.* on the Bank of England, intending to remit it to K. & Co., but were advised that they could not properly do so. The next day they stopped payment, and shortly afterwards went into liquidation. K. & Co. paid the bills at maturity, and the 2,000*l.* was placed *in medio*. An application by K. & Co. that the 2,000*l.* should be paid to them having been dismissed on the ground that the repayment of the money to them by S. & Co. would have been a fraudulent preference.—Held, on appeal, that as S. & Co. never intended to misappropriate the 2,000*l.* the payment of it by mistake into their general account was not a breach of trust, and therefore that the relation of debtor and creditor between S. & Co. and K. & Co. was never created, and the question of fraudulent preference did not arise, and consequently that K. & Co. were entitled to the money. *In re Smith, Fleming & Company; ex parte Kelly & Company* (App.), 48 Law J. Rep. Bankr. 65; Law Rep. 11 Ch. D. 306.

5.—A deed was executed by debtors in insolvent circumstances, by which they conveyed all their estate to trustees on trust to sell as they might think proper, and to divide the residue of the proceeds after paying expenses rateably among the creditors parties to the deed, and, if the trustees thought fit, creditors who refused or neglected to execute, and, if the trustees thought proper, but not otherwise, to pay the dividends on debts due to non-assenting creditors to the debtors. The deed provided for the payment of maintenance

to the debtors if the trustees thought fit, and the executing creditors respectively indemnified the debtors and the trustees in respect of the bills of exchange and promissory notes made or indorsed to them respectively by the debtors in respect of the scheduled debts:—Held, that the deed was not void under 13 Eliz. c. 5. *Spencer v. Slater* (48 Law J. Rep. Q.B. 204; Law Rep. 4 Q.B. D. 13) distinguished. *Boldero v. The London and Westminster Discount Company*, Law Rep. 5 Ex. D. 47.

[And see *BANKRUPTCY*, B 6, D 27; *VOLUNTARY SETTLEMENT*, 8, 9.]

## FRAUDULENT DEBTOR.

[See *BANKRUPTCY*, 1; *DEBTOR'S ACT*, 17–20.]

## FREE MINERS.

[See *FOREST OF DEAN*.]

## FREIGHT.

[See *MARINE INSURANCE*, 12, 14; *SHIPPING LAW*, K.]

## FRIENDLY SOCIETY.

(A) PRIORITIES OF MEMBERS OF DIFFERENT CLASSES.

(B) WINDING-UP: PRIORITY.

(C) MORTGAGE.

(a) *Instalments: fines.*

(b) *Statutory receipt.*

(D) PROCEEDINGS: DISPUTES BETWEEN SOCIETY AND MEMBERS: ARBITRATION.

(E) OFFICERS.

(a) *Liability of estate of deceased officer.*

(b) *Liability for acts of treasurer.*

(F) FRIENDLY SOCIETY NOT A CHARITY.

[Amendment of the Friendly Societies Act, 1875. 39 & 40 Vict. c. 32.]

[Further provisions as to investment of funds of Friendly Societies. 40 & 41 Vict. c. 18. ss. 16, 17.]

[The meaning of section 30 of the Friendly Societies Act, 1875, declared. 42 Vict. c. 9.]

(A) PRIORITIES OF MEMBERS OF DIFFERENT CLASSES.

1.—By the rules of a benefit building society “realised” members, who had by their subscription, with interest and bonuses, made up the full amount of their shares, were entitled to payment, or certificates for payment in rotation, of such amount, and “withdrawal” members, who had not made up the full amount of their shares, but had given notice to withdraw, were entitled to like payments or certificates for the amount of their subscriptions with interest. In the winding-up of the society,—Held (affirming the decision of Hall, V.C., 45 Law J. Rep. Chanc. 143; Law Rep. 1 Ch. D. 481,

*nom. Smith's Case*), that these two classes stood in the position of creditors entitled to be paid in priority to "investing" members, who had not made up their shares, and had given no notice of withdrawal. *In re The Norwich and Norfolk Provident Building Society; ex parte Rackham* (App.), 45 Law J. Rep. Chanc. 785.

#### (B) WINDING-UP: PRIORITY.

2.—A banking company acted as treasurers of a friendly society. A claim for priority in the winding-up of the bank in respect of money of the society lodged in the bank was rejected. A winding-up is not an insolvency within the meaning of section 15, sub-section 7, of the Friendly Societies Act. *In re The West of England and South Wales District Bank; ex parte The Swansea Royal Friendly Society*, 48 Law J. Rep. Chanc. 577; Law Rep. 11 Ch. D. 768.

Semble, it is *ultra vires* of the manager of a bank to accept for the bank the office of treasurer of a friendly society. *Ibid.*

Semble, if a friendly society omit to take from its treasurer security in accordance with the Act and its rules, the right to priority given by the Friendly Societies Act, section 15, sub-section 7, is lost. *Ibid.*

#### (C) MORTGAGE.

##### (a) Instalments: fines.

3.—The rules of a benefit building society, duly certified by the Registrar of Friendly Societies, provided that every mortgage should contain full powers of sale and covenants in accordance with the rules as a security for any money advanced, and that in case the mortgagor should neglect or refuse to observe and perform the covenants for payment of advance instalments, as well as any fines inflicted for neglect of payment as provided for in a table to the rules, then after certain steps taken the board of directors should be at liberty to sell the mortgaged property, and if any member should be desirous of redeeming, he should be allowed to do so on payment of all advance repayments, and any fines due in respect thereof up to the time of redemption, and the present value of the future repayments. The table referred to purported to shew the fines to which borrowing members were liable for default of payment of their monthly subscriptions and interest on their shares from one to ten, according to an increasing scale, for a period of from one to six months, but made no provision beyond six months. The plaintiff borrowed 1,400*l.* from the society, and took twenty-eight 50*l.* shares, and his mortgage was expressed to be for securing the repayment of 1,400*l.*, with interest at 7½ per cent., by monthly instalments of 31*l.* 10*s.* for five years. The payments having fallen into arrear, and the society having taken possession, the plaintiff brought an action for redemption, and the society claimed to be entitled to fines for each unpaid instalment in-

creasing month by month in the same proportion as for the first six months:—Held, that upon the reasonable construction of the rules, the rights of the society were restricted to a six months' fine in respect of each unpaid instalment of each share. *Lovejoy v. Mulhern* (App.), 46 Law J. Rep. Chanc. 630.

4.—Fines secured by covenant in a mortgage form part of the principal in taking the account in foreclosure, and carry interest. Form of pre-closure in such case does not differ from the ordinary decree. *The Provident Permanent Benefit Building Society v. Greenhill*, Law Rep. 9 Ch. D. 122.

##### (b) Statutory receipt.

5.—When the legal estate in land is vested in a building society as mortgagees, and the society on being paid off, gives a receipt in the form provided for by the Building Societies Act, 1874, the effect of the receipt is to vest the legal estate in the land in the person who in equity is best entitled to call for it, and not necessarily in the person who paid the money. *The Fourth City Mutual Benefit Building Society v. Williams. Marson v. Cox*, 49 Law J. Rep. Chanc. 245; Law Rep. 14 Ch. D. 140.

In a case where there are successive equitable mortgagees, and the payment is made by the mortgagor, the first equitable mortgagee is the person entitled. If the payment is made by an equitable mortgagee, who had no notice of prior incumbrances, he is the person entitled, although there are other mortgagees prior to him in point of time. *Pease v. Jackson* (37 Law J. Rep. Chanc. 725; Law Rep. 3 Chanc. 576) considered. *Ibid.*

#### (D) PROCEEDINGS: DISPUTES BETWEEN SOCIETY AND MEMBERS.

6.—A compromise of proceedings taken by a member against a friendly society on the terms that the society would pay the member's solicitor, the plaintiff, certain costs and charges, having been effected, the plaintiff sued for non-payment of the said costs and charges, under 18 & 19 Vict. c. 63. s. 19, and 21 & 22 Vict. c. 101. s. 7, making the secretary defendant:—Held, that the action was properly brought, as it was an action touching or concerning the property, right or claim to property of the society, to which the trustees would under the former Act have been the defendants, and was a "proceeding against the society" within the latter Act, and rightly brought against the secretary. *Roberts v. Page*, 45 Law J. Rep. Q. B. 601; Law Rep. 1 Q.B. D. 476.

7.—When the rules of a building society established under the Act of 1874, state, pursuant to section 16, sub-section 9 of the Act, that disputes between the society and its members shall be settled by arbitration, the jurisdiction of the Court to entertain actions relating to such disputes is ousted thereby. *Wright v. The Monarch Benefit Building Society*,

46 Law J. Rep. Chanc. 649; Law Rep. 5 Ch. D. 726.

The rules of a building society established under the Act of 1874, stated that disputes between the society and its members should be settled by arbitration. A borrowing member of the society brought an action against the society for an account of what was due to it under his mortgage, alleging that in order to complete a sale of the mortgaged property he had been compelled to pay the sum claimed by the society without having time to investigate the accounts, of which he disputed the accuracy and impeached various specific items:—Held, on motion by the defendants for a stay of proceedings, that the dispute was one which must be settled by arbitration. *Ibid.*

8.—The provisions of section 80 of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), apply to friendly societies in general, and are not restricted, as with regard to industrial assurance companies they are, to such as receive contributions by means of collectors at a greater distance than ten miles from the registered office of the society. *In re The United Patriots' National Benefit Society and Holt*, 48 Law J. Rep. M.C. 55; Law Rep. 4 Q.B. D. 29.

Where, therefore, by the rules of a friendly society all disputes between members, or persons claiming through members, and the society, were to be referred to arbitration, it was held that, nevertheless, a Court of summary jurisdiction had jurisdiction, under sub-section 10 of section 30, to decide, upon the application of a person claiming through a member, a dispute between him and the society. *Ibid.*

9.—The plaintiff, a member of a benefit building society, incorporated under and still subject to the Act 6 & 7 Will. 4. c. 32, mortgaged certain property to the society. The provisions of 10 Geo. 4. c. 56, are, so far as applicable, incorporated with 6 & 7 Will. 4. c. 32. One of the rules of the society provided that all disputes between the society and any of its members should be referred to arbitration, pursuant to 10 Geo. 4. c. 56. s. 27. The plaintiff brought an action as mortgagor against the trustees of the society for an account. The defendants contended that the proper remedy was arbitration under the rules:—Held (on appeal from the Court of Appeal, 47 Law J. Rep. Chanc. 228), that the provisions of 10 Geo. 4. c. 56. s. 27, are not applicable to those purposes of a benefit building society which involve the adjustment of rights created by mortgage, and that the jurisdiction of the Court was therefore not ousted. *Mulhern v. Lord* (H.L.), 48 Law J. Rep. Chanc. 745; Law Rep. 4 App. Cas. 182.

10.—A statement of claim alleging a dispute between a building society and a member who had given notice of withdrawal, which had been acquiesced in,—Held bad on demurrer, as it must be assumed that a rule existed referring disputes of that kind to an arbitrator or justices pursuant to 10 Geo. 4. c. 56. s. 27, incorporated in 6 & 7 Will. 4. c. 32. s. 4. *Huckle v. Wilson*, Law Rep. 2 C.P. D. 410.

## (E) OFFICERS.

### (a) Liability of estate of deceased officer.

11.—The secretary and manager of a benefit building society, established and certified under 6 & 7 Will. 4. c. 32, with rules providing for the inspection and auditing of its officers' accounts, having as such officer obtained possession of moneys of the society and misappropriated them, and having died insolvent,—Held, that his estate was liable under 4 & 5 Will. 4. c. 40. s. 12, to discharge the claim of the society for the moneys so misappropriated in priority to the claims of the other creditors; and that the negligence of the society in not examining and auditing his accounts as prescribed by the rules was no bar to the claim. *In re Marriott; Moors v. Marriott*, 47 Law J. Rep. Chanc. 331; Law Rep. 7 Ch. D. 543.

### (b) Liability for acts of treasurer.

12.—By the certified rules of an unincorporated building society the directors were empowered to borrow money up to a prescribed limit. The course of business was for the treasurer of the society to receive the loan and give the lender a receipt, together with an undertaking on behalf of the directors to give a promissory note of the directors for the amount, and these notes were subsequently exchanged for the receipt and undertakings. The plaintiffs advanced 100*l.* to the society, paying the amount to the treasurer and receiving from him a receipt and undertaking. This sum was never paid over to the society, but was appropriated by the treasurer to his own use; and no promissory note for the amount was procured for the plaintiffs. At the time of this loan the society had borrowed in excess of the limit prescribed by the rules. The plaintiffs having sued the society and the directors to recover the amount,—Held, that the society and the directors might and did hold out the treasurer as having authority to act for them in the way he did, and that they were both liable, notwithstanding that the amount of the plaintiffs' loan was in excess of the limit prescribed by the rules of the society. *Chapleo v. The Brunswick Benefit Building Society*, 49 Law J. Rep. C.P. 796; Law Rep. 5 C.P. D. 331.

[And see No. 2 *supra*.]

## (F) FRIENDLY SOCIETY NOT A CHARITY.

13.—A testator gave 500*l.* to trustees to apply the income in aid of the Ringwood Friendly Society, a Society whose funds were raised by the subscriptions of its members, and were applicable for their benefit in case of "sickness, lameness, or old age." Some time after testator's death the Society was dissolved:—Held, that the Society was not a charitable institution, and that the gift was invalid as aiming to create a perpetuity, and was not, on the dissolution of the Society, applicable *cy-près*. *In re Clarke's Trusts*, 45 Law J. Rep. Chanc. 194; Law Rep. 1 Ch. D. 497.

## FURIOUS DRIVING.

Although the word "rider" is not used in the penal clause of 5 & 6 Will. 4. c. 50. s. 78, yet justices of the peace have jurisdiction to convict a person for furiously riding on a horse.

*Williams v. Evans*, Law Rep. 1 Ex. D. 277.

[And see HIGHWAY, 24.]

## FURNITURE.

*Bequest of*. [See WILL CONSTRUCTION, D 11.]

## GAME.

(A) TAKING, DURING FENCE MONTHS.

(B) TRESPASS IN PURSUIT OF.

[Provisions for the better protection of occupiers of land against injury to their crops from ground game. 43 & 44 Vict. c. 47.]

## (A) TAKING, DURING FENCE MONTHS.

1.—A pheasant was caught accidentally between the 1st of February and the 1st of October, by a farmer on his own farm, in a wire set for rabbits and not for pheasants, but finding the pheasant in the wire still alive, he, after releasing it and putting it on the ground, picked it up and carried it away with him. The 1 & 2 Will. 4. c. 32. s. 3, makes it unlawful "to kill or take any game between the 1st of February and the 1st of October:"—Held, that the catching the pheasant in the wire and the picking it up and carrying it away, was not one continuous act, but that the picking it up and carrying it away constituted a "taking" within the statute, but that it was material for the justices to consider whether the farmer took the bird away with a view only to restore it to liberty, or with a view to killing it or keeping it, in which latter case they ought to convict. *Watkins v. Price*, 47 Law J. Rep. M.C. 1.

## (B) TRESPASS IN PURSUIT OF GAME.

2.—A landlord, who on letting a farm verbally has reserved the game to himself, has thereby a sufficient authority to give leave to a person to kill game on such farm to prevent any such person from being a trespasser thereon in pursuit of game within the meaning of section 30 of 1 & 2 Will. 4. c. 32. *Jones v. Williams*, 46 Law J. Rep. M.C. 270.

After a conviction by two justices under such section, and before any formal conviction had been drawn up, one of such justices changed his mind, and together with a third justice who had not heard the case, but without the concurrence of the other justice who had convicted, reversed such conviction:—Held, that such reversal was irregular, but that as no conviction had been drawn up there was no good conviction existing, and the whole proceeding was a miscarriage. *Ibid*.

## GAMEKEEPER.

*Killing master's rabbits in order to sell them not guilty of embezzlement*. [See EMBEZZLEMENT, 3.]

## GAMING.

(A) SUPPRESSION OF BETTING HOUSES.

(B) SUFFERING GAMING ON LICENSED PREMISES.

## (A) SUPPRESSION OF BETTING HOUSES.

1.—Upon a warrant issued by a justice under 16 & 17 Vict. c. 119. s. 11 (an Act for the Suppression of Betting Houses), founded upon an information that a certain house was used as a common gaming house within the meaning of the 8 & 9 Vict. c. 109 (an Act to amend the law concerning gaming and wagers), the house was searched and the appellant and others apprehended and brought before the petty sessions, when the appellant was charged with having the management of a room in the said house for the purpose of betting with persons resorting thereto, upon horse races, contrary to the statute. No information charging such offence or summons embodying such information had been issued or served:—Held, by the majority of the Court (Cleasby, B., and Grove, J.), Field, J., dissenting, that the want of such information or summons rendered the proceedings on the hearing invalid, and that the conviction thereon must be quashed. And held, further, that a month's notice of the taking of such proceedings was not necessary before laying an information under 16 & 17 Vict. c. 119. s. 17. *Blake v. Beesh* (App. Div.), 45 Law J. Rep. M.C. 111; Law Rep. 2 Ex. D. 335.

## (B) SUFFERING GAMING ON LICENSED PREMISES.

2.—The offence of suffering gaming on licensed premises may be committed by connivance, either on the part of the principal or the person in charge. *Redgate v. Haynes*, 45 Law J. Rep. M.C. 65; Law Rep. 1 Q.B. D. 89.

A gentleman took a sitting-room and three bed-rooms in the appellant's hotel; one of these bed-rooms was occupied by himself, the other two by a horse trainer and a jockey, both of whom lived in the immediate neighbourhood. The appellant retired to bed shortly before 11 p.m. and the hall porter was left in charge. Between 1.30 and 2.15 the following morning the three persons were discovered in the sitting-room playing cards for money, the noise they made having been heard outside the premises. During all this time the hall porter, whose duty it was to stay up and attend to customers, was in a parlour at the extreme end of the house where he could not hear what was going on:—Held, that there was sufficient evidence to convict the appellant of suffering gaming on her premises, and that it was un-

necessary to prove an actual knowledge on her part of what was going on. *Ibid.*

3.—By the Licensing Act, 1872, s. 17, any licensed person who suffers any gaming to be carried on on his premises is liable to a penalty. The appellant, who was a licensed person, allowed certain persons to play on his premises a game called "Puff and Dart." Each player paid the sum of twopence as entrance money, and the winner received a rabbit as a prize. The appellant was convicted by a stipendiary magistrate for having unlawfully suffered gaming to be carried on upon his licensed premises:—*Held* (Cockburn, L.C.J., doubting), that the conviction was right. *Bew v. Harston*, 47 Law J. Rep. M.C. 121; Law Rep. 3 Q.B. D. 454.

[And see *ALHOUSE*, 18.]

*Contract by way of gaming or wagering.* [See *CONTRACT*, 9-15; *BROKER*, 3.]

*Proof of gaming debt in bankruptcy.* [See *BANKRUPTCY*, D 9.]

#### GAOLER.

*Action by prisoner against, for non-discharge.*  
[See *FALSE IMPRISONMENT*, 2.]

#### GARNISHEE.

[See *ATTACHMENT*, 1-14.]

#### GAS.

*Nuisance by.* [See *NUISANCE*, 6.]

#### GASFITTER.

*Negligence by.* [See *NEGLIGENCE*, 13.]

#### GAS WORKS CLAUSES ACTS.

1.—A tenant of premises is not, under the Gas Works Clauses Acts, 1847 and 1871, and the Metropolis Gas Act, 1860, personally liable for arrears of gas rate left unpaid by the preceding tenant; therefore, when the Acts say that payment of arrears left unpaid by an outgoing tenant shall not be required from the next tenant unless he agreed with the defaulting consumer to pay the arrears, they do not impose any personal liability upon an incoming tenant who is within the exception, so as to entitle the Gas Company to summon him before a magistrate for non-payment. *The Gas Light and Coke Company v. Mead*, 45 Law J. Rep. M.C. 710.

Quære, whether the company might not cut off the gas from the premises of the respondent for non-payment of the arrears. *Ibid.*

2.—A gas company, with whose private Act the Gas Clauses Act, 1847, was incorporated, in laying a gas pipe under a street, broke into and injured an arch in the possession of the plaintiff, and used by him as a store-house:—*Held*, that

an action would lie against the company for the injury so done to the plaintiff; the arch being a "building" within section 7 of the Gas Clauses Act, 1847, and not materials of a road or bridge, within section 6. *Thompson v. The Sunderland Gas Company* (App.), 46 Law J. Rep. Exch. 710; Law Rep. 2 Ex. D. 429.

#### GAVELKIND.

Land was demised on trust for A. for life, with remainder to "W., the eldest son of A.," for life. At the date of the will A. had two sons living, both children; J., the elder, the third born, and W., the younger:—*Held*, that W. was the person designated. *In re Garland; Garland v. Beverley*, 47 Law J. Rep. Chanc. 711; Law Rep. 9 Ch. D. 213.

Testator died possessed of gavelkind land at S. and no other real estate. He devised his land at S., and all other his real estate, on trust, with an ultimate remainder to his own right heirs:—*Held*, that the common law heir was designated. *Ibid.*

#### GAZETTE.

*Publication in: libel.* [See *CROWN*, 8.]

#### GENERAL AVERAGE.

[See *MARINE INSURANCE*, 25; *SHIPPING LAW*, L.]

#### GENERAL MEETING.

*Powers of: transfer of company.* [See *COMPANY*, G 10.]

#### GIFT.

[And see *DONATIO MORTIS CAUSA*.]

1.—A testator, who died in May, 1874, had in July, 1873, purchased the remainder of a lease in certain hereditaments to expire in April, 1874, and in November, 1873, he obtained an agreement from the reversioners for a further lease to be granted to him upon the completion of a new house which he was to build upon the premises. At the testator's death the house was nearly completed, and the lessors were about to execute the lease in his favour. The evidence shewed that it had throughout been the testator's intention that the new house should be made over by way of gift to his housekeeper, whom he appointed executrix of his will:—*Held*, that the legal interest taken by the executrix could not be set up by her as completing the imperfect gift. *Strong v. Bird* (43 Law J. Rep. Chanc. 814) distinguished. *Bottle v. Knockner*, 46 Law J. Rep. Chanc. 159.

2.—J. R. insured his life and gave the policy to his mother, without making a valid assignment to her of the interest in the money secured thereby. He then died intestate, and

his administratrix brought detinue and trover against the mother's solicitor and the mother, to recover possession of the policy:—Held (affirming the judgment of the Court below), that the action could not be maintained. *Rummons v. Hare* (App.), 46 Law J. Rep. Exch. 30; Law Rep. 4 Ex. D. 169.

*By husband to wife: incomplete gift carried out as trust.* [See TRUST, A 2; HUSBAND AND WIFE, 34.]

*To solicitor: fiduciary relation.* [See SOLICITOR, 17.]

#### GLASGOW POLICE ACT.

[See SCOTCH LAW, 10.]

#### GLEBE.

*Purchase-money of: reinvestment: Lands Clauses Act.* [See LANDS CLAUSES ACT, 26, 27.]

#### GOLD FIELDS ACT.

[See COLONIAL LAW, 41.]

#### GOODWILL.

*Meaning of term.* [See PARTNERSHIP, 9.]

*Mortgage of: compensation under Lands Clauses Act.* [See LANDS CLAUSES ACT, 9.]

*Sale or assignment of.* [See PARTNERSHIP, 13; VENDOR AND PURCHASER, 13, 14.]

#### GUARANTY.

[See PRINCIPAL and SURETY.]

#### GUARDIAN.

*Of infant or lunatic.* [See INFANT, 26; LUNATIC, 3-7.]

*Of the poor.* [See POOR LAW, 1.]

#### GROWING CROPS.

Growing crops are not "personal chattels" within the Bills of Sale Act, 17 & 18 Vict. c. 36. *Branton v. Griffiths*, 45 Law J. Rep. C.P. 588; Law Rep. 1 C.P. D. 349.

#### GOVERNOR.

*Colonial: powers of.* [See COLONIAL LAW, 26.]

#### GRAIN.

[Restrictions as to carriage of grain in ships. 43 & 44 Vict. c. 43.]

#### HABEAS CORPUS.

[See PARENT and CHILD, 1.]

#### HABENDUM.

*Discrepancy between habendum and reddendum.* [See DEED, 3.]

#### HABITUAL DRUNKARD.

[See DRUNKARD.]

#### HARBOUR.

A local Act (to be judicially noticed) authorised the owner of a beach, on which fishermen had been from time immemorial accustomed to beach their boats, to levy a toll of 5s. per boat:—Held, that the owner was bound to allow the beach to be so used, or to provide some equally safe and convenient place. *Aiton v. Stephen* (H.L. Sc.), Law Rep. 1 App. Cas. 456.

#### HARBOURS, DOCKS, AND PIERS CLAUSES ACT.

1.—The steamship C, under the directions of the dockmaster and within the limits of his jurisdiction, when entering the St. Katharine Docks came into collision with two barges, and drove them against a steamship lying alongside the wharf, which steamship crossed the plaintiff's skiff and sank it. In the City of London Court, where a cause of damage was instituted, it was found by the learned Judge as a fact, that the C. was not liable for the damage to the plaintiff's skiff, because she was bound by statute to obey the dockmaster, and could not do anything but under his orders. The plaintiff appealed, and the Court held that the master contributed to the damage by negligence in carrying out the orders of the dockmaster, and therefore that C. was liable for the damages proceeded for. *The Cynthia*, 46 Law J. Rep. F., D. & A. 58; Law Rep. 2 P. D. 52.

2.—The "owner" of any wreck, who, under section 56 of the Harbours Act, 1847, is to repay the harbour-master the expense of removing it if it becomes an obstruction to his harbour, is he who was the owner thereof when such wreck became an obstruction. Therefore, where a wreck became an obstruction to a harbour, and the underwriters subsequently, and before the removal, paid the owner as for a total loss:—Held, that such payment did not make them liable to the harbour-master as "owners," but the original shipowner, to whom the burden attached at the time the wreck became an obstruction, must bear the expense of removal. *Eglinton v. Norman and Another* (App.), 46 Law J. Rep. Exch. 557.

3.—Section 74 of the Harbours, Docks, and Piers Act, 1847, enacts that "the owner of every vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock or pier, or the quays or works connected therewith; and the master or person having the charge of such vessel or float of timber,



through whose wilful act or negligence any such damage is done shall also be liable to make good the same. . . . Provided always that nothing herein contained shall extend to impose any liability upon the owner where the vessel, at the time when the damage is caused, is in charge of a compulsory pilot. A vessel was driven aground by a violent storm, and after the master and crew had been obliged to abandon her, was forced by the wind and waves against a pier, whereby serious damage was occasioned:—Held by the majority of their Lordships (affirming the decision of the Court of Appeal, 46 Law J. Rep. Q.B. 831; Law Rep. 1 Q.B. D. 547), that the owners of the ship were not liable under the above section. *The River Weir Commissioners v. Adamson* (H.L.), 47 Law J. Rep. Q.B. 193; Law Rep. 2 App. Cas. 743.

The exemption from obligation to make good losses or injuries caused by the "act of God" applies to liabilities created by section 74 no less than to those existing before the passing of the Act. *Ibid.*

#### HEARING IN CAMERA.

*Jurisdiction.* [See PRACTICE, H H 29.]

#### HEIR.

*Citation of.* [See PROBATE, 28.]

*Gift of blended fund to.* [See WILL CONSTRUCTION, H 28-30.]

*Proof of heirship.* [See LEGITIMACY DECLARATION ACT, 1, 2; MORTGAGE, 55.]

#### HEIRLOOMS.

1.—The Court can order a sale of heirlooms to pay mortgages charged on the estate to which the heirlooms are annexed, even as against infant remaindermen. *Fane v. Fane*, 46 Law J. Rep. Chanc. 174; Law Rep. 2 Ch. D. 711.

2.—The Court has no jurisdiction to order heirlooms to be sold at the instance of the tenant for life, on the ground that the sale would be for the benefit of parties interested. *D'Eyncourt v. Gregory*, 45 Law J. Rep. Chanc. 741; Law Rep. 3 Ch. D. 635.

[And see WILL CONSTRUCTION, D 11.]

#### HERALD'S COLLEGE.

*Herald's visitations: admissibility of, in evidence.* [See EVIDENCE, 12.]

#### HIGHWAY.

(A) DEFINITION OF.

(B) DEDICATION OF.

(C) REPAIR AND MAINTENANCE OF.

(a) *Liability of township, parish or place to repair roads within it.*

DIGEST, 1875-1880.

(b) *Roads authorized by private act.*

(c) *Proceedings for non-payment of rate.*

(d) *Licence by Justices to get materials in enclosed land.*

(e) *Sale of exhausted gravel pit: right of pre-emption.*

(f) *Compensation to person damaged by alteration of level.*

(D) DIVERTING AND STOPPING UP.

(E) ENCROACHMENT: INFORMATION: LIMITATION OF TIME.

(F) POWER TO LET PASTURAGE.

(G) ACTIONS AND PROCEEDINGS.

(a) *Notice of action.*

(b) *Liability of surveyor.*

(H) OBSTRUCTIONS.

(a) *Removal.*

(b) *Wilful obstruction.*

(c) *Trees overhanging highway.*

(I) OFFENCES: FURIOUS DRIVING.

(K) NAME OF OWNER OF CART: GENERAL HIGHWAY ACT.

[Amendment of the law relating to highways in South Wales. 41 & 42 Vict. c. 34.]

[Amendment of the law relating to highways and the Acts relating to locomotives on roads. 41 & 42 Vict. c. 77.]

[Amendment of the law with respect to District Auditors. 42 & 43 Vict. c. 6.]

[Amendment of the law with respect to returns of receipts and expenditure as regards highways. 42 & 43 Vict. c. 39.]

#### (A) DEFINITION OF.

1.—Where the access to a road at either end has become impossible by reason of ways leading up to it having been lawfully stopped up, such road ceases to be a "public highway." *Bailey v. Jamieson*, Law Rep. 1 C.P. D. 329.

#### (B) DEDICATION OF.

2.—Where evidence of user is given in support of a presumed dedication of a public right of way over copyhold, it does not lie on the persons claiming such right to shew that the lord has had possession. *Powers v. Bathurst*, 49 Law J. Rep. Chanc. 294.

#### (C) REPAIR AND MAINTENANCE OF.

(a) *Liability of township, parish or place to repair roads within it.*

3.—The provision in 25 & 26 Vict. c. 61 (the Highway Act, 1862), s. 52, by which any place declared to be a parish, in pursuance of 20 Vict. c. 19, for poor law and other purposes, shall be deemed to be a parish separately maintaining its own highways, does not render the inhabitants of a place, formerly extra-parochial, liable in respect of the repair of a highway. *Reg. v. The Inhabitants of Central Wingland*, 46 Law J. Rep. M.C. 282; Law Rep. 2 Q.B. D. 349.

4.—A public highway ran along the slope of

N N

a hill, beneath which was a valley, the slope being at right angles to the valley, and very precipitous. A landslip of considerable magnitude occurred on the slope, and about 252 yards of the highway were carried off into the valley below, and its place being filled up with stones and other *débris*, no trace of the old metalled road remained, but the line of it was known and admitted. An engineer, who had inspected the *locus in quo*, reported that it was practicable to form a permanent and passable road along the whole tract, and of a similar character, at a moderate outlay. The Court had power to draw inferences of fact:—Held, that there was no such total destruction of the road as would relieve the parish from liability to repair. *Reg. v. Hornsea* (39 Law J. Rep. M.C. 59) distinguished. *Reg. v. The Inhabitants of Greenhow*, 45 Law J. Rep. M.C. 141; Law Rep. 1 Q.B. D. 703.

5.—To enable a Judge before whom an indictment, preferred by order of justices under section 95 of 5 & 6 Will. 4. c. 50, for non-repair of a highway, is tried, to make an order for the costs of "such prosecution" to be paid out of the rate under that section, it is necessary that the prosecution be one which the justices had jurisdiction to order, and be the one which they did order. Therefore, where an indictment charging the inhabitants of a township with the non-repair of a general highway, was amended at the trial so as to charge them in respect only of a limited highway,—Held, that the Judge had no power to order the costs to be paid out of the rate levied in the township, under section 95 of 5 & 6 Will. 4. c. 50, the prosecution of the amended indictment not being "such prosecution" within the section. *Reg. v. Lee*, 45 Law J. Rep. M.C. 54; Law Rep. 1 Q.B. D. 198.

6.—The inhabitants of the township of A. were indicted for the non-repair of a highway situate within that township. The parish in which the township of A. was situated was divided into seven townships, each of which (with two exceptions) had from time immemorial repaired its own highways. The parish at large had never done any repairs, nor appointed surveyors, nor levied highway rates. One of the exceptions was the highway mentioned in the indictment which had been repaired by the adjoining township of W., but for so doing there was no evidence of any consideration:—Held, that the township of A. was liable to repair such highway, there being no legal liability on the township of W., or on the parish to repair it. *Reg. v. The Inhabitants of Ardsley* (C.C. B.), 47 Law J. Rep. M.C. 65; Law Rep. 3 Q.B. D. 255.

(b) *Roads authorised by private act.*

7.—A private Act of Parliament (5 Geo. 4. c. xciv.) after authorising certain trustees to establish a ferry and make roads in communication therewith, provided that the roads when

made, as well as the ferry, should be maintained and repaired out of certain tolls thereby authorised to be taken. The Act specified no limit of time for the expiration of the trust, but it was provided that if the execution of the authorised works should not be completed within the space of ten years, all the powers and authorities thereby given should cease and determine, save only as to so much of the work as should have been completed within that time. The ferry was established, and all the roads made with one exception, but the funds derived from the tolls being insufficient to keep one of the roads so made in repair, an order was made by justices in Special Sessions, under the provisions of 4 & 5 Vict. c. 59. s. 1, for contribution out of the highway rates towards the repair of such road:—Held (on appeal from the Queen's Bench Division, 47 Law J. Rep. M.C. 74; Law Rep. 3 Q.B. D. 187), that the road in question was a turnpike road within the meaning of 4 & 5 Vict. c. 59, and that as the funds of the trust were inadequate to keep it in repair, the justices had a discretion to appropriate a portion of the highway rate towards its maintenance. Held also, that the completion by the trustees of the whole system of roads specified in the Act of 4 Geo. 4. c. xciv. was not a condition precedent to the right to call upon the parish to contribute towards the repair of the roads that had been made. *The King v. Cumberworth* (3 B. & Ad. 108; s. c. 1 Law J. Rep. M.C. 86) overruled. *The Queen v. French* (App.), 48 Law J. Rep. M.C. 175; Law Rep. 4 Q.B. D. 507.

(c) *Proceedings for non-payment of rate.*

8.—Where proceedings are taken before justices for the non-payment of a highway rate, the mere production of the book purporting to contain such rate is no evidence of the due publication of such rate. *Bird v. Adcock*, 47 Law J. Rep. M.C. 123.

(d) *Licence by Justices to get materials in enclosed land.*

9.—The plaintiff was owner and occupier of a farm in the parish of L., and the defendant was in 1877 the surveyor of highways for the parish. In 1866, the justices at special sessions granted their licence under 5 & 6 Will. 4. c. 50. s. 54, authorising the then surveyor to get materials, for the repair of the highways within the parish, from a field forming part of the said farm, and the surveyor, in pursuance of the licence, got such materials as were necessary. Materials continued to be got during subsequent years, down to 1877, for the same purpose; but in 1877, in consequence of objections raised by the plaintiff, the defendant, as surveyor, applied to the justices for a new licence. The justices having declined to accede to the application on the ground that the licence granted in 1866 was still in force, the defendant entered the land, and got further materials

for the repair of the highways:—Held, that the licence granted to the surveyor in 1866 was limited to the necessities of the particular occasion, and was not in force in 1877, so as to justify the defendant in entering the plaintiff's land during that year. *Manvers and Browne v. Bartholomew*, 48 Law J. Rep. M.C. 3; Law Rep. 3 Q.B. D. 5.

(e) *Sale of exhausted gravel pit: right of pre-emption.*

10.—Where, under section 48 of the General Highway Act (5 & 6 Will. 4. c. 50), an exhausted gravel pit is offered for sale to the owner of adjoining lands to whom the statute gives the right of pre-emption, it is the duty of the justices at the Special Sessions, in fixing the price to be paid by him, to consider his interests as well as those of the parish. They are, therefore, while in the interests of the parish, fixing a minimum below which the land shall not be sold, yet, in his interests to fix a price fair for him to pay, and not to take as a standard of value a price which might be obtained on a sale by auction, or to some person who for some private or personal reasons would give an extraordinary price. *Reg. v. The Drayton-in-Hales Highway Board*, 45 Law J. Rep. M.C. 126; Law Rep. 1 Q.B. D. 608.

An appeal to the Quarter Sessions, under section 105, lies against the consent or determination of justices under section 48. *Ibid.*

(f) *Compensation to person damaged by alteration of level.*

11.—The Public Health Act, 1848, vests by section 68 all streets, being highways, in local boards of health, authorises them to alter or raise the level of such streets, and directs by section 144 that compensation shall be made out of the rates to all persons damaged by the exercise of the powers of the Act; the amount, in case of dispute, to be settled by arbitration. By section 2 the word street is to apply to and include any highway not being a turnpike road, and any road, footway, &c., and the parts of such highway, road, footway, &c., within the district, and by an amending Act the word highway is defined to mean any highway repairable by the inhabitants. The Local Government Act, 1858, authorised local boards to take on themselves by agreement with turnpike trustees the maintenance and repair of a turnpike road within their district. A local board, through whose district a turnpike road and footpath passed, agreed with the turnpike trustees to repair and to raise the footpath, the trustees agreeing to raise the road at the same place. The necessary result of thus raising the footpath was to damage the house of the plaintiff, who thereupon claimed compensation from the board under section 144 of the Public Health Act, 1848:—Held (by Brett, L.J., and Cotton, L.J., *dissentiente* Bramwell, L.J., reversing the judgment of the Queen's Bench Division,

47 Law J. Rep. Q.B. 521), that the road in question was, although a turnpike road, a street within section 68 of the Act, and was vested in the local board by virtue of that section, and that the plaintiff was therefore entitled to compensation from the local board for the damage caused by the alteration made by them in the exercise of their statutory powers, and an award made against the board under section 144 was enforceable. *Nutter v. The Acorington Local Board of Health* (App.), 48 Law J. Rep. Q.B. 487; Law Rep. 4 Q.B. D. 875.

(D) DIVERTING AND STOPPING UP.

12.—On appeal from a certificate of justices to divert a highway, it did not appear upon the certificate that the proposed substitution would be more convenient, as the result of the view of the magistrates themselves affecting their own judgment:—Held, that this was requisite, and the appeal was allowed. Held also, that upon this application the certificate need not state that the old road would become unnecessary. *Reg. v. Wallace*, Law Rep. 4 Q.B. D. 641.

13.—By 10 & 11 Vict. c. 34. s. 66, the commissioners may allow, upon such terms as they may think fit, any building within the limits of the special Act, to be set forward for improving the line of the street in which such building is situated:—Held, that the term "street" as used in the above section did not include a road without a line of buildings, and that the commissioners had no power under that section to divert any portion of a highway by widening it and obliterate a portion of the old highway which had thereby become unnecessary. *Reg. v. Platts*, 49 Law J. Rep. Q.B. 848.

(E) ENCROACHMENT; INFORMATION; LIMITATION OF TIME.

14.—An encroachment on a highway under 27 & 29 Vict. c. 101. s. 51, by making any building or fence on the side of any carriage way within fifteen feet from the centre thereof, is not a continuing offence, and the six months' limitation of time contained in 11 & 12 Vict. c. 43, s. 11, begins to run from the time when such building or fence was completed. *Coggins v. Bennett*, Law Rep. 2 C.P. D. 568.

(F) POWER TO LET PASTURAGE.

15.—The plaintiff was lessee, under a local board, the urban authority, of the right of pasturage over the herbage at the side of a public road which was a "street" within the meaning of the Public Health Act, 1875, and which, therefore, by section 149 "vested in and was under the control of" the local board. He was also lessee to the same extent of the herbage at the side of a private road, within the district of the board, and he turned out his cattle to graze on both roads. The defendant turned out his cattle on the same roads without any right

to do so:—Held (affirming the judgment of the Queen's Bench Division, 47 Law J. Rep. Q.B. 446; Law Rep. 3 Q.B. D. 376), that the plaintiff could maintain an action against the defendant for depasturing the public road, inasmuch as that road "vested" in the local board, which thereby acquired such a property in the soil of the road as was necessary for the purpose of exercising the powers over the road given by the statute, and which therefore could give the plaintiff a title to the pasturage: but that he could not do so with respect to the private road, for the local board could not give him any title to the pasturage, and he had no such possession as enabled him to maintain an action against the defendant for interfering with his enjoyment of the pasturage on that road. *Coverdale v. Charlton* (App.), 48 Law J. Rep. Q.B. 128; Law Rep. 4 Q.B. D. 104.

#### (G) ACTIONS AND PROCEEDINGS.

##### (a) Notice of action.

16.—In an action against a local board acting under the Public Health Act, 1848 (11 & 12 Vict. c. 63), for not having properly filled up a trench which the board had caused to be made in a road for laying down a sewer, by reason of which that part of the road gave way, and the plaintiff's horse was injured, the notice of action given in compliance with section 139 of that Act stated that the board did by their "labourers, servants and others, on or about the 13th of May last, negligently, carelessly, and improperly leave a certain portion of the said road or highway in an insufficient and improper state of repair, whereby a horse" of the plaintiff "sank into the said road or highway, and was thrown therein," and injured:—Held, that the notice was not limited to a complaint of an injury from non-repair of the road, but was applicable to a cause of action arising from an act of misfeasance, and was therefore a sufficient notice of the cause of action. *James Smith & Company v. The West Derby Local Board*, 47 Law J. Rep. C.P. 607; Law Rep. 3 C.P. D. 428.

##### (b) Liability of surveyor.

17.—By section 109 of the Highway Act (5 & 6 Will. 4. c. 50) no action is to be brought against any person for anything done under that Act after three months next after the fact committed, for which such action was brought. The Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 117, constitutes the local board of health surveyor of highways, with all the powers of any such surveyor in England; and by section 139 of that Act every action against any inspector, or any person acting under the general Board of Health, or the officer of health, clerk, surveyor, inspector of nuisances, or the officer acting under the direction of the local board, for anything done under the provisions of that Act, is to be commenced within six months after the accrual of the cause of action, and not after-

wards:—Held, that an action of trespass against a local board of health for an act done by the board as surveyor of highways, which was commenced less than six months, though more than three months after the alleged trespass, was not too late. *Taylor v. The Meltham Local Board of Health*, 47 Law J. Rep. C.P. D. 12.

18.—The defendant had been appointed by a vestry surveyor of highways. The vestry resolved that part of a highway should be raised, and ordered the defendant to employ men to do it. The defendant contracted with G. to do the work. G. employed and paid his own men, and proceeded with the work. The defendant, as surveyor, employed men to cart materials to the ground, and determined the levels; but beyond exercising a general superintendence on behalf of the vestry did not personally interfere with the work. G. left the road in such a state that the plaintiff in driving along the road by night was overturned and injured. The defendant did not give any direction that the road should be left in such a state:—Held (reversing the judgment of the Queen's Bench, 43 Law J. Rep. Q.B. 168), that the defendant was liable. *Pondlebury v. Greenhalgh* (App.), 45 Law J. Rep. Q.B. 3; Law Rep. 1 Q.B. D. 36.

[And see Nos. 20, 21 *infra*.]

#### (H) OBSTRUCTIONS.

##### (a) Removal.

19.—The owner in fee of a house abutting on the highway in 1858 wrongfully enclosed a portion of the highway as a garden. In 1873 the Buxton Local Board of Health served a notice on the occupier to remove the obstruction, and stating that in default it would be removed at his expense. On bill filed by the occupier and owner to restrain the local board, —Held (assuming the enclosure to be wrongful), the board had power under ss. 69 and 70 of 10 & 11 Vict. c. 34 to remove the garden as an obstruction to the safe and convenient passage along the highway. *Bagshaw v. The Buxton Local Board of Health*, 45 Law J. Rep. Chanc. 260; Law Rep. 1 Ch. D. 220.

Semble, the body in whom the guardianship of the highway is vested have, by common law, the right of removing obstructions, which individuals may exercise only in case of special injury. *Ibid*.

Semble, that if the board had no right by statute or common law, still the Court would not restrain them in the same suit in which it decided that the enclosure was an obstruction. *Ibid*.

20.—By the side of the highway and under the entrance to T.'s premises a drain ran. T. substituted for it a culvert, and by so doing raised the entrance and the part of the highway adjoining it. The surveyor of the highways served T. with a notice to reinstate, alleging that the culvert caused a nuisance to

the highway. On T.'s failing to reinstate the highway, the surveyor himself removed the culvert, and in doing so broke some of the tiles:—Held, that an information against the surveyor under the 52nd section for malicious injury to the property ought to be dismissed. *Denny v. Thwaites*, 46 Law J. Rep. M.C. 141; Law Rep. 2 Ex. D. 21.

(b) *Wilful obstruction.*

21.—The working surveyor of highways, in repairing a road, left large stones in the roadway, insufficiently fenced and lighted:—Held, that though he might have been guilty of an offence under 5 & 6 Will. 4. c. 50. s. 56, yet he was rightly convicted under section 72. *Fearnley v. Ormsby*, Law Rep. 4 C.P. D. 136.

(c) *Trees overhanging highway.*

22.—The word "owner" in section 65 of the Highways Act, 1835, means the person in actual occupation. Where an order of Justices under section 65, directing certain trees overhanging a highway to be pruned or lopped, was made on a summons served only on the tenant in occupation of the land abutting the highway, and whereon the trees grew,—Held, that such order was good, and a motion to restrain a highway board from enforcing the same was dismissed with costs. *Woodard v. The Billericay Highway Board*, 48 Law J. Rep. Chanc. 535; Law Rep. 11 Ch. D. 214.

23.—Suffering trees and underwood to grow over and across a highway, so as to obstruct the free passage, is not a wilful obstruction of the free passage within the meaning of 5 & 6 Will. 4. c. 50. s. 72. So held by Mellor, J., and Quain, J., Cockburn, C.J., dissenting. *Walker v. Horner*, 45 Law J. Rep. M.C. 34; Law Rep. 1 Q.B. D. 4.

*Nuisance: locomotive.* [See LOCOMOTIVE ACTS.]

*Opening coal-shoot in highway: negligence.*  
[See MASTER AND SERVANT, 14.]

*Turnpike road: disused toll-house: right to.*  
[See TURNPIKE, 1.]

*Unreasonable user.* [See NUISANCE, 9.]

*Van left in highway: negligence causing death: horse frightened.* [See NUISANCE, 8.]

*Water company breaking up street.* [See WATERWORKS, 2.]

(I) OFFENCES.

*Furious driving*

24.—A bicycle is a "carriage," and the propulsion of it by means of a person seated on and carried by it is a "driving of a carriage" within 5 & 6 Will. 4. c. 50. s. 78. *Taylor v. Goodwin*, 48 Law J. Rep. M.C. 104; Law Rep. 4 Q.B. D. 228.

[And see FURIOUS DRIVING.]

(K) NAME OF OWNER OF "CART:" GENERAL HIGHWAY ACT.

25.—A light spring cart, used by the maker of agricultural implements for conveying them to market, as well as for driving himself and family from place to place, and on which he paid a tax under 32 & 33 Vict. c. 14. s. 18, is not a "cart" within the meaning of section 76 of the General Highway Act, 1835 (5 & 6 Will. 4. c. 50), so as to make it necessary for the owner's name to be painted thereon. *Danby v. Hunter*, 49 Law J. Rep. M.C. 15; Law Rep. 5 Q.B. D. 20.

HONG KONG.

[See COLONIAL LAW, 22.]

HOSPITAL.

*Exemption from land tax.*

1.—A hospital which was erected before the passing of 4 Will. & M. c. 1, imposing a land tax, and the site of which was exempted from that tax by the provisions of 38 Geo. 3. c. 5. ss. 25 & 29, was by a decree of the Court of Chancery removed to another site, and the old site was discharged from the charitable trusts to which it was then subject:—Held (reversing the decision of the Queen's Bench Division, 46 Law J. Rep. Q.B. 207), that the removal of the hospital and the secularisation of the site did not remove the exemption from land tax conferred on the site as "land belonging to an hospital in the fourth year of William and Mary," by 38 Geo. 3. c. 5. s. 29. *Rabbits v. Cow* (App.), 46 Law J. Rep. Q.B. 498; Law Rep. 3 Q.B. D. 307. Affirmed on appeal (H.L.), 47 Law J. Rep. Q.B. 385; Law Rep. 3 App. Cas. 473 (*nom. Cow v. Rabbits*).

*Lease by.*

2.—In 1763, lands were conveyed upon trust for the plaintiffs, a charitable corporation, and in 1783, the plaintiffs granted a lease of part of such lands to G. for ninety-nine years at a peppercorn rent. In 1877 the plaintiffs commenced an action against K., who was in possession of the demised lands, on the ground that the lease being voidable under the 13 Eliz. c. 10, they had the option to determine it at any time during its continuance, and that the Statute of Limitations did not commence to run against them until they exercised such option:—Held (affirming Fry, J.), that, in the absence of evidence to the contrary, the counter-claim was *prima facie* evidence of the plaintiffs' title in fee, and that the defendant being admittedly in possession of land included in the lease, the presumption, in the absence of proof to the contrary, was that he was in possession under some title derived through G. Held, also, that, though the 13 Eliz. c. 10, and 14 Eliz. c. 14, were primarily directed against ecclesiastical persons, the expression "guardian

of any hospital" was wide enough to include and did include lay persons and secular institutions, and therefore that the plaintiffs were within the purview, and subject to the provisions of those Acts. But held (reversing the decision of The Master of the Rolls), that the lease being voidable from its commencement, the plaintiffs' right of entry, and therefore their right of action to recover possession, accrued the moment the lease was granted, and was, therefore, barred by the Statute of Limitations. *The Governors of Magdalen Hospital v. Knott* (App.), 47 Law J. Rep. Chanc. 726; Law Rep. 8 Ch. D. 709.

*Exemption from inhabited house duty.* [See INHABITED HOUSE DUTY, 2.]

*Nuisance by: infectious diseases.* [See NUISANCE, 7.]

### HOTCHPOT.

[See ADVANCEMENT, 4-7; WILL CONSTRUCTION, M.]

### HOUSE OF LORDS.

[Amendment of the law in respect of the Appellate Jurisdiction of the House of Lords. Appointment, Salary and Pension of Lords Ordinary of Appeal. 39 & 40 Vict. c. 59.]

#### *Appeal when sustainable.*

1.—Case in which the House of Lords reviewed a judgment of the Court below (irregularly given) in order to stop litigation at the request of the parties. *Dudgeon v. Thomson* (H.L. Sc.), Law Rep. 3 App. Cas. 34.

2.—Appeal does not lie to the House of Lords from the Scotch High Court of Justiciary. *Mackintosh v. The Lord Advocate for Scotland* (H.L. Sc.), Law Rep. 2 App. Cas. 41.

#### *Leave to appeal to House of Lords.*

3.—In determining whether leave should be granted to appeal to the House of Lords under s. 71 of the Bankruptcy Act, 1869, the Court will be guided by the same principles as under s. 18 of the Bankruptcy Act, 1849 (12 & 13 Vict. c. 106). *Ex parte Jackson; in re Boves* (App.), Law Rep. 14 Ch. D. 726.

#### *Practice on appeals.*

4.—The House refused, after pronouncing decree, to hear any observations on the part of a person not before the House as appellant or defendant. *Yates v. The University College, London* (H.L.), 45 Law J. Rep. Chanc. 137; Law Rep. 7 E. & I. App. 438.

5.—In cases of appeal to the House of Lords there are always two motions before the House—one, that the judgment under appeal be reversed; the other, that the judgment under appeal be affirmed, and the appeal dismissed with costs. When the votes are equal upon the first motion, the motion is lost. The second

motion is not put, as it is assumed that it would be lost also. The judgment appealed from is therefore affirmed, but no costs are given. *Pryce v. The Monmouthshire Railway and Canal Company* (H.L.), 49 Law J. Rep. Exch. 130.

6.—Where two decisions of the House of Lords are irreconcilable that which is more recent and more consistent with general principles ought to be preferred. *Campbell v. Campbell* (H.L. Sc.), Law Rep. 5 App. Cas. 787.

#### *Staying execution pending appeal.*

7.—The practice as to appeals to the House of Lords has not been altered by the Judicature Acts. An appellant from the Court of Appeal in an action attached to a Common Law Division cannot obtain stay of execution pending appeal unless he gives bail in error as directed by the Common Law Procedure Act, 1852, s. 151; on so doing he is entitled to stay of execution as of right. An application to enlarge the time for giving bail in error must be made to the Division to which the action is attached, not to the Court of Appeal. *Justice v. The Mersey Steel & Iron Company* (App.), Law Rep. 1 C.P. D. 575.

8.—A party to whom costs have been ordered to be paid will not be restrained from enforcing the order pending an appeal to the House of Lords, if his solicitors undertake to refund if the order should be reversed. *Morgan v. Elford* (App.), Law Rep. 4 Ch. D. 352.

#### *Order of, how made order in Chancery.*

9.—Where the House of Lords had reversed the decision of the Court of Appeal, the order of the House of Lords was made an order of the Supreme Court on motion, *ex parte*, in the Division of the High Court in which the action was tried. *The British Dynamite Company v. Krebs*, 48 Law J. Rep. Chanc. 800; Law Rep. 11 Ch. D. 448.

#### *Action for costs on judgment of.*

10.—An action lies on the judgment of the House of Lords ordering the appellant in an unsuccessful appeal to that House to pay the costs of such appeal to the respondent. *The Marbella Iron Ore Company v. Allen*, 47 Law J. Rep. C.P. D. 601.

*Continuing injunction pending appeal.* [See INJUNCTION, 28.]

### HUSBAND AND WIFE.

- (A) CELEBRATION OF MARRIAGE.
- (B) ACTION BY DIVORCED WIFE AGAINST HUSBAND.
- (C) LIABILITY OF HUSBAND FOR ACTS OF WIFE.
  - (a) *Authority of wife to pledge husband's credit.*
  - (b) *Wife's breaches of trust during coverture.*
- (D) ADVANCEMENT OR GIFT BY HUSBAND.

**(E) ANNUITY TO HUSBAND AND WIFE FOR JOINT LIVES: TENANTS BY ENTIRETIES.****(F) PROPERTY OF WIFE GENERALLY.**

- (a) *Chose in action of wife: reduction into possession by husband.*
- (b) *Confirmation by wife as against husband of her settlement made during minority.*
- (c) *Acknowledgment of deed by wife.*
- (d) *Equity of wife to a settlement.*
- (e) *Mortgage by husband and wife: resulting trust.*

**(G) SEPARATE PROPERTY OF WIFE.**

- (a) *What is.*
- (b) *Restraint on anticipation following gift of gross sum.*
- (c) *Liability of, for wife's engagements.*
- (d) *Whether passing by her will.*
- (e) *Equitable estate tail: disentailing deed.*
- (f) *Gift of, to husband; evidence of.*

**(H) MARRIED WOMAN'S PROPERTY ACTS.**

- (a) *Earnings of married woman.*
- (b) *Share under intestacy.*
- (c) *Policy of insurance for benefit of wife.*
- (d) *Liability for antenuptial and general debts of wife.*
- (e) *Right of married woman to bring action of trespass.*
- (f) *Liability of husband for antenuptial debts of wife.*

**(I) MARRIED WOMAN HAVING PROTECTION ORDER.****(L) DOWER.****(M) SEPARATION DEED: CUSTODY OF CHILDREN.**

[Power given to magistrate on conviction of husband for aggravated assault on wife to make order equivalent to order for judicial separation and alimony. 41 & 42 Vict. c. 19. s. 3.]

[Extension to Scotland of the facilities now in force in England and Ireland for effecting policies of assurance for the benefit of married women and children. 43 & 44 Vict. c. 26.]

**(A) CELEBRATION OF MARRIAGE.**

[See MARRIAGE.]

**(B) ACTION BY DIVORCED WIFE AGAINST HUSBAND.**

1.—An action by a divorced wife against her former husband for acts done during the coverture will not lie. *Phillips v. Barnet*, 45 Law J. Rep. Q.B. 277; Law Rep. 1 Q.B. D. 436.

**(C) LIABILITY OF HUSBAND FOR ACTS OF WIFE.****(a) Authority of wife to pledge husband's credit.**

2.—The defendant having held out his wife to the plaintiff as having authority to pledge his credit afterwards became insane. The plaintiff, being unaware of the insanity, continued to supply the wife with goods on credit:—Held, that the defendant was liable to the

plaintiff for the price of the goods so supplied. *Drew v. Nunn* (App.), 48 Law J. Rep. Q.B. 591; Law Rep. 4 Q.B. D. 661.

3.—Where a suit has been reasonably instituted in the Divorce Court by a wife against her husband for a divorce, on the ground of cruelty and adultery, the husband is liable to the wife's solicitor for the fair and reasonable costs, as between solicitor and client, which have been incurred in the prosecution of such suit, although they may be costs which the Registrar of the Divorce Court has disallowed in taxing the wife's costs of such suit, as between party and party. *Ottaway v. Hamilton*, 47 Law J. Rep. C.P. 424. Affirmed on appeal, 47 Law J. Rep. C.P. 725; Law Rep. 3 C.P. D. 393.

4.—When a wife lives apart from her husband under an agreement by which she is to receive a specified income for her maintenance, and is not to apply to him for anything more, she has, so long as he fulfils those conditions, no authority to pledge his credit; nor can any such authority be implied from the alleged inadequacy of her income. *Eastland v. Burchell*, 47 Law J. Rep. Q.B. 500; Law Rep. 3 Q.B. D. 432.

5.—Where husband and wife live together, and the husband has privately forbidden her to buy goods on credit, he is not liable for the price of articles of dress, although suitable to her rank in life, supplied to her by a tradesman with whom she has not dealt before, but to whom the fact that she was so forbidden has not been communicated. *Jolly v. Rees* (15 Com. B. Rep. N.S. 628; 33 Law J. Rep. C.P. 177) followed. *Debenham v. Mellon* (App.), 49 Law J. Rep. Q.B. 497; Law Rep. 5 Q.B. D. 394. Affirmed on appeal by the House of Lords, 50 Law J. Rep. Q.B. 155; Law Rep. 6 Q.B. D. 24.

6.—A married woman carried on business in her maiden name. Her husband gave the trade creditors notice that the business was not his, and that he would not be liable for the trade debts. A creditor supplied goods to the wife and drew bills on her in her maiden name, which she accepted in her maiden name. The bills were dishonoured and she absconded. On debtor's summons by the creditor against the husband and wife to enforce payment by the husband of the amount due on the bills,—Held, that the summons was vexatious and oppressive and must be dismissed, for that, if the creditor could make out any case against the husband, his proper course was to bring an action. *In re Shepherd; ex parte Shepherd* (App.), 48 Law J. Rep. Bankr. 35; Law Rep. 10 Ch. D. 573.

**(b) Wife's breaches of trust during coverture.**

7.—The defaults of a feme trustee during coverture are chargeable to her husband. Testator appointed his wife and two others executors and trustees; directed his business and a leasehold house to be sold, and gave the residue

(which was principally leasehold property) to his wife, directing that if she married again it should be settled to her separate use for life; then he bequeathed the house "if not sold, and the money settled as above stated and all money, &c., so settled upon her for her lifetime" to certain other persons; but if his wife should not marry again he left the property to her own disposal at her death. The widow married again two years after testator's death; the leaseholds were not converted, and she received the entire income till her death, twenty-nine years afterwards, by which time the greater portion of the terms of years had run out. Her second husband, who survived his wife and her co-trustees, never acted in the trust:—Held, that the leaseholds ought to have been converted upon the widow's second marriage, and that the second husband was liable as a trustee having legal control over the trust property, for a breach of trust in permitting the tenant for life to receive the entire income of the unconverted property. *In re Smith's Estate*. *Clifford v. Washington*, 48 Law J. Rep. Chanc. 205.

The husband was ordered to recoup to the trust estate the difference between the income of the leaseholds received by himself or his wife during the coverture, and the dividends which would have been produced by a sale thereof at the time of her marriage and investment of the proceeds in consols. *Ibid*.

Semble, that the excess of income thus received by the tenant for life must be held as received by her husband through her hands. *Ibid*.

#### (D) ADVANCEMENT OR GIFT BY HUSBAND.

8.—A husband transferred railway debentures into the joint names of himself, his wife, and A. He also transferred railway shares into the joint names of himself, his wife, A. and B. A. and B. were, with C., trustees of the marriage settlement of the husband and wife. On the death of the husband,—Held, that the investments were in the nature of an advancement for the wife, for whom A. and B. were trustees. *In re Eykyns' Trusts*, Law Rep. 6 Ch. D. 115.

*Incomplete gift carried out as trust*. [See No. 34 *infra* and TRUST, A 2.]

#### (E) ANNUITY TO HUSBAND AND WIFE FOR JOINT LIVES: TENANTS BY ENTIRETIES.

9.—In an antenuptial settlement the wife's father covenanted with the trustees to pay to them during his life an annuity, upon trust to pay the same "unto and to the use of the husband and wife during their joint lives," and after the death of the husband to the use of the wife, with trusts for the children and the husband if he survived his wife:—Held, that the husband and wife took the annuity by entireties, and therefore that the whole of it was during their joint lives liable to the husband's debts, the wife not being entitled to any equity thereout.

*Ward v. Ward*, 49 Law J. Rep. Chanc. 409; Law Rep. 14 Ch. D. 506.

#### (F) PROPERTY OF WIFE GENERALLY.

##### (a) *Chose in action of wife: reduction into possession by husband.*

10.—By an antenuptial marriage-settlement, a sum of consols belonging to the husband was settled after the respective deaths of the husband and wife, and failure of children (which happened), in trust for the survivor of the husband and wife absolutely; and certain Portuguese bonds belonging to the wife were settled upon trust for the husband during the joint lives of himself and his wife, and in case he survived her in trust for such persons as she should by will appoint, and in default of appointment for her next-of-kin, excluding the husband; but in case she survived him, in trust for her absolutely. The husband by his will gave all his property to his wife absolutely; and the wife by her will gave all her property to her husband for life, with remainder to her sisters absolutely. The husband and wife having perished together at sea,—Held, that the consols belonged to the legal personal representatives of the husband, and the bonds to the legal personal representatives of the wife. *Wollaston v. Berkeley*, 45 Law J. Rep. Chanc. 772; Law Rep. 2 Ch. D. 213.

11.—An order made in an administration suit declared that one-fifth share in certain property "belonged to J. W. and his wife in her right." This share was afterwards sold by the husband and wife, and the money paid to and received by the husband, who predeceased his wife. After her death the surviving executors of the husband filed their bill to set aside the sale of the one-fifth share on the ground of fraudulent concealment:—Held, that the sale of the share was a reduction into possession, and that the husband's representatives were the proper parties to institute the suit. *Widgery v. Tepper*, 46 Law J. Rep. Chanc. 579; Law Rep. 5 Ch. D. 516; affirmed on appeal, 47 Law J. Rep. Chanc. 550; Law Rep. 7 Ch. D. 413.

12.—A married woman became entitled, on the intestacy of an uncle, to shares, and the shares were, in pursuance of an agreement between husband and wife, transferred into the joint names of the husband and wife. The husband subsequently deserted his wife, and she obtained a magistrate's protection order. Capital subsequently became payable on account of the shares:—Held, that the shares had not been reduced into possession, and that the returned capital payable on them belonged to the wife, as being property acquired since the date of the desertion. *Nicholson v. The Drury Building Estate Company (Lim.)*, 47 Law J. Rep. Chanc. 192; Law Rep. 7 Ch. D. 48.

13.—P. was indebted to W. in 2,400*l.*, secured by his bond, payable by yearly instalments of 200*l.* In 1869 W. died, having by her will appointed P.'s wife her sole executrix and re-



siduary legatee. In 1870 P. and his wife passed the residuary account of W. without including the bond debt, and P. applied to his own use the residuary estate of W. P. took possession of the bond and kept it until his death in 1871. In 1876 P.'s estate was being administered by the Court, and his widow claimed to prove for the amount of the bond debt:—Held, that P. had reduced the bond into possession, and that the debt was extinguished. *Price v. Price* (App.), 48 Law J. Rep. Chanc. 478; Law Rep. 11 Ch. D. 163.

14.—The share of a married woman, who was administratrix and one of the next-of-kin of an intestate, was received by an agent appointed by herself and her husband:—Held, a reduction into possession by the husband. *In re Barber; Dardier v. Chapman*, Law Rep. 11 Ch. D. 442.

15.—A legacy of 995*l.* bequeathed to a married woman having been paid by cheque to the order of herself and her husband, she and her husband went together to the husband's bankers and placed 195*l.* to the husband's credit, and opened a separate account in the wife's name with the balance of 800*l.*, which account she afterwards dealt with as a *feme sole*. The husband having gone into liquidation,—Held, that the 800*l.* had never been reduced into possession, or that even if it had, it had been given by the husband to the wife, and belonged to her for her separate use. *Parker v. Lechmere*, Law Rep. 12 Ch. D. 256.

(b) *Confirmation by wife of her settlement made during minority.*

16.—By a settlement made in 1848 on the marriage of C., who was then a minor, certain funds to which she was then entitled in reversion, were settled upon the usual trusts for husband and wife and children. C. was left a widow with one son. While she was a widow she claimed, as administratrix of her husband, and against the trustees of the settlement, certain policy moneys. These moneys were paid into Court, and she consented to a decree that they should be paid to the trustees. She married again, and had seven more children. During her second coverture the reversionary interests fell in, and an order was made, on petition in a suit, for carrying over C.'s share in the funds to an account entitled the account of C.'s first marriage settlement, and the dividends were ordered to be paid to C. C.'s second husband stated that this order was made in ignorance that it would confirm the settlement. C. never claimed the dividends till after the bill was filed. On a bill by the second husband against C.'s son by the first marriage, for a declaration that the settlement did not bind the funds against him, it was held, that the consent to the trustees taking the policy moneys, and the order made on the petition amounted to a confirmation of the settlement. *White v. Coe*, 45 Law J. Rep. Chanc. 685; Law Rep. 2 Ch. D. 837.

(c) *Acknowledgment of deed by wife.*

17.—The Court refused to make an order under 3 & 4 Will. 4. c. 74. s. 91, dispensing with the concurrence of the husband to the execution of a deed by his wife on an affidavit by the son that the husband and wife had for three years been living apart, in consequence of the intemperate and violent habits of the former, which rendered necessary his confinement in a lunatic asylum for some time, and that, although he had since been discharged, he was not in a fit mental condition to execute a deed, or understand its nature. The Court directed that the application should be made to the husband to execute, and that the result should be stated to the Court, and that he should have notice of an application for the order, and, further, that there should be an affidavit by a medical man of the husband's mental condition. *In re The Trusts of the Will of Clare*, 49 Law J. Rep. C.P. 557.

(d) *Equity of wife to a settlement.*

18.—The same principles are applicable with regard to a wife's equity to a settlement whether she is entitled absolutely to the *corpus*, or whether she takes a life interest only, and the Court will, in its discretion, direct the whole of the dividends on a fund in which the wife has a life interest only to be paid to her in exclusion of the assignee in insolvency of her husband. *Taunton v. Morris*, 47 Law J. Rep. Chanc. 721; Law Rep. 8 Ch. D. 453. Affirmed on appeal, 48 Law J. Rep. Chanc. 408; Law Rep. 11 Ch. D. 779.

19.—In an administration action, upon the petition of a married woman absolutely and immediately entitled to a share in the residuary estate of the testator, after decree but before further consideration, the Court made an order enforcing the petitioner's equity to a settlement, notwithstanding that her share had not been ascertained or become payable. *Robinson v. Robinson*, 48 Law J. Rep. Chanc. 507; Law Rep. 12 Ch. D. 188.

20.—The equity to a settlement of a married woman prevails on behalf of her children by a former marriage, though of full age and sufficiently provided for, and the Court will not enquire what other provision they have. *Conington v. Gilliat*, 46 Law J. Rep. Chanc. 61; Law Rep. 1 Ch. D. 694.

21.—The wife of a person of unsound mind was entitled to a fund in Court. An order was made in enforcement of her equity to a settlement, directing accumulations and future income to be paid to her separate use, with liberty to apply in chambers for the disposal of capital in a similar manner. *In re Dixon's Trusts*, 48 Law J. Rep. Chanc. 592.

22.—In the settlement of a wife's fortune under a covenant to settle upon the wife for life, with remainder to her children, a power to the wife alone to appoint among her children should be inserted. *Oliver v. Oliver*, 48 Law J. Rep. Chanc. 630; Law Rep. 10 Ch. D. 765.

23.—A married woman has no equity to a settlement out of property given for the benefit of herself and her husband during their joint lives and the life of the survivor. *In re Bryan. Godfrey v. Bryan*, 49 Law J. Rep. Chanc. 504; Law Rep. 14 Ch. D. 516.

(c) *Mortgage by husband and wife: resulting trusts.*

24.—A husband and wife appointed by way of mortgage some real estate legally settled, but subject to an absolute power in the husband and wife. On redemption it was provided that the re-conveyance should be made to the uses of the settlement. There was a power of sale under which any surplus purchase-money was to be held on trust for the husband, his heirs, executors, administrators, and assigns. The power of sale was exercised after the death of the husband:—Held, that the surplus purchase-money belonged to the personal representative of the husband. *Jones v. Davies*, 47 Law J. Rep. Chanc. 654; Law Rep. 8 Ch. D. 205.

(G) SEPARATE PROPERTY OF WIFE.

(a) *What is.*

25.—After a marriage the wife, who had for some years previously carried on a business on her own account, continued, with her husband's consent, to carry it on in her maiden name:—Held (affirming the decision of Malins, V.C.), that the business, including the stock-in-trade, utensils, capital and debts, as they stood on the morning of the marriage, with all accretions since that time, belonged to the wife for her separate use. *Ashcorih v. Outram* (App.), 46 Law J. Rep. Chanc. 687; Law Rep. 5 Ch. D. 923.

26.—For the purpose of determining whether property is vested in a married woman for her separate use, the whole frame of the deed, will, or other instrument creating the trust must be narrowly examined. *In re Peacock's Pension Fund*, 48 Law J. Rep. Chanc. 265; Law Rep. 10 Ch. D. 490.

In a deed the words "comfortable maintenance," coupled with a restriction on alienation, and the whole frame and intention of the deed, held to vest personal property in a married woman to her separate use. *Ibid.*

27.—One T. having been found lunatic, an annual sum was ordered to be allowed out of his income "for the separate maintenance of his wife, payable quarterly." The wife accumulated out of the allowance 20,000*l.*, and died during the husband's lifetime, having disposed of the accumulations by her will. In an action by the committee of the husband for administration, the executor of the will claimed by counter-claim probate of the will:—Held, that the accumulations were her separate estate. *In the goods of Tharp* (App.), Law Rep. 3 P. D. 76.

*Gift of income for maintenance and support of a wife and children: wife whether entitled for separate use.* [See TRUST, D 9.]

(b) *Restraint on anticipation following gift of gross sum.*

28.—A testatrix gave her real and personal estate to trustees to convert, and after payment of debts, &c., to invest the residue of the trust moneys and pay the income to a tenant for life (who pre-deceased the testatrix), and after her death to pay and divide the same residue of the same trust moneys between two persons, one of whom was a married woman; and she directed that every gift made to a woman by her will should be to her separate use, and so that she should not have power to deprive herself thereof by anticipation, and that her receipt alone, notwithstanding her coverture, should be a sufficient discharge. The trustees paid the married woman's share into Court. On petition presented by her,—Held, that she was entitled to an order for payment out, while still under coverture, notwithstanding the restraint on anticipation. *In re Croughdon's Trusts*, 47 Law J. Rep. Chanc. 795; Law Rep. 8 Ch. D. 460.

(c) *Liability of, for wife's engagements.*

29.—The property of a married woman settled as she should appoint by deed or will, and in default of appointment to her for life for her separate use, with remainder, if she survive her husband, to her executors, administrators and assigns, without restraint on anticipation, is in equity separate estate for the purpose of being bound by her general engagements. *Mayd v. Field*, 45 Law J. Rep. Chanc. 699; Law Rep. 3 Ch. D. 584.

A., a married woman, having property so settled on her, covenanted during the coverture (but without reference to herself as a married woman), to cause 1,000*l.* to be paid after her death to the trustees of her daughter's marriage settlement. The trusts were for the daughter for life for her separate use, without power of anticipation, with remainder to the husband for life, with remainder to the children of the marriage in the usual form. This covenant did not refer to the power, or the property comprised in the original settlement. Afterwards by her will, made in execution of the power during the coverture, A. bequeathed 1,000*l.* on trust for the daughter for life, for her separate use, with remainder on certain trusts for her children slightly different from those declared under the covenant. She also bequeathed the residue of her estate upon certain trusts:—Held, first, that though A.'s covenant could not be supported as an execution of her power, yet her property was so settled on her as to be bound by the covenant as to her general engagement binding her separate estate. Secondly, that the gift of the 1,000*l.* by the will was a satisfaction to the extent to which the daughter and her children took under the settlement. *Ibid.*

A. survived her husband. After his death she made savings out of her settled property, and sold some furniture, also part thereof, and invested the proceeds in stock:—Held, that nei-

ther the savings nor the stock passed under her will. *Ibid.*

30.—A married woman having property settled on her for her separate use without power of anticipation or alienation made, during her coverture, together with her mother and husband, a joint and several promissory note. Before it became due her husband died, after which she in no way acknowledged or ratified the contract. On action brought against her on the note when discovered,—Held, that the note being when made *nudum pactum* both at law and in equity did not become binding on her after her husband's death; and her separate property could not be reached in the action. *Roberts v. Watkins*, 46 Law J. Rep. Q.B. D. 552.

31.—Property limited to the separate use of a married woman without power of anticipation is not bound (at least during the coverture) by a charge fraudulently created by her in favour of a mortgagee without notice of the restraint. Therefore, where the property was a fund in Court, and the mortgagee had, by virtue of a power in his security, obtained an order directing payment of future dividends to him, the order was upon the application of the married woman discharged. *Thomas v. Price*, 46 Law J. Rep. Chanc. 761.

32.—A married woman, having a life interest in certain property for her separate use, without power of anticipation, by deed fraudulently assigned her life interest to a mortgagee for value:—Held, that the deed could give no title to the mortgagee. *Stanley v. Stanley*, 47 Law J. Rep. Chanc. 256; Law Rep. 7 Ch. D. 589.

A mortgagee, having discovered the fraud, obtained from the married woman a warrant of attorney, entered up judgment thereon, and afterwards obtained a charging order on a dividend due to her the very day it accrued due:—Held, that this was a mere device, to make her future income a security for the mortgage debt, and an attempt to do indirectly what could not be done directly, and that, therefore, the charging order must be discharged. *Ibid.*

33.—A married woman having separate estate without power of anticipation cannot be sued personally in respect of a debt contracted during her coverture. In order to charge her personal estate her husband and trustees must be joined as defendants. *Atwood v. Chichester* (App.), Law Rep. 8 Q.B. D. 722.

34.—A husband being about to go abroad, executed a deed, whereby he purported to grant, assign, transfer and set over to his wife a leasehold house and furniture, to hold the same unto his said wife as her separate estate:—Held, that it was the intention of the husband to settle the property on the wife, and that he thereby became trustee of the property for the separate use of the wife. The wife handed the title-deeds of the house to an agent, in order to raise 200*l.* The agent, falsely representing himself as the agent of the husband, by forged documents purported to mortgage the property to H. & S. (to whom the

deeds were delivered) for 1,200*l.*, which he appropriated. The wife repeatedly, but in vain, pressed the agent to return her the title-deeds. The fraud being discovered,—Held, that the wife had not been guilty of such negligence as to deprive her of her right to relief against H. & S., and that the forged documents must be delivered up to be cancelled, and the title-deeds handed over to her. *For v. Hawks*, 49 Law J. Rep. Chanc. 579; Law Rep. 13 Ch. D. 822.

35.—In January and June, 1875, a married woman, having at the time separate property, not subject to a restraint on anticipation, by deeds covenanted to pay to the plaintiffs 5,000*l.* and interest. In January, 1880, the husband died:—Held, that all her separate property at the date of the judgment, whether in existence at the dates of the deeds or after acquired, was chargeable with the payment of the amount due on the covenants. *Pike v. Fitzgibbon*, 49 Law J. Rep. Chanc. 493; Law Rep. 14 Ch. D. 837 (reversed on appeal, but not yet reported).

Held also, that separate property, which during coverture she was restrained from anticipating, was chargeable with the payment of the amount due. *Ibid.*

36.—Sums advanced by a stranger in providing necessaries for the support of a married woman, living separate from her husband, are debts binding her separate estate; and, being debts payable out of funds held in trust for her separate use, are not barred by the Statute of Limitations. *Hodgson v. Williamson*, Law Rep. 15 Ch. D. 87.

37.—A married woman who was sued for a debt contracted with a creditor who believed her to be a *feme sole*, pleaded coverture, and the husband was then made a party. It being alleged that she had separate estate, it was declared at the trial that her separate estate was chargeable with payment of the debt and costs, and an enquiry was directed to ascertain of what her separate estate consisted, and in whom it was vested. The Master certified that the separate property consisted of an annuity secured by the covenant of the husband, contained in a separation deed, and vested in a trustee. On a summons by the plaintiff to shew cause why he should not be at liberty to sign judgment, and the trustee not being a party,—Held, that the Court could only make an order declaring the debt (with interest) and the taxed costs of the plaintiff to be a charge upon the annuity, but without prejudice to the trustees' claim, if any. *Collett v. Dickenson*, Law Rep. 11 Ch. D. 687.

38.—A charge by a married woman on an expectation under the will of a living person who afterwards died, leaving property to her separate use, was upheld. *Flower v. Buller*, 49 Law J. Rep. Chanc. 784; Law Rep. 15 Ch. D. 665.

39.—At the trial of an action, brought against husband and wife to recover the amount of a bill of exchange indorsed by the wife to

the plaintiff, it appeared that the wife, when she indorsed the bill, was a married woman possessed of a life interest in certain property settled to her separate use without any restraint upon anticipation, and that after writ issued, but before trial, her life interest was, by deed, resettled upon her for her separate use without power of anticipation. Judgment having been entered for the plaintiff for the amount claimed, with a direction to the Master to enquire as to the wife's separate estate and report to the Court, and also with an injunction restraining the defendants from dealing with the separate estate until the debt was paid or the money paid into Court, it was—Held, on appeal, that this judgment was wrong: that the proper order to make was one declaring the plaintiff entitled to be paid the amount of the debt out of the estate (if any) to which the wife might be entitled for her separate use without restraint on her power of dealing therewith: judgment to be entered for the husband; and (the plaintiff having failed to shew that the wife at the time of the trial was entitled to any separate estate with power of dealing therewith) no further order to be made, except that the judgment was to be without prejudice to such proceedings as the plaintiff might be advised to take in order to set aside the deed of resettlement. *Barber v. Gregson* (App.), 49 Law J. Rep. Exch. 731.

*Counterclaim by husband joined as formal defendant in action to enforce right against separate estate of wife.* [See PRACTICE, W 67.]

*Guaranty by wife in consideration of supply of goods to husband: construction of guaranty.* [See PRINCIPAL AND SURETY, 3.]

*Married woman not liable to be made bankrupt.* [See No. 53 infra.]

(d) *Whether passing by her will.*

40.—By a marriage settlement, the income of certain property was settled on the wife, for her life, for her separate use, without power of anticipation; and the corpus, if there were no children of the marriage, and she survived her husband, on her absolutely, for her separate use, if she should not survive her husband, then as she should by deed or will appoint. She made a will in pursuance of the power in her husband's lifetime, and survived him, but did not republish the will after his death. There were no children of the marriage:—Held, that the will passed her separate property. *Bishop v. Wall*, 45 Law J. Rep. Chanc. 773; Law Rep. 3 Ch. D. 194.

41.—A married woman to whom property is limited for life for her separate use, with a power to appoint by will, by exercising the power makes the property assets for payment of debts payable out of her separate estate. *In re Harvey's Estate. Gilbert v. Harben*, 49 Law J. Rep. Chanc. 3; Law Rep. 13 Ch. D. 216.

[And see No. 29 supra; POWER, 8.]

(e) *Equitable estate tail: disentailing deed.*

42.—A married woman having an estate tail settled to her separate use without power of anticipation as to the income may by a disentailing deed enlarge her estate tail into a fee simple, and limit the fee to her separate use, with a power to dispose of it so as to defeat her husband's title by the curtesy, notwithstanding the bankruptcy of her husband. *Cooper v. Macdonald* (App.), 47 Law J. Rep. Chanc. 373; Law Rep. 7 Ch. D. 288.

(f) *Gift of, to husband: evidence of.*

43.—A married lady received a banker's draft for the amount of a legacy given to her separate use. She gave the draft to her husband, who paid it into his current account, and on the same day placed it upon a deposit account in his own name, and then shewed his wife the deposit note. He died very shortly after. The widow gave evidence that she never intended to give up the control of this money:—Held, that the executors of the husband must pay her this sum. *Green v. Carhill*, 46 Law J. Rep. Chanc. 477; Law Rep. 4 Ch. D. 882.

(H) MARRIED WOMAN'S PROPERTY ACTS.

(a) *Earnings of married woman.*

44.—The husband, owing to intemperance, became incapable of carrying on his business, and was placed in an infirmary. His wife carried on his business for several months, and borrowed money for the purpose. The husband, on his return from the infirmary, did not interfere with the business, but occupied a room in the upper part of the house. Meat purchased by the wife having been seized in execution for a debt of the husband,—Held, that there was a separate trading by the wife, and that the goods seized were her property. *Lovell v. Newton*, Law Rep. 4 C.P. D. 7.

45.—Under the Married Woman's Property Act, 1870, the separate earnings of a deceased married woman are equitable assets distributable *pari passu* amongst all her creditors, and her executor is therefore not entitled to retain his own debt out of such separate earnings in priority to her other creditors. *In re Poole's Estate. Thompson v. Bennett*, 46 Law J. Rep. Chanc. 803; Law Rep. 6 Ch. D. 739.

(b) *Share under intestacy.*

46.—The limit of 200l. fixed by section 7 of the Married Woman's Property Act, 1870, applies only to money coming to the married woman by "deed or will," and not to personal estate to which she may have become entitled as next-of-kin of an intestate. Such personal estate, therefore, whatever may be its amount or value, belongs, where unaffected by any settlement, to her for her separate use, and may be transferred or paid to her upon her

separate receipt, without the necessity of any examination. Quære, whether the 8th section does not apply to *corpus*, as the "rents and profits" therein mentioned are not limited to those arising during the life of the married woman. *In re Voss. King v. Voss*, Law Rep. 13 Ch. D. 504.

(c) *Policy of insurance for benefit of wife.*

47.—Upon a petition presented under section 10 of the Married Woman's Property Act, 1870, for the appointment of trustees to receive the moneys payable under a policy effected by a husband for the benefit of his wife and children; the Court will declare the rights and interests therein of the widow and children of the deceased. *In re Mellor's Policy Trusts*, 47 Law J. Rep. Chanc. 246; Law Rep. 6 Ch. D. 127; 7 Ch. D. 200.

The husband having died insolvent, and the income of the policy moneys being insufficient to maintain his widow and infant daughters, the Court directed the moneys to be distributed, as if the husband had died intestate—one-third to be paid to the widow, and the income of the remaining two-thirds to be paid to her, during the minority of the daughters, for their maintenance. *Ibid.*

48.—After the passing of the Married Woman's Property Act, 1870, a trader being entitled to two policies of assurance on his own life, upon each of which one premium only had been paid, surrendered them to the insurance office, and obtained in lieu thereof two new policies under the same premiums, and expressed upon the face of them to be for the benefit of his wife, if living at his death, for her sole and separate use, and bearing endorsements to the effect that they should be entitled to the same privileges as policies opened with the company at the date of the original policies. Within two years after obtaining the new policies he filed a petition for liquidation under the Bankruptcy Act, 1869, and shortly afterwards died. Upon a bill filed by the trustee in the liquidation against the widow and the insurance company, one of the Vice-Chancellors held (45 Law J. Rep. Chanc. 96) that the transaction amounted to a voluntary settlement, within the meaning of the 91st section of the Bankruptcy Act, 1869, and was therefore void as against the trustee; but upon appeal, the Court having come to the conclusion upon the evidence, first, that the original policies had no surrender value at the time of the substitution of the new policies; and, secondly, that the premiums upon the new policies had been paid out of the wife's separate property, reversed the decision, and dismissed the bill with costs. *Holt v. Everall* (App.), 45 Law J. Rep. Chanc. 433; Law Rep. 2 Ch. D. 266.

Held also, that the insurance company could only recover their costs against the plaintiff, and were not entitled to retain them out of the policy moneys. *Ibid.*

(d) *Liability for antenuptial and general debts of wife.*

49.—Income settled to the separate use of a married woman is liable under section 12 of the Married Woman's Property Act, 1870, for her debts contracted before marriage, although it is subject to restraint on anticipation. *The London and Provincial Bank v. Bogle*, 47 Law J. Rep. Chanc. 301; Law Rep. 7 Ch. D. 773.

In an action in the Queen's Bench Division against a husband and wife jointly for a debt contracted by the wife before marriage, costs of defence were recovered by the husband under section 3 of the Married Woman's Property Act (1870) Amendment Act, 1874, and were paid to him by the plaintiffs. In a subsequent action (commenced by the plaintiffs in the Chancery Division for the purpose of enforcing the judgment obtained by them in the first action against the wife) the same costs were ordered to be repaid to the plaintiffs out of the wife's separate estate. *Ibid.*

50.—The statement of claim in an action brought against husband and wife, married after the 30th of July, 1874, to recover a debt due from the wife before her marriage, need not state that the husband has received any of the assets in respect of which he is made liable for such a debt by the Married Woman's Property Amendment Act. *Matthews v. Whittle*, 49 Law J. Rep. Chanc. 359; Law Rep. 13 Ch. D. 811.

When a debt is payable on demand, the service of a writ of summons is a sufficient demand. *Ibid.*

51.—An action cannot be brought against a married woman without joining her husband as the defendant, though the action be brought only in order to declare that property from her separate earnings, and which had become her separate property within the meaning of the Married Woman's Property Act, 1870 (33 & 34 Vict. c. 93), might be made chargeable with the payment of a debt she had contracted whilst living apart from her husband. *Hancock & Company v. Lablache*, 47 Law J. Rep. C.P. 514; Law Rep. 3 C.P. D. 197.

52.—The separate estate of a woman married since 1870 held liable in an action on a joint and separate promissory note by her and her husband for money lent to him. Held also, that her trustees need not be parties. *Davies v. Jenkins*, Law Rep. 6 Ch. D. 728.

53.—A married woman is not liable to be made a bankrupt, though she has a separate estate, and has incurred debts subsequent to her marriage. The Married Woman's Property Act, 1870, has made no difference. Although the distinction between traders and non-traders has been abolished, a person to be made a bankrupt must still be one who can be sued personally, as upon and for a debt, and against whom judgment can be given with all its consequences, which is not the case with a married woman with separate estate, for the separate

estate only is liable to be attached to satisfy engagements contracted on the faith of it. *Ex parte Jones*; in *re Grissell* (App.), 48 Law J. Rep. Bankr. 109; Law Rep. 12 Ch. D. 484.

(c) *Right of married woman to bring action of trespass.*

54.—Under the Married Woman's Property Act, 1870, a married woman can maintain an action in her own name against a wrong-doer for her expulsion from a beerhouse, in which she carried on business apart from her husband, and for loss of profits, stock in trade and fixtures which she had purchased with her separate earnings, it being a remedy for the protection of her property within the meaning of section 11. *Moore v. Robinson*, 48 Law J. Rep. Q.B. 166.

A married woman living apart from her husband had accumulated enough of her separate earnings to purchase the goodwill and stock of a beerhouse, which was taken for her by S., to whom the licence was transferred, and who agreed with the landlord not to do anything to imperil the licence on pain of forfeiting the tenancy and the fixtures. S. executed a declaration of trust in favour of the plaintiff, and handed it to her with the licence indorsed in blank; and she carried on the business. S. having gone away to sea, the defendant, the landlord, served a notice at the house, requiring him to remove his goods by the following day, and on the following day entered and took possession, turning the plaintiff and her furniture out of the house:—Held, on action brought to recover damages for the expulsion, that, in the absence of evidence that the house had been improperly conducted, the absence of S., the licensed person, did not cause the licence to be imperilled so as to create a forfeiture, and justify the entry by the defendant. *Ibid.*

(f) *Husband's liability for wife's debts.*

55.—Real and personal estate was given by will to A. and B. to permit X. to receive the income during his life, remainder to the use of Y., an infant. On the death of X. leaving his widow and Y. otherwise unprovided for, the Court made an order for the payment of the whole income of Y.'s property for her maintenance to X.'s widow by A. and B. Shortly afterwards, the circumstances of X.'s widow improved, but A. and B., till the death of B., in 1851, and after that event A. alone, still paid the gross income (without ever paying succession duty) to X.'s widow during Y.'s minority. Y. attained twenty-one in 1873, married, and sought to charge A. and the estate of B. with, first, excess of payments for maintenance, having regard to X.'s widow's altered circumstances; secondly, dilapidations; thirdly, amount paid for succession duty, with interest:—Held, first, that the order was a protection during the joint lives of A. and B., but that the trust so created did not survive, and that an enquiry must therefore be directed whether A. properly

paid the whole income from 1861; secondly, that they were under no liability for dilapidations; thirdly, that they were liable for succession duty, but not for the interest. *Brown v. Smith*, 48 Law J. Rep. Chanc. 866; on appeal, Law Rep. 10 Ch. D. 377.

X.'s widow, in 1863, married J. W., who died in 1872. On the 7th of May, 1874, she married R. W. Y. sought to charge J. W.'s estate, Y.'s separate estate, if any, and R. W. in the same way:—Held, first, that J. W.'s liability in respect, as well of his wife's receipt of income from 1861 to 1863, as of her accountability for succession duty, terminated with the coverture; second, that R. W. was similarly protected by section 12 of the Married Woman's Property Act, 1870; third, that J. W.'s estate was liable for the receipts of income from 1863 to 1872. *Ibid.*

56.—Mrs. P., being absolutely entitled to twenty-six shares in the W. bank, in May, 1873, married H., having previously executed a settlement of the shares, which, however, was never registered, and did not in any way come to the knowledge of the bank. In the winding-up H.'s name was put upon the list as a contributory in his own right. On a summons to vary the certificate,—Held, that, as under the 78th section of the Companies Act, 1862, H. was liable to contribute the same sum as his wife would have been liable to contribute if she had not married, and also as, under the 75th section of the same Act, such liability created a debt, H., upon his marriage, became a debtor to the company, and not merely the husband of a debtor, and therefore that the "Married Woman's Property Act (1870) Amendment Act, 1874," had no application, and that H. had rightly been put upon the list as a contributory in his own right, but that the more proper mode of entering his name on the list would be as a contributory under the 78th section of the Companies Act, 1862. *In re The West of England and South Wales District Bank. Hatcher's Case*, 48 Law J. Rep. Chanc. 723; Law Rep. 12 Ch. D. 284.

57.—By the law of Jersey the husband is liable for the antenuptial debts of his wife, while by the law of England (Married Woman's Property Act, 1874) the husband is not liable for the antenuptial debts of his wife, except to the extent of certain assets derived from her and specified in section 5 of that Act. The defendant and his wife were sued in England for a debt which had been contracted by the wife before marriage. The debt was for goods sold in Jersey to the wife while a *feme sole* residing there; she subsequently had come to England, and there married the defendant, an Englishman. At the time of the marriage the Married Woman's Property Act, 1874, was in force. There were, however, no assets derived from the wife for which the husband could be rendered liable within section 5:—Held, that, the husband was not liable. *De Gruchy v. Wills*, 48 Law J. Rep. C.P. 726; Law Rep. 4 C.P. D. 362.

**(I) MARRIED WOMAN HAVING PROTECTION ORDER.**

58.—A married woman, deserted by her husband, and having obtained a protection order, was plaintiff in an administration suit, being entitled to sue as a *feme sole*, under 20 & 21 Vict. c. 85. ss. 20, 21 and 25:—Held that, on an application by her, on further consideration of the cause, for payment out of her share in the estate, she must make an affidavit of continuance of desertion, and also of no settlement. *Ewart v. Chubb*, 45 Law J. Rep. Chanc. 108.  
[And see No. 12 supra.]

**(K) DOWER.**

59.—A woman who was married before the Dower Act came into operation joined in a mortgage by her husband of his freehold to release her dower, the equity of redemption and trusts of surplus arising from a sale being reserved to the husband, his heirs, executors and assigns:—Held (reversing the decision of Bacon, V.C., 46 Law J. Rep. Chanc. 545; Law Rep. 4 Ch. D. 639), that the equity of redemption was not charged with the amount of dower against a subsequent assign of the husband. *Dawson v. The Bank of Whitehaven* (App.), 46 Law J. Rep. Chanc. 884; Law Rep. 6 Ch. D. 218.

**(M) SEPARATION DEED: CUSTODY OF CHILDREN.**

60.—A separation deed, executed after the passing of the Infants Custody Act, 1873, contained a covenant by the husband that the mother should have the sole custody and control of their infant daughter, except for one month in every year. The mother afterward adopted speculative religious opinions, and published a work, which was found by a jury to be calculated to deprave public morals, but at the same time they entirely exonerated her from any corrupt motives in publishing it. On a petition by the infant, by her father as her next friend, under the Infants Custody Act, 1873,—Held (affirming the decision of the Master of the Rolls), that it was for the benefit of the infant to remove her from the custody of the mother to that of the father. *In re Besant* (App.), 48 Law J. Rep. Chanc. 497; Law Rep. 12 Ch. D. 605 *nom.* (*Besant v. Wood*).

Quære: Whether the effect of a covenant by a husband in a separation deed, executed since the Infants Custody Act, 1873, giving up the custody of children to the mother, is to incapacitate him, *in toto*, from exercising his parental power and authority over the children, unless the Court, in the exercise of its discretion under the Act, otherwise directs. *Ibid.*

*Suit for restitution of conjugal rights: separation deed a bar to suit: pleading separation deed.* [See DIVORCE, 20.]

*Receiving stolen goods: adulterer receiving goods from wife: wife not liable to conviction for stealing goods of husband.* [See RECEIVING STOLEN GOODS, 9.]

**ILLEGALITY.**

*Assignment of debtor's estate for benefit of creditors.* [See CONTRACT, 8.]

*Association.* [See LOTTERY ACTS, 1.]

*Bill of sale: compounding felony.* [See BILL OF SALE, 49.]

*Contract.* [See CONTRACT, 3-16; MARINE INSURANCE, 2.]

*Fraudulent purpose, delivery of goods for: right to repudiate.* [See FRAUD, 3.]

*Gaming contract.* [See CONTRACT, 9-15; GAMING.]

*Insurance: policy by father on son's life.* [See INSURANCE, 1.]

*Insurance "without benefit of salvage."* [See MARINE INSURANCE, 1.]

*Landlord and tenant: premises let for purpose subsequently made illegal.* [See COVENANT, 13.]

**ILLEGITIMATE CHILDREN.**

A will was admitted as evidence of the illegitimacy of the testator's reputed son. *Murray v. Milner*, 48 Law J. Rep. Chanc. 775.

*Appointment to.* [See POWER, 18.]

*Evidence of illegitimacy.* [See EVIDENCE, 16, 17.]

*Gift by will to.* [See WILL CONSTRUCTION, H 11-14.]

**ILLUSORY APPOINTMENTS ACT.**

[See POWER, 20.]

**IMPLICATION.**

*Bequest: revocation of.* [See WILL CONSTRUCTION, I 16.]

*Covenant to buy beer of brewer: implied condition to supply good beer.* [See COVENANT, 15.]

*Lease of furnished house: implied condition that house fit for occupation.* [See LANDLORD AND TENANT, 2.]

*Life estate by implication.* [See WILL CONSTRUCTION, I 15.]

*Right of way: landlord and tenant.* [See WAY, 5.]

*Support: implied covenant for, on sale of land.* [See INJUNCTION, 21.]

*Will: construction: implied gift to children of daughter.* [See WILL CONSTRUCTION, I 13.]

**IMPOUNDING.**

*Animals without food or water.* [See ANIMALS, 2.]

## IMPRISONMENT.

1.—Where a term of one calendar month's imprisonment begins in one month and ends in another, the month must be calculated from the day on which the imprisonment commences to the day before the (numerically) corresponding day in the following month. If there is no such numerically corresponding day, the term will end on the last day of the following month. *Migotti v. Colville* (App.), 48 Law J. Rep. C.P. 696 (affirming the decision of Denman, J., 48 Law J. Rep. M.C. 48).

## INCLOSURE.

## (A) LAND TAX: LIABILITY TO, NOT TRANSFERRED.

## (B) RIGHTS OF WAY.

## (a) Award of.

## (b) Extinguishment of.

## (C) DRAINAGE RATE: POWER TO LEVY DISTRESS.

## (A) LAND TAX: LIABILITY TO, NOT TRANSFERRED.

1.—Upon an exchange of lands under 6 & 7 Will. 4. c. 115 (which contains a clause assimilating the tenure and quality of lands exchanged and allotted to that of the lands in respect of which the allotment or exchange is made), the statute does not transfer a liability to land tax, from one property exchanged to the other. *Cooch v. Walden*, 46 Law J. Rep. Chanc. 639.

Circumstances of delay considered not to amount to a waiver of requisitions on title. *Ibid.*

A lady was entitled under a will to a share of an estate which after the testator's death was varied by allotments and exchanges under the above Inclosure Act. She afterwards devised her share of the estate "as devised" to her "by testator's will."—Held, that this passed the lady's share in the estate in its actual condition. *Ibid.*

## (B) RIGHT OF WAY.

## (a) Award of.

2.—Strips of land having been allotted by an award under an Inclosure Act to different persons, there was awarded to the owners for the time being of the allotments "a way, right and liberty of passage for themselves and their respective tenants and farmers of the said lands and grounds, as well on foot as on horseback, as with their carts and carriages, and to lead and drive their horses, oxen and other cattle," as often as occasion should require, from a highway adjoining the outside strip over the east end of the allotments to their respective allotments, "doing as little damage to the soil, or the corn, grass or herbage" as might be, with a provision that if any owners should street out the way through their respective

allotments, the same should be made and for ever remain at least eleven yards wide.—Held, that there was no implied restriction of the right of way to agricultural purposes. Held also, that a person entitled to a right of way is entitled to make an efficient way for any purposes for which he is entitled to use it, and desires to use it; and held, therefore, that the owners of any allotment, on converting the same into building land, might form a metalled road to the highway over the east end of the intervening plots. *Newcomen v. Coulson* (App.), 46 Law J. Rep. Chanc. 559; Law Rep. 5 Ch. D. 133.

## (b) Extinguishment of.

3.—H. sold Whiteacre to the defendant, reserving all rights to an allotment in respect thereto under a pending inclosure. The conveyance was made with all ways "to the said lands appertaining, or held, or used, or occupied therewith." At the time of the conveyance there were certain trackways across Blackacre (then part of the waste awaiting inclosure), which had been used with Whiteacre for more than forty years. Blackacre was subsequently allotted to H., and by him before the award sold to C., who devised it to the plaintiff. The trackways were not set out in the award:—Held (affirming the decision of the Court of Appeal, 47 Law J. Rep. Exch. 639; Law Rep. 3 Ex. D. 303), that upon the making of the award the trackways were stopped up and extinguished by 8 & 9 Vict. c. 118. s. 68, in favour of H. and all claiming through him, notwithstanding the terms of the conveyance to the defendant. *Turner v. Crush* (H.L.), 48 Law J. Rep. Exch. 481; Law Rep. 4 App. Cas. 221.

## (C) DRAINAGE RATE: POWER TO LEVY DISTRESS.

4.—By an Act for enclosing certain common lands, commissioners were empowered by their award to order and direct by whom and at whose expense the said drains, &c., should be made and thereafter repaired, maintained, &c. By their award, the commissioners provided that such repairing, &c., should be by a rate, to be made by two surveyors (elected in manner provided for), and should "be levied and recovered by such ways and means as parish rates or assessments are by law recovered within the said parish." An action for the amount of a drainage rate, made under the above award, being brought by the surveyors against an occupier of land liable to pay the same, it was held that no action would lie. *Danby v. Watson*, 46 Law J. Rep. M.C. 179.

*Reservation of minerals: support.* [See MINES, 5.]

*Of manor by lord: evidence that sufficient common of pasture left.* [See COMMON, 4.]

*Of portions of highway.* [See HIGHWAY, 19.]



## INCOME AND CAPITAL.

[See TENANT FOR LIFE AND REMAINDER-MAN,  
2-19.]

## INCOME TAX.

*Deductions.*

1.—A colliery company claimed to deduct in their assessment to the income tax on the profits of their business a sum for the lessening of the quantity of coal in their mines by getting and selling the coal:—Held, that they were entitled to the deduction, having regard to the provision of 29 & 30 Vict. c. 36. s. 8, as to assessing certain concerns mentioned in schedule A according to the rules of schedule D, this being, in estimating "the balance of profits or gains" under rule 1 of case 1 of schedule D (in 5 & 6 Vict. c. 35. s. 100), a deduction proper to be made, and not prohibited by rules 1 and 3 of case 1, or by section 159. *Andrew Knowles & Sons (Lim.) v. M'Adam, Surveyor of Taxes*, 47 Law J. Rep. Exch. 139; Law Rep. 3 Ex. D. 23.

2.—A sum set aside out of the net profits of a company, under the articles of association, for the purpose of meeting the depreciation of buildings, fixed plant and machinery, is in the nature of capital, and cannot be deducted from the profits liable to income tax under schedule D. *Forder v. Andrew Handyside & Company (Lim.)*, 45 Law J. Rep. Exch. 809; Law Rep. 1 Ex. D. 233.

3.—Brewers claimed that, in computing for income tax the balance of their profits, a deduction should be allowed for premiums paid by them in order to obtain leases of public-houses, which they sublet to tenants undertaking to buy beer of them alone:—Held, that such a deduction could not be allowed. *Watney & Company v. Musgrave*, 49 Law J. Rep. Exch. 493; Law Rep. 5 Ex. D. 41.

4.—Dividends of a foreign corporation with an agency in England which were derived partly from foreign profits were paid to shareholders resident in England by the English agency out of money in hand from English profits. The Crown claimed from the English agency, in addition to income tax upon all the English profits of the corporation, income tax upon so much of the dividends paid to shareholders resident in England as was derived from foreign profits:—Held, by Pollock, B., and Huddleston, B. (Kelly, C.B., dissenting), that the claim must be allowed, under 16 & 17 Vict. c. 34. s. 10, notwithstanding that no portion of the foreign profits was actually remitted to England. *Gilbertson v. Ferguson; in re The Imperial Ottoman Bank*, 49 Law J. Rep. Exch. 536; Law Rep. 5 Ex. D. 57 [affirmed on appeal but not yet reported].

*Quarry: assessment of profits.*

5.—A property in which slate is gotten by levels driven underground into a hill, is a

quarry and not a mine for the purposes of the rules for assessing income tax, and ought as such to be assessed on the profit of the preceding year, under rule 1 of Part III. of schedule A of 5 & 6 Vict. c. 35:—So held by the Court of Appeal, affirming the judgment of the Exchequer Division (reported 48 Law J. Rep. Exch. 486). *Jones v. The Cwmorthin Slate Company (Lim.)* (App.), 49 Law J. Rep. Exch. 110; Law Rep. 5 Ex. D. 97.

*Companies "resident" in England.*

6.—(1) A joint stock company registered in England under the Companies Acts, 1862 and 1867, carried on the business of sulphur miners, manufacturers, or merchants in Italy. It had directors and shareholders both in England and abroad. The company, so far as its affairs in the United Kingdom were concerned, was managed by a board of directors holding meetings at the London registered office of the company. All the operations connected with the manufacture and sale of sulphur were under the practical management of members of the board resident in Italy, and were exclusively carried on in that country where the profits were earned, but the Italian members were in constant correspondence with their co-directors resident in France and England, who met at the office aforesaid. All the original books of the company and its moneys were kept in Italy, but transcripts of the books and the dividends required for the English shareholders were sent to London. These dividends were the only part of the profits remitted to this country:—(2) A joint stock company was registered in England under the Companies Acts, 1862 and 1867. It had a registered address, directors and shareholders in England, but the whole of its property and the majority of shareholders were in India. The business of the company was the purchase, manufacture, and sale of jute. The materials were bought, wrought, and sold, the books kept, and the gains and profits of the company exclusively made in India, under the management of a resident director appointed by and subject to the control of a board of directors in England. Such proportion only of the profits as became payable to the English shareholders was, from time to time, remitted to the directors in England, who thereupon called meetings of those shareholders at the place registered as the address of the company, but which was, in fact, a private office lent for the purpose by one of the directors. At these meetings a dividend was declared, which was distributed amongst the shareholders living in England:—Held, that each company was "residing within the United Kingdom," and therefore, under the provisions of the Income Tax Acts (5 & 6 Vict. c. 35. s. 1, and c. 80. s. 2; 16 & 17 Vict. c. 34. s. 2), liable to make a return of the whole annual profits of its business, and chargeable to the income tax thereon, and not merely in respect of such part

of the profits as was remitted to England. *The Cesena Sulphur Company (Lim.) v. Nicholson. The Calcutta Jute Mills Company (Lim.) v. Nicholson*, 45 Law J. Rep. Exch. 321; Law Rep. 1 Ex. D. 428.

### INCONSISTENCY.

*Inconsistent clauses in will.* [See WILL CONSTRUCTION, G 2.]

*Inconsistent relief.* [See PRACTICE, W 35, 36.]

### INCUMBENT.

[See CHURCH AND CLERGY.]

### INDECENCY.

[See NUISANCE, 16.]

[Consent no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen. 43 & 44 Vict. c. 44.]

### INDEMNITY.

*Assignment of lease: breach of covenant.* [See PRACTICE, U 4.]

*As between principal and agent.* [See PRINCIPAL AND AGENT, 29.]

*As between principal and surety.* [See PRINCIPAL AND SURETY, 7-11.]

*Executor carrying on testator's business: right of, to indemnity.* [See EXECUTOR, 21.]

*Sale of shares: indemnification of vendor by jobbers.* [See COMPANY, D 90.]

*Shipping law: collision: claim of owners of vessel against owners of tug.* [See ADMIRALTY, 38.]

### INDIAN LAW.

[See COLONIAL LAW, 23.]

### INDICTMENT.

*Accessory after the fact.* [See ACCESSORY.]

*Conspiracy to defraud.* [See CONSPIRACY.]

*Charging previous conviction: false pretences.* [See RECEIVING STOLEN GOODS.]

*Joinder of distinct offences.* [See PERJURY.]

*Non-repair of highway, for.* [See HIGHWAY, 4-6.]

*Obscene publication: libel: setting out words.* [See OBSCENE PUBLICATION.]

*Venue.* [See EMBEZZLEMENT.]

### INDORSEMENT.

*Bill of exchange or cheque, of.* [See BILL OF EXCHANGE, I, 10, 18; HUSBAND AND WIFE, 43.]

*Writ, of.* [See PRACTICE, II 1-4.]

### INDUSTRIAL SCHOOL.

[The Industrial Schools Acts of 1866 and 1868 amended. 43 & 44 Vict. c. 15.]

### INFANT.

#### (A) MAINTENANCE OF.

- (a) *Infant contingently entitled.*
- (b) *Power of trustees to apply income.*
- (c) *Concurrent suits: jurisdiction.*
- (d) *Discretion of parent controlled by Court.*

#### (B) PROPERTY OF.

- (a) *Consent by, to variation of investments.*
- (b) *Conversion of real estate of.*
  - (1) *Under Lands Clauses Act: reconversion.*
  - (2) *Under Partition Act.*
- (c) *Jurisdiction to lease land of infant reversioner.*

#### (C) CONTRACTS OF.

- (a) *Contract of service.*
- (b) *Advance to, for necessities.*
- (c) *Infant trader.*
- (d) *Infant lessee: misrepresentation as to age.*
- (e) *Ratification by infant on majority.*
  - (1) *Debt, of.*
  - (2) *Contract of marriage, of.*

#### (D) EXECUTION OF POWER BY.

#### (E) CUSTODY AND EDUCATION OF.

#### (F) GUARDIAN.

#### (G) ACTIONS AND PROCEEDINGS BY AND AGAINST.

#### (A) MAINTENANCE OF INFANT.

##### *Infant contingently entitled.*

1.—The presumption that a legacy given by a person *in loco parentis* to an infant on his attaining twenty-one carries interest by way of maintenance in the meantime, is rebutted if the testator makes any other provision for such maintenance. *In re George* (App.), 47 Law J. Rep. Chanc. 118; Law Rep. 5 Ch. D. 837.

Though Lord Cranworth's Act, s. 26, enables trustees to apply for an infant's maintenance income to which the infant is contingently entitled, it does not enable them so to apply income to which the infant never can become entitled at all. *Ibid.*

2.—Section 26 of Lord Cranworth's Act (23 & 24 Vict. c. 145) authorises maintenance where the infant's interest is merely contingent. Therefore where a fund was settled on trust for A. for life, and after her death for her children, who being sons should attain twenty-one, or being daughters should attain that age or marry, and A. died leaving an infant daughter,—Held, that the trustees might apply the income for her maintenance. *In re Cotton*, 45 Law J. Rep. Chanc. 201; Law Rep. 1 Ch. D. 232.

3.—The testator directed the trustees of his will to stand possessed of the residue of his estate, in trust to allow to his wife the sum of

100*l.* per annum, for the maintenance and support of each of his children until they should respectively attain twenty-one, with power to increase such allowance at their discretion; and with the consent of his widow, to advance any sums not exceeding one-fourth of the capital of each child's presumptive share for the placing out or advancement in life, or otherwise for the benefit of such child; and subject thereto to stand possessed of the premises, upon trust for all his children who being sons should attain twenty-one, or being daughters should attain twenty-five or marry; making no provision for the maintenance of unmarried daughters during the interval between twenty-one and twenty-five. On a petition for the judicial opinion of the Court,—Held, that the trustees had no power, either under Lord Cranworth's Act, 23 & 24 Vict. c. 145, or the rule of Court that interest may be given by way of maintenance, to apply the income of the presumptive shares of adult daughters for their maintenance; but that they might make advances out of capital for the purpose. *In re Breeds' Will*, 45 Law J. Rep. Chanc. 191; Law Rep. 1 Ch. D. 226.

Held also, that the trustees might increase the allowance to the widow for the maintenance of each infant daughter, in order to meet the expenses of her education, that being included in the term "maintenance and support." *Ibid*.

(b) *Power of trustees to apply income.*

4.—Real and personal estate was given by will to A. and B. to permit X. to receive the income during his life, remainder to the use of Y., an infant. On the death of X. leaving his widow and Y. otherwise unprovided for, the Court made an order for the payment of the whole income of Y.'s property for her maintenance, to X.'s widow by A. and B. Shortly afterwards, the circumstances of X.'s widow improved, but A. and B., till the death of B., in 1851, and after that event A. alone, still paid the gross income (without ever paying succession duty) to X.'s widow during Y.'s minority. Y. attained twenty-one in 1873, married, and sought to charge A. and the estate of B. with, first, excess of payments for maintenance, having regard to X.'s widow's altered circumstances; second, dilapidations; third, amount paid for succession duty, with interest:—Held, first, that the order was a protection during the joint lives of A. and B., but that the trust so created did not survive, and that an enquiry must therefore be directed whether A. properly paid the whole income from 1861; second, that they were under no liability for dilapidations; third, that they were liable for succession duty, but not for the interest. *Brown v. Smith*, 46 Law J. Rep. Chanc. 866; on appeal Law Rep. 10 Ch. D. 377.

X.'s widow, in 1863, married J. W., who died in 1872. On the 7th of May, 1874, she married R. W. Y. sought to charge J. W.'s estate, Y.'s separate estate, if any, and R. W. in

the same way:—Held, first, that J. W.'s liability in respect, as well of his wife's receipt of income from 1861 to 1863, as of her accountability for succession duty, terminated with the coverture; second, that R. W. was similarly protected by section 12 of the Married Woman's Property Act, 1870; third, that J. W.'s estate was liable for the receipts of income from 1863 to 1872. *Ibid*.

5.—Where by will of a testator the amount of income to be applied for maintenance of infant children is left to the discretion of trustees, but in the opinion of the Court that discretion is not properly exercised, the Court will in a proper suit control that discretion, and order the whole of the income to be allowed for maintenance, if, in the opinion of the Court, having regard to all the circumstances of the case, that course will be most for the benefit of the infants. *In re Hodges' Estate. Davey v. Ward*, 47 Law J. Rep. Chanc. 335; Law Rep. 7 Ch. D. 754.

(c) *Concurrent suits: jurisdiction.*

6.—The Court of the County Palatine of Lancaster having appointed guardians and from time to time during three years settled an allowance for the maintenance of infants who were entitled to property under a testamentary disposition, an action for administration of the testator's estate was commenced in the Chancery Division of the High Court of Justice, and a summons was taken out for the appointment of guardians and an allowance for maintenance and education. An application was then made to the Vice-Chancellor of the County Palatine Court for a stay of all proceedings in that Court, and refused by him. Upon appeal, the decision of the Vice-Chancellor was affirmed, the Court being of opinion that, though there ought not to be two concurrent suits with the same object, it was more for the benefit of the infants to stay the proceedings in the High Court than those in the Court of the County Palatine. *In re Alison's Trusts; in re Johnson* (App.), 47 Law J. Rep. Chanc. 755; Law Rep. 8 Ch. D. 1.

(d) *Discretion of parent controlled by Court.*

7.—The trustees of a will were directed to pay the income of a trust fund to which infants were presumptively entitled to their mother, to be applied by her for their benefit at her discretion. The mother was convicted of obtaining goods by false pretences:—Held, that the Court ought to control her discretion, and give directions for the maintenance of the infants. *In re Roper's Trusts*, Law Rep. 11 Ch. D. 272.

(B) PROPERTY OF.

(a) *Consent by, to variation of investments.*

8.—By a marriage settlement, after reciting that the lady was an infant of the age of seventeen years or thereabouts, personal property

was assigned to trustees upon the usual trusts, the wife taking the first life interest, and with power to vary investments with the consent in writing of the husband and wife, or the survivor of them:—Held, that the wife, while still an infant, could give a valid consent to a proposed change of investment. *In re Cardross's Settlement Trusts*, 47 Law J. Rep. Chanc. 327; Law Rep. 7 Ch. D. 728.

(b) *Conversion of real estate of.*

(1) *Under Lands Clauses Act: reconversion.*

9.—Real estate, to which an infant was entitled in fee simple, was taken by a railway company for the purposes of their undertaking, and the purchase-money, which amounted to more than 200*l.*, paid into Court under the Lands Clauses Consolidation Act, 1845, s. 69:—Held, that, under the provisions of section 69, the purchase-money was to be treated as real estate, and that on the death of the infant his heir was entitled. *Kelland v. Fulford*, 47 Law J. Rep. Chanc. 94; Law Rep. 6 Ch. D. 491.

(2) *Under Partition Act.*

10.—The sale of infant's real estate under a decree in a partition suit does not work a conversion. *Steed v. Precoe* (43 Law J. Rep. Chanc. 687) distinguished. *Foster v. Foster*, 45 Law J. Rep. Chanc. 301; Law Rep. 1 Ch. D. 588.

(c) *Jurisdiction to lease land of infant reversioner.*

11.—Where an infant who was seised in fee in remainder expectant, on the decease of his father (who was tenant thereof by the curtesy), of a share of certain freehold property, presented a petition for the sanction of the Court to a building lease, under the 17th section of 11 Geo. 4. and 1 Will. 4. c. 65, all the other owners having agreed to grant the lease, the Court made the order. *In re Clark* (44 Law J. Rep. Chanc. 314, followed). *In re Letchford*, 45 Law J. Rep. Chanc. 530; Law Rep. 2 Ch. D. 719.

(C) *CONTRACTS OF.*

(a) *Contract of service.*

12.—By 38 & 39 Vict. c. 90. s. 4, disputes between an employer and a workman may be heard and determined by a Court of summary jurisdiction, which may order payment of any sum not exceeding 10*l.* which it may find to be due as wages or damages. The appellants under the above section sought to recover from the respondent, an infant, a sum of money as damages for breach of contract in absenting himself from their service. By the contract in question the infant undertook to serve the appellants for five years, at a certain scale of wages therein specified, power being reserved to the appellants, in case they should cease to carry on business, or find it necessary to reduce the operation of their works from want

of materials, strikes, &c., to terminate the contract on giving fourteen days' notice of their intention so to do. The Justices held that the contract was invalid as against the respondent, and accordingly dismissed the summons:—Held, that if the provisions contained in the agreement were common to labour contracts, or were such as the appellants were reasonably justified in imposing, and if the wages were a fair compensation for the respondent's services, the contract was beneficial and therefore binding, and the case was accordingly remitted to the Justices for further consideration. *Leslie v. Fitzpatrick*, 47 Law J. Rep. M.C. 22; Law Rep. 3 Q.B. D. 229.

(b) *Advance to, for necessities.*

13.—A deed executed by an infant to secure advances made to him for expenditure upon necessities is not binding upon him when he becomes of age. *Martin v. Gale*, 46 Law J. Rep. Chanc. 84; Law Rep. 4 Ch. D. 428.

(c) *Infant trader.*

14.—A trader who, being an infant, had represented himself to be of full age, was, after majority, adjudicated bankrupt in respect of a debt incurred under age. *In re Lynock*, 45 Law J. Rep. Bankr. 48; Law Rep. 2 Ch. D. 227.

(d) *Infant lessee: misrepresentation as to age.*

15.—A lessor who obtains judgment setting aside a lease on the ground of an infant lessee having falsely represented himself to be of full age, cannot also recover for use and occupation. *Lomprière v. Lange*, Law Rep. 12 Ch. D. 675.

(e) *Ratification by infant on majority.*

(1) *Debt.*

16.—The defendant, who had, when an infant, given the plaintiff a guarantee for payment of 200*l.*, wrote on such guarantee after he came of age the following: "I promise to pay the above as a debt of honour whenever I may be in a position to pay the same to Miss E." (the plaintiff), "providing she be living at such time, with interest at the rate of five per cent. on the whole sum from due date to payment:—Held, not a ratification of the debt within Lord Tenterden's Act, 9 Geo. 4. c. 14. s. 5. *Maccord v. Osborne*, 45 Law J. Rep. C.P. 727; Law Rep. 1 C.P. D. 568.

17.—The right of a defendant in an action to set off a debt due from the plaintiff to him, under 2 Geo. 2. c. 22. s. 13, exists only where the debt sought to be set off is enforceable by action. Where the defendant sought to set off a debt, arising upon the promise of an infant, such promise not having been ratified in accordance with s. 5 of 9 Geo. 4. c. 14, it was held that the replication of infancy to the plea of set-off was a sufficient answer, and that the plaintiff was entitled to recover. *Rawley v.*

*Rawley* (App.), 45 Law J. Rep. Q.B. 675; Law Rep. 1 Q.B. D. 460.

The words in 9 Geo. 4. c. 14. s. 5, "No action shall be maintained," extend to cases of set-off; so that a defendant may not set off a promise of an infant supported merely by a parol ratification after full age in an action brought against him by the infant, any more than he might sue the infant upon such promise, both being equally precluded by the above section. *Ibid.*

(2) *Contract of marriage.*

18.—A promise of marriage is within the Infants Relief Act, 1874 (37 & 38 Vict. c. 62), which by section 2 enacts that "no action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age." Therefore no action can be brought for the breach of a promise of marriage made during infancy, notwithstanding a ratification of such promise has been made after full age. Ratification in such case would have reference to the original promise, and therefore would not be evidence of a new or fresh promise. *Coxhead v. Mullis*, 47 Law J. Rep. C.P. 761; Law Rep. 3 C.P. D. 439.

19.—The defendant, when an infant, made a promise of marriage to the plaintiff. The day after he attained his majority, having previously told her in a letter that he had explained all to his father, who assented to the marriage, he said to her, "Now I may and will marry you as soon as possible:—"Held, that it was a question for the jury whether this was a fresh promise or a ratification of the promise made during infancy. *Northcote v. Doughty*, Law Rep. 4 C.P. D. 385.

The last case distinguished. *Ibid.*

20.—When both the plaintiff and the defendant were under age, the defendant made an express promise to marry the plaintiff, which she accepted, but no time for the marriage was then fixed. For some years afterwards, and after the defendant had come of age, the parties remained on the footing of engaged lovers, and at last (the defendant being then of age) the day of their marriage was fixed, the plaintiff naming the day at the request of the defendant to do so. Ultimately the defendant refused to marry. In an action for breach of promise of marriage,—Held, by Denman, J., and Lindley, J., that, assuming the case of *Coxhead v. Mullis* (47 Law J. Rep. C.P. 761; Law Rep. 3 C.P. D. 439) to be rightly decided, and that a contract to marry is within the Infants Relief Act (37 & 38 Vict. c. 62), and therefore not capable of being ratified by an infant after he comes of age, there was here evidence from which a jury ought to find a fresh promise to marry made after the defendant had come of age, as distin-

guished from a mere ratification of the promise to marry which had been made during the defendant's infancy:—Held, by Lord Coleridge, C.J., that as a contract to marry is within the Infants Relief Act, what took place after the defendant came of age was only evidence of a ratification of the subsisting contract to marry, and was not evidence of a fresh contract. *Ditcham v. Worrall*, 49 Law J. Rep. C.P. 688; Law Rep. 5 C.P. D. 410.

*Infants' Relief Act*, 1874: *trade debts: conviction of infant under Debtors Act*, 1869, s. 12. [See DEBTORS ACT, 9.]

(D) EXECUTION OF POWER BY.

21.—By a marriage settlement made in the name of a lady, then an infant, it was agreed that the intended husband and infant, and all other necessary parties would, as soon as the case would admit, assign unto the trustees of the settlement certain personal estate to which the infant became, under her father's will, entitled upon her marriage, upon trust for investment, with the consent of the husband and wife, and to pay the income to the wife for her separate use, and on her death to her husband for life, or until bankruptcy or alienation, and in trust for the issue of the marriage, and in default of issue becoming absolutely entitled in trust for such person or persons as the wife should by deed, with or without power of revocation and new appointment, or by will appoint, and in default of such appointment, if the wife should survive the husband, for the wife absolutely, but if he should survive her, in trust for the persons who, under the Statutes of Distribution, should be her next-of-kin. The infant by a deed-poll exercised the power of appointment by appointing the property (subject to the trusts in the settlement in favour of herself, husband and issue), to the husband absolutely, reserving to herself a power of revocation and new appointment. The wife died an infant without issue. Her interest in the fund agreed to be settled was at the date of the settlement, and at her death still remained reversionary, and no further settlement was made by the husband. The husband went into liquidation, and the plaintiff was appointed his trustee, and brought an action claiming the settled property against the next-of-kin, who also claimed it:—Held, that the next-of-kin were volunteers, and could not, as against the plaintiff, obtain specific performance of the covenant to settle the fund. Held (by James, L.J., and Brett, L.J., dissentients Cotton, L.J.), that a power in gross to appoint personalty by deed can be exercised by an infant, and that the settlement shewed an intention that the power should be exercised during infancy. *In re D'Angibau. Andrew v. Andrew* (App.), 49 Law J. Rep. Chanc. 756; Law Rep. 15 Ch. D. 228.

An infant cannot by settlement or otherwise give himself a power. *Ibid.*

## (E) CUSTODY AND EDUCATION OF.

22.—Consideration of the principles by which the Court is guided in taking a child from the custody of its father. *In re Taylor*, 46 Law J. Rep. Chanc. 399; Law Rep. 4 Ch. D. 157.

Where the father of a boy of three years abandoned his home, and ceased to support his wife for several months, and became a co-respondent in a divorce case, the Court, on the petition of the mother, made an order for the immediate delivery of the child to its mother; but gave free liberty of access by the father and paternal grand-parents at all reasonable times, and leave to apply when the child should have attained the age of seven years for a scheme of maintenance and education. *Ibid.*

23.—A father who makes his children wards of Court, and then applies to the Court to assist him in directing their religious education, does not necessarily thereby abdicate his parental authority. In such a case, if the father has not otherwise forfeited or abandoned his right to educate his children, the Court will not interfere with him in the honest exercise of his parental authority, nor will it see the children, although they may have acquired strong religious convictions, different from those of the father, but will give effect to his wishes. *In re Agar-Ellis. Agar-Ellis v. Lascelles* (App.), 48 Law J. Rep. Chanc. 1; Law Rep. 10 Ch. D. 49.

The father of the infant plaintiffs was a Protestant, and the mother a Roman Catholic. The mother married the father, relying on his express promise that all the children should be brought up as Roman Catholics. This promise was retracted soon after the marriage, and the father thenceforth insisted and directed that the children should be brought up as Protestants, and himself instructed them in the Protestant faith. The mother, relying on the promise, secretly and unknown to the father, brought up the children as Roman Catholics. When the children were respectively nine, ten and a half, and twelve and a half years of age they refused to go to church with their father, who thereupon made them wards of Court, and took out a summons for directions as to their religious education, intending to have them brought up as Protestants. The mother then presented a petition under the Infants Custody Act, 1873, alleging that the children were devout Roman Catholics, and had acquired settled religious convictions, to disturb which would be cruel and injurious to their moral sense, and prayed that she might have the custody of the infants to bring them up as Roman Catholics:—Held, that the Infants Custody Act, 1873, did not apply, and that the petition was unsustainable. Also, that as it was a question affecting the wards, the Court had jurisdiction to strengthen the hands of the father by granting an injunction to restrain the mother from interfering with the religious education of the children. *Ibid.*

24.—A separation deed, executed after the

passing of the Infants Custody Act, 1873, contained a covenant by the husband that the mother should have the sole custody and control of their infant daughter, except for one month in every year. The mother afterwards adopted speculative religious opinions and published a work, which was found by a jury to be calculated to deprave public morals, but at the same time they entirely exonerated her from any corrupt motives in publishing it. On a petition by the infant, by her father as her next friend, under the Infants Custody Act, 1873,—Held (affirming the decision of the Master of the Rolls), that it was for the benefit of the infant to remove her from the custody of the mother to that of the father. *In re Besant* (App.), 48 Law J. Rep. Chanc. 497; Law Rep. 11 Ch. D. 508.

Quære, whether the effect of a covenant by a husband in a separation deed, executed since the Infants Custody Act, 1873, giving up the custody of children to the mother, is to incapacitate him, *in toto*, from exercising his parental power and authority over the children, unless the Court, in the exercise of its discretion under the Act, otherwise directs. *Ibid.*

25.—The jurisdiction of the Lancaster Palatine Court and of the High Court of Justice over its infant wards is not ousted by the fact that the wards during their infancy may become of unsound mind. In such cases, therefore, such Courts have jurisdiction to entertain applications respecting the custody and education of the infants, although they may be of unsound mind, and although the question of their sanity may be the principal point in dispute. *In re Edwards; McNeile v. Chambers* (App.), 48 Law J. Rep. Chanc. 233; Law Rep. 10 Ch. D. 605.

[And see DIVORCE, 7, 28.]

## (F) GUARDIAN.

26.—Guardian *ad litem* of infant defendant may give consent for evidence to be taken by affidavit. *Knotchbull v. Fowle*, Law Rep. 1 Ch. D. 604.

*Guardian ad litem: consent by, to taking evidence by affidavit.* [See PRACTICE, K 9.]

*Power of, to consent under Places of Worship Sites Act.* [See PLACES OF WORSHIP SITES ACT.]

## (G) ACTIONS AND PROCEEDINGS BY AND AGAINST.

27.—A defendant cannot act as next friend of infant plaintiffs. And where infant *cestui que trust* were suing by their mother's husband as next friend, and by amendment on the eve of trial the mother (also a *cestui que trust*), and her husband (who had no individual interest), were made co-defendants, the objection being taken at the trial that the infant's next friend could not be a defendant, he was ordered to be struck out as a defendant. *Lewis v. Nobbs*, 47 Law J. Rep. Chanc. 662; Law Rep. 8 Ch. D. 861.

*Foreclosure suit: day to infant to show cause.* [See MORTGAGE, 57.]

*Sale of reversion: under-value.* [See REVERSION, 1.]

*Subscribing memorandum of association of company.* [See COMPANY, C 1.]

*Post-nuptial settlement: ante-nuptial agreement: ratification.* [See VOLUNTARY SETTLEMENT, 5.]

*Transfer of shares: liability of jobber.* [See COMPANY, D 89, 90.]

# INFANTS' CUSTODY ACT, 1873.

[See INFANT, 23, 24.]

# INFANTS' RELIEF ACT, 1874.

[See INFANT, 18-20.]

# INFERIOR COURT.

[See COUNTY COURT; LORD MAYOR'S COURT.]

# INFORMATION.

*Libel, for.* [See LIBEL, 20-24.]

*Limitation of time: encroachment on highway.* [See HIGHWAY, 14.]

# INHABITED HOUSE DUTY.

1.—The statute 48 Geo. 3. c. 55, schedule B, rule 6, directs that "where any house shall be let in different storeys, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall, nevertheless, be subject to and shall in like manner be charged to the said duties, as if such house or tenement was inhabited by one person or family only, and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged to the said duties." Rule 14 directs that "where any dwelling-house shall be divided into different tenements being distinct properties, every such tenement shall be subject to the same duties as if the same were an entire house, which duty shall be paid by the occupiers thereof respectively." Certain blocks of buildings, each having a street entrance, and one internal staircase, were structurally divided into different suites of rooms distinct from each other. A porter living in the tenement had the care of the street door, which was locked at night, and he also had access to the rooms. Each suite of rooms had a door opening on to the staircase common to all. Some of the suites of rooms were let to tenants as offices for business purposes. A few were let as residences. Some were untenanted:—Held, affirming the judgment of the Court below (44 Law J. Rep. Exch. 146), that the duty was properly charged upon the blocks as "houses," under rule 6, and not upon the separate suites of rooms as "dis-

tinot properties" under rule 14. *The Attorney-General v. The Westminster Chambers Association (Lim.)* (App.), 45 Law J. Rep. Exch. 886; Law Rep. 1 Ex. D. 469.

For the purpose of (*inter alia*) house duty the Valuation (Metropolis) Act, 1869, s. 45, makes the valuation list for the time being conclusive evidence of the gross rateable value of the hereditaments inserted therein, and of the fact that all hereditaments required to be inserted therein have been so inserted. Section 76 enacts that where, for the purpose of house duty, it is necessary to make a separate valuation of any hereditament by reason of its not being separately valued in any valuation list the value shall be ascertained "as if this Act had not been passed." Rule 7 of Schedule B of 48 Geo. 3. c. 55 directs that no house shall be estimated at any less annual value than the rent or value at which the same shall stand charged in the last rate made on or before the time of making the assessment for the relief of the poor. Each block had not been inserted in the valuation list as one hereditament. But each suite of rooms was charged therein as a separate hereditament:—Held, affirming the decision of the Court below (44 Law J. Rep. Exch. 146), that for the purpose of the house duty it was not "necessary" within the meaning of section 76 of the Valuation (Metropolis) Act, 1869, "to make a separate valuation of each block" by reason of its not being separately valued in the valuation list, and that the house duty on each block was rightly charged at the aggregate of the value at which its component tenements were estimated in the valuation list. *Ibid.*

2.—The appellant, who was the medical resident superintendent of a county lunatic asylum, lived in a separate and detached house, built upon ground within the boundary of the asylum, and had ready and convenient access to the main buildings of the asylum by passing through a portion of the grounds thereof, through a gate in the wall which enclosed the garden at the rear of his house. The front part of his garden abutted immediately upon a public lane with which he had direct communication without passing through the asylum. The garden was enclosed on the right and left by walls, in each of which was a gate opening into the asylum grounds. The house was built as the residence of the medical resident superintendent of the asylum, and did not contain more accommodation than was reasonably necessary for himself and family. The asylum being an "hospital or house provided for the reception and relief of poor persons," was, by 48 Geo. 3. c. 55. sch. B., exempt from the duty imposed by 14 & 15 Vict. c. 36 on inhabited houses:—Held, that the residence of the medical superintendent was part of the asylum, and entitled to the exemption. *Jepson v. Gribble*, 45 Law J. Rep. Exch. 502; Law Rep. 1 Ex. D. 151.

3.—A superintendent of police who lives in a house adjoining the police station, which com-

municates with it by a door in the yard, the house being liable to be employed for such purposes of the police force as the chief constable may direct, and who is compelled to live there, but is subject to be removed from station to station at any time, is not liable to inhabited house duty or to income tax under schedule B, as occupier of such house. *Bent v. Roberts*, 47 Law J. Rep. Exch. 112; Law Rep. 3 Ex. D. 66.

4.—Premises occupied for the purpose of carrying on the business of a telegraph company held (*dissentiente* Cleasby, B.) to be premises occupied for the purposes of trade within 32 & 33 Vict. c. 14. s. 11, and exempt from inhabited house duty. *The Chartered Mercantile Bank of India v. Wilson*, 47 Law J. Rep. Exch. 153; Law Rep. 3 Ex. D. 108 (*nom. Bank of India v. Wilson*).

A building was occupied by a bank and a telegraph company in such a way that all the ground-floor and basement, except the telegraph company's entrance hall, and the basement under it, were the bank's, and the upper floors the telegraph company's, but there were doors between the telegraph company's entrance hall and the bank's lobby, which were open during banking hours to give a second access to the telegraph company's premises, and a care-taker lived on the third floor to protect the entire building:—Held, to be a dwelling-house within the Inhabited House Duty Acts. *Ibid*.

5.—A building used for the ordinary purposes of a club, and not slept in at night, is not an "inhabited dwelling-house" within the meaning of 14 & 15 Vict. c. 36, and is not liable to the duty payable upon inhabited dwelling-houses. *Riley v. Read*, 48 Law J. Rep. Exch. 487; Law Rep. 4 Ex. D. 100.

### INHIBITION.

*Disobedience to.* [See CHURCH AND CLERGY, 30, 34.]

### INJUNCTION.

[And see BANKRUPTCY, N.]

#### (A) JURISDICTION TO GRANT.

(a) *Extent of, under new practice.*

(b) *To restrain execution for rates by local board.*

(c) *To restrain criminal prosecution for advancing frontage.*

(d) *To restrain libel.*

(e) *To restrain sale by sheriff: order of other division.*

(f) *To restrain actions and proceedings.*

#### (B) WHEN GRANTED.

(a) *Acquiescence when a bar.*

(b) *To restrain distress for rent.*

(c) *Adjoining estates: user of same name.*

(d) *To restrain trespass.*

(e) *To restrain waste.*

(f) *To restrain nuisance.*

(g) *Support: reasonable apprehension of damage.*

(h) *Mandatory injunction.*

(1) *Obstruction of right of way.*

(2) *Building in breach of covenant.*

(i) *Interlocutory injunction: balance of convenience.*

(G) DAMAGES.

(D) PRACTICE IN ACTION FOR.

#### (A) JURISDICTION TO GRANT.

(a) *Extent of, under new practice.*

1.—The jurisdiction of the High Court to grant injunctions is more extensive than that formerly possessed by the Court of Chancery, which was limited by the practice of the Chancellors, and by precedents, to certain specified cases. *Beddow v. Beddow*, 47 Law J. Rep. Chanc. 588; Law Rep. 9 Ch. D. 89.

The Common Law Procedure Act gave to Common Law Courts power to grant injunctions in all cases in which it should seem just or reasonable; a power more extensive than that possessed by the Court of Chancery. The larger powers conferred on Common Law Courts by the Common Law Procedure Act is now, by the 25th section, sub-section 8 of the Judicature Act, 1875, vested in the High Court. That power is practically unlimited. What the Court may do on interlocutory motion, it may, *a fortiori*, do at the trial of the action. *Ibid*.

Injunction granted to restrain an arbitrator from continuing to act who had misappropriated funds, the subject-matter of the arbitration, and become indebted to one of the parties. *Ibid*.

(b) *To restrain execution for rates by local board.*

2.—Orders having been obtained by a local board from justices, for payment by A. and L. and others, of a rate levied for defraying the expense of paving a certain street, an agreement was come to that the order against L. should not be enforced for three months, in order to enable a case to be stated for the opinion of the Court of Queen's Bench, on a point of law. An understanding was, at the same time, come to, that the order against A. should abide the decision in L.'s case. L., instead of taking the case to the Queen's Bench, went before the Quarter Sessions, and the order against him was quashed on a technical ground. A. was not informed of the course taken by L., and the three months having expired within which she could have appealed, the local board obtained an order against her for payment of the rate. On motion by A. to restrain the board from enforcing the order, until she had had an opportunity of stating a case for the opinion of the Queen's Bench,—Held, that the Court had power to restrain the local board from enforcing the order, and on A. undertaking to consent to a case for the opinion of the Queen's Bench, and to pay the amount of the rate into



Court, the injunction was granted. *Ashworth v. Hobden Bridge Local Board*, 47 Law J. Rep. Chanc. 195.

(c) *To restrain criminal prosecution for advancing frontage.*

3.—The plaintiff had brought forward his house, forming part of the street, beyond the line of frontage. The urban authority threatened to take summary proceedings under the Public Health Act, 1875. The plaintiff brought an action claiming an injunction to restrain the threatened proceedings, on the ground that they were irregular under the Act; and also that the urban authority had been aware of, and had acquiesced in, the bringing forward of his building. A motion for an injunction was refused. *Korr v. The Corporation of Preston*, 46 Law J. Rep. Chanc. 409; Law Rep. 6 Ch. D. 463.

The Court has no jurisdiction to restrain criminal proceedings for the prosecution of persons for a breach of the laws sanctioned by the legislature. *Lord Auckland v. The Westminster Local Board of Works* (41 Law J. Rep. Chanc. 723) explained. *Ibid.*

The doctrine of acquiescence is inapplicable to public functionaries. *Ibid.*

(d) *To restrain libel.*

4.—The jurisdiction of the Court of Chancery to restrain libel as injurious to property has been enlarged by the Judicature Act, 1873. And semble—that *The Prudential Assurance Company v. Knott* (44 Law J. Rep. Chanc. 192) is no longer binding. *Thorley's Cattle Food Company (Lim.) v. Massam*, 46 Law J. Rep. Chanc. 713; Law Rep. 6 Ch. D. 582.

[And see *LIBEL*, 14.]

(e) *To restrain sale by sheriff: order of other division.*

5.—By an order made in the Common Pleas Division the sheriff was directed to withdraw from possession of goods claimed by the trustee of a marriage settlement, if the trustee paid the amount of a judgment debt, for which they had been seized, into Court, but if not to sell and pay the proceeds into Court. The trustee having failed to pay the money into Court:—Held, that the Chancery Division in an action to administer the trusts of the settlement, had no jurisdiction to restrain a sale by the sheriff. *Wright v. Redgrave* (App.), Law Rep. 11 Ch. D. 24.

(f) *To restrain actions and proceedings.*

6.—A creditor's petition to wind up a company having been directed to be heard by the Master of the Rolls, and it being desirable that an action of ejectment brought by the freeholders against the company to recover the possession of land on which the company had erected buildings (which constituted its principal assets) should be stayed until the winding-up petition had been heard, the creditor applied for that purpose to the Common Pleas Division

of the High Court in which such action was pending:—Held, that notwithstanding section 24, sub-section 5 of the Judicature Act, 1873, the Master of the Rolls might still, under section 85 of the Companies Act, 1862, restrain further proceedings in the action of ejectment; and, therefore, though the Common Pleas Division had power to restrain such proceedings it declined to interfere at the instance of such creditor, as it considered it more convenient that the power to restrain should be exercised by the Court before which were the winding-up proceedings. [See *Garbutt v. Raven*, 45 Law J. Rep. Chanc. 130.] *Kingchuroh v. The People's Garden Company (Lim.)*, 45 Law J. Rep. C.P. 130; Law Rep. 1 C.P.D. 45.

7.—Applications for a stay of proceedings in any action pending against a company for the winding-up of which a petition has been presented, should be made to the divisional Court, or the single Judge before whom the action is pending, and not to the Judge of the Chancery division, to whose Court the petition is attached (per Jessel, M.R.). *In re The People's Garden Company (Lim.)*, 45 Law J. Rep. Chanc. 129; Law Rep. 1 Ch. D. 44.

[But see now Order LI. r. 2a.]

8.—Where an action had been brought in the Court of Queen's Bench against a company after the passing of a resolution to wind it up voluntarily, to which resolution the plaintiff was a party, and the liquidator applied to the Queen's Bench Division under 36 & 37 Vict. c. 66. s. 24, sub-s. 5, for an order to stay proceedings, that Court made the order absolute, staying proceedings upon the terms that the costs be added to the debt on proof in the liquidation. *Walker v. The Banagher Distillery Company*, 49 Law J. Rep. Q.B. 134; Law Rep. 1 Q.B. D. 127.

9.—In all winding-up cases applications to stay proceedings in actions commenced against the company in liquidation should be made to that divisional Court of the Chancery Division of the High Court in which the liquidation is proceeding (per Malins, V.C.). *In re The Rivers Protection and Manure Company; Needham v. Same*, 45 Law J. Rep. Chanc. 132; Law Rep. 1 Ch. D. 253.

10.—The proper tribunal to stay an action in either division of the High Court of Justice, is the divisional Court of that division in which the action is commenced; subject to this, that the Judicature Acts have not taken away from the Chancery Division of the High Court the jurisdiction to restrain any action against a company which is being wound up by it under the Companies Acts. *Garbutt v. Famous* (per Malins, V.C.), 45 Law J. Rep. Chanc. 130:—Held, on appeal, that the Chancery Division of the High Court has no jurisdiction either by injunction or order to stay, to restrain proceedings in an action pending in another division, even if such action was commenced before the Judicature Acts came into operation; and semble, the defendant should apply for that purpose to the division in which the action is pending, or

proceed by counter-claim or statement of defence. *Garbutt v. Famous*, 45 Law J. Rep. Chanc. 133; Law Rep. 1 Ch. D. 155.

11.—The Court of Bankruptcy has no jurisdiction to restrain by injunction an action in tort; and where an injunction is applied for to restrain an action for debt, it is the duty of the Court, under rule 289, to exercise its discretion as to whether the injunction should be granted or not. *Ex parte Harold*; *in re Moode*, 45 Law J. Rep. Bankr. 121; Law Rep. 3 Ch. D. 119.

*Foreign sovereign, against removal of property by.* [See PATENT, 29.]

*To restrain arbitrator from acting.* [See ARBITRATION, 14, 15.]

#### (B) WHEN GRANTED.

##### (a) Acquiescence when a bar.

12.—Delay is no bar to an injunction in aid of a legal right, unless the legal remedy is barred by lapse of time. *Fullwood v. Fullwood*, 47 Law J. Rep. Chanc. 459; Law Rep. 9 Ch. D. 176.

13.—Where a covenant had been entered into not to sell wines and spirits on certain premises,—Held, that the covenantee, by not interfering with the sale of British wines to a limited extent, did not lose his right to an injunction to restrain a more extensive breach. *Richards v. Revett*, 47 Law J. Rep. Chanc. 472; Law Rep. 7 Ch. D. 472.

[And see No. 3 supra.]

##### (b) To restrain distress for rent.

14.—The Court will not grant an injunction to restrain a landlord from distraining for rent, even though it is doubtful whether he is entitled to such rent, without providing for the landlord having the amount of such rent secured to him in the event of his ultimately being found to be entitled to it. *Shaw v. The Earl of Jersey*, 48 Law J. Rep. C.P. 303; Law Rep. 4 O.P.D. 359.

##### (c) Adjoining estates: user of same name.

15.—The owner of a property called by a particular name brought an action against the owner of the adjoining property to restrain him from calling his property by the same name. The statement of claim alleged inconvenience, injury and consequent damage to the plaintiff's property, but did not allege malice.—Held, on demurrer, that no right of action existed. *Day v. Brownrigg* (App.), 48 Law J. Rep. Chanc. 173; Law Rep. 10 Ch. D. 294.

##### (d) To restrain trespass.

16.—Where after the expiration of a tenancy for years the holder of a bill of sale of the furniture of the late tenant put and continued a man in possession of the furniture upon the premises under a power in his security,—Held, that the landlord was entitled to treat the bill

of sale holder as a mere trespasser; and in an action against him by the landlord to restrain him from selling the goods on the premises or continuing in possession, an interlocutory injunction was granted in those terms. *Smith v. Brown*, 48 Law J. Rep. Chanc. 694.

[And see CYPHOLDS, 3.]

##### (e) To restrain waste.

17.—It is in the discretion of the Court whether or not an injunction should be granted to restrain a particular act, and in exercising such discretion the Court will consider whether the doing of the act must produce an injury to the party applying for relief; whether such injury, if any, can be estimated by way of damages, and whether such damages must be the subject of successive suits or can be obtained once for all. *Doherty v. Allman* (H.L. Jr.), Law Rep. 3 App. Cas. 709.

In an action by a lessor of lands leased for a long term of years (900 and upwards), with a covenant by the lessee to keep the premises "in good condition during the term," and so "deliver them up," against the lessee for an injunction to restrain him from converting the buildings on the land from military barracks into ordinary dwelling-houses.—Held, that as this was not the case of enforcing a negative covenant in clear and indisputable terms, and as the alleged apprehended waste was of a meliorating character, the discretion of the Court below, which had refused to grant an injunction, would not be interfered with. *Ibid.*

##### (f) To restrain nuisance.

18.—The defendant was tenant and occupier of a newly erected stable, adjoining and all but touching the flank wall of a house in the suburbs of London, and which stable was erected on a mound of made earth at a higher level than the basement of the plaintiffs' house, and the result was that water, mixed with stable drainage and sewage leaking from a broken soil-pipe in the stable yard, oozed through the wall of the plaintiffs' house, so as to be a nuisance. On a bill filed by the plaintiffs, as owners of the house, for an injunction to restrain the nuisance occasioned by the damp, and also by the noise of the horses kept in the stable,—Held, that the occupier of the house should be a party to the suit, inasmuch as the alleged nuisances were of a temporary nature. *Broder v. Saillard*, 45 Law J. Rep. Chanc. 414; Law Rep. 2 Ch. D. 592.

The bill having been amended by the addition of the occupier as co-plaintiff, it appeared that the damp was due to the circumstance of the stable being erected on made earth, placed there unknown to the defendant by some predecessor in title.—Held, nevertheless, that an injunction should be granted, for the reason that the possessor of land is responsible for nuisances arising on it, by whatever means occasioned. Held also, with regard to the noise,

that the stable was so situated that the ordinary use of it occasioned an annoyance amounting to a nuisance. Under the circumstances, no costs were given to the successful plaintiffs. *Ibid.*

19.—In an action by mill owners, riparian proprietors, to restrain the discharge of water containing acid into a stream, where the defendants asked that damages, in lieu of an injunction, might be given, an injunction was granted. *Pennington v. The Brinsop Hall Coal Company (Lim.)*, 46 Law J. Rep. Chanc. 773; Law Rep. 5 Ch. D. 769.

20.—In an action by the occupier of a house on Ash Common, adjoining Aldershot Camp, which had been acquired by the Crown for military purposes under 5 & 6 Vict. c. 94, and was vested in the Secretary of State for War, for an injunction to restrain the general commanding the troops at Aldershot, and the officers under his orders, from causing rifle practice on Ash Common, so as to be a nuisance to the plaintiff and his family,—Held, that the Secretary of State for War was a necessary party to the action, and that the injunction could not be granted in his absence, it not being alleged that the defendant threatened and intended to continue the nuisance, or that he could of his own authority continue it. *Hanley v. Steele*, 46 Law J. Rep. Chanc. 782; Law Rep. 6 Ch. D. 521.

An action will lie against the Secretary of State for War, like any other corporation, for misuser of land vested in him, but semble, when land has been acquired under the authority of Parliament for military purposes, and is vested in the Secretary of State for War, an action will not lie against him for a nuisance occasioned by the reasonable user of such land for military purposes under his direction. *Ibid.*

*To restrain burial near dwelling-house.* [See BURIAL, 1.]

*To restrain obstruction to access to wharf.* [See RIVER, 3.]

(g) *Support: reasonable apprehension of damage.*

21.—The plaintiffs' statement of claim alleged that the plaintiffs bought land of the defendants for the purpose of erecting buildings on it, and that the defendants were informed and knew of such purpose at the time of the purchase; that the plaintiffs erected buildings on the land; and that it was necessary for the support of such land that the mines and minerals in the adjoining land of the defendants should not be worked and gotten within fifty yards from the boundary of the land of the plaintiffs so bought; and that if they were worked and gotten within such distance, the said land of the plaintiffs would subside and the buildings erected thereon be destroyed; and that such land would so subside, although no buildings were placed thereon: but if otherwise, that the plaintiffs claim to be entitled to necessary support from the adjoining land for the said land and buildings. The statement then shewed that the defendants were about to work and get the

mines and minerals under the adjoining land of the defendants within the said distance of fifty yards of the plaintiffs' boundary; and the statement concluded with a claim for an injunction to restrain the defendants from working the mines and minerals adjacent to the plaintiffs' said land in such a manner as to cause any subsidence of the surface of the plaintiffs' land or of the buildings erected thereon:—Held (per Grove, J.), on demurrer to such statement, that the plaintiffs had shewn a sufficient *prima facie* ground for such injunction, irrespectively of any right of support for the buildings. *Siddons v. Short*, 46 Law J. Rep. C.P. 795; Law Rep. 2 C.P. D. 572.

Semble, that there was an implied agreement by the defendants not to work the minerals so as to cause injury to such buildings. *Ibid.*

*Foreign creditor, against: after administration decree.* [See ADMINISTRATION, 37.]

(h) *Mandatory injunction.*

(1) *Obstruction of right of way.*

22.—The plaintiff having upon the trial of an action established his title to a right of way, which the defendant, with full notice of his claim, had obstructed by building over it a solid and expensive structure,—Held, that he was entitled to a mandatory injunction compelling the defendant to remove such obstruction, even though the defendant offered him a substituted right of way. *Krehl v. Burrell*, 47 Law J. Rep. Chanc. 353; Law Rep. 7 Ch. D. 551; affirmed on appeal, 48 Law J. Rep. Chanc. 252; Law Rep. 11 Ch. D. 146.

The mode in which the Court should exercise its discretion in reference to its jurisdiction under Lord Cairns' Act, considered. *Ibid.*

(2) *Building in breach of covenant.*

23.—Where houses were set out in a regular plan, and each purchaser of a house covenanted with the former owners of the whole not to erect any building in advance of the general line of frontage,—Held, that a purchaser of one of such houses to whom the benefit of such covenants was assigned, was entitled to a mandatory injunction to compel the purchaser of another house to pull down a bay-window built in breach of such covenant, even without shewing material damage. *Manners v. Johnson*, 45 Law J. Rep. Chanc. 404; Law Rep. 1 Ch. D. 673.

24.—The purchasers of the different lots of an estate laid out for building executed a deed by which they covenanted with the vendor not to erect any buildings beyond a certain line, the covenant being subject to a proviso that it should not be personally binding on any one except in respect of breaches committed during his sole or joint seisin of the lot to which it related. In 1872 the purchaser of lot B built upon it a bakehouse beyond the line. The plaintiff about the same time bought the opposite lot A. No complaint appeared to have

been made by any one of the erection of the bakehouse until this action was commenced. In 1876 the defendant purchased the residue of a mortgage term in lot B, and in 1877 commenced building upon that plot a wooden stable beyond the line. The plaintiff, as soon as he heard of this, wrote to complain on the 17th of March, 1877, at which time the stable was built up to the eaves. The defendant proceeded to complete the stable, which was finished on the day on which the plaintiff commenced an action for an injunction to restrain the defendant from allowing any buildings to continue on his land beyond the line:—Held (by Bacon, V.C.), that a mandatory injunction ought to be granted to compel the removal of all the erections on the defendant's plot beyond the line. Held (on appeal), that the injunction ought not to extend to the building which had been allowed to remain for five years without complaint, but must be confined to buildings erected since the defendant acquired his title. *Baxter v. Bower* (23 W. R. 805) explained. The Judicature Act, 1873, s. 26. sub-s. 8, has not altered the principles on which the Court acts in granting injunctions. *Gaskin v. Balls* (App.), Law Rep. 13 Ch. D. 324.

(i) *Interlocutory injunction: balance of convenience.*

25.—The owner of an ancient market for the sale of cattle, which was held on every Thursday at B., brought an action to restrain auctioneers, who advertised that they would on a certain Monday, and on every succeeding Monday, hold a market for the sale of cattle at B., from holding their intended market. The auctioneers had expended moneys in advertising and in erecting pens and stallage for cattle. On motion for an interlocutory injunction pending the trial of the action,—Held (reversing the decision of the Master of the Rolls), that, on the balance of convenience and inconvenience, it was not a case for an interlocutory injunction pending the trial of the action. *Elves v. Payne* (App.), 48 Law J. Rep. Chanc. 831; Law Rep. 12 Ch. D. 486.

*Breach of covenant not to carry on trade.* [See COVENANT, 3.]

*Motion standing over to trial: undertaking to account: conflict of evidence.* [See TRADE MARK, 16.]

*Right of assigns of covenantee to sue on the covenant: covenant running with the land.* [See COVENANT, 20.]

*Sale of goodwill: "dealing with" customers of old firm.* [See VENDOR AND PURCHASER, 14.]

*Stall in public building: exclusive right of sale.* [See COVENANT, 11.]

(C) DAMAGES.

*Damages accrued after issue of writ: jurisdiction to award.* [See NUISANCE, 9.]

(D) PRACTICE IN ACTION FOR.

26.—A memorandum of a decree, giving damages instead of an injunction in respect of a nuisance, directed to be indorsed on the plaintiff's title-deed. *Cramford v. The Hornsea Steam Brick and Tile Company (Lim.)* (App.), 45 Law J. Rep. Chanc. 432.

27.—C. was mortgagee of a reversionary interest in which he was about to foreclose the equity of redemption. He entered, through his solicitor D., into negotiations with G. and with F. for sale of the reversion. In the end D. closed with F. G. alleged that D. had agreed to sell to him, and brought an action for specific performance, to restrain C. from assigning to F. and in the alternative for damages for breach of the agreement entered into with him. An interim injunction was granted, subject to the usual undertaking as to damages. D. was made a defendant in the action. The Vice-Chancellor dismissed the action with costs as against F., but, on the ground of D.'s improper conduct, without costs against C. and D., and he refused to direct any enquiry as to damages. C. and D. appealed on the questions of the enquiry and of costs, and G. entered a cross appeal for damages:—Held, that the enquiry as to damages ought to have been allowed, but in this case the measure of damages could only be the interest of money at five per cent. during the time C. had been kept out of it, less any interest he had made. Held also, that the appeal on the enquiry as to damages was a matter wholly collateral, and that as the rest of the appeal was merely an appeal for costs they were not allowed by the Judicature Act to vary the order as to costs made in the Court below. *Graham v. Campbell* (App.), 47 Law J. Rep. Chanc. 593; Law Rep. 7 Ch. D. 490.

Notice of motion for an injunction was given, but owing to press of business in the Court it stood over from time to time, and at last stood over without the undertaking as to damages being continued. On a threat by C. and F. to complete the assignment of the reversion G. obtained an interim injunction *ex parte*:—Held, that notice of motion having been given, the *ex parte* injunction ought not to have been granted. *Ibid.*

28.—An order having been made in an administration action for distribution amongst persons claiming as next-of-kin, A. commenced an action claiming to be next-of-kin, and obtained an injunction staying the distribution. A.'s action was dismissed by the Vice-Chancellor and the Court of Appeal, and she gave notice of appeal to the House of Lords:—Held, that the injunction should be continued pending such appeal with liberty to discharge it if the appeal were not prosecuted without delay. *Polini v. Gray. Sturla v. Freccia* (No. 2) (App.), Law Rep. 12 Ch. D. 439.

29.—Where an interim injunction is granted over a certain day, "or until further order," the injunction is not continued after the day named "until further order," but may be stayed before

the day named by order of the Court. *Bolton v. The School Board for London*, 47 Law J. Rep. Chanc. 461; Law Rep. 7 Ch. D. 760.

30.—The defendant having been restrained from proceeding with certain buildings, appealed, offering an undertaking to abide by any order the Court might make at the hearing as to pulling down or altering any buildings erected by him. The Court of Appeal being of opinion that the right to an interlocutory injunction was not established, discharged the order, taking from the defendant an undertaking in the terms of his offer:—But held, that, without any undertaking, the Court would have jurisdiction at the trial to order the pulling down of any buildings erected after the commencement of the action, or after notice had been given to the defendant that the plaintiff objected to the building. *Smith v. Day* (App.), Law Rep. 13 Ch. D. 651.

*Application by defendants for injunction and receiver.* [See RECEIVER, 1.]

*Breach of: notice by telegram.* [See CONTEMPT OF COURT, 3, 4.]

*Indorsement of claim for.* [See PRACTICE, 112.]

*Interim: service by post.* [See BANKRUPTCY, L 5, M 42.]

*Third party, relief against.* [See BANKRUPTCY, N 1.]

## INLAND REVENUE.

[See REVENUE.]

## INNKEEPER.

(A) OBLIGATION ON, TO PROVIDE REFRESHMENT FOR TRAVELLER.

(B) LIABILITY OF.

(a) *For injury to guest.*

(b) *Sufficiency of notice under 26 & 27 Vict. c. 41.*

(C) LIEN OF.

[Extension of the lien of innkeepers upon goods, &c., deposited with them by persons indebted to them in respect of board, lodging, keep or expenses. 41 & 42 Vict. c. 38.]

(A) OBLIGATION ON, TO PROVIDE REFRESHMENT.

1.—An innkeeper is bound by the common law to receive and provide reasonable refreshment and accommodation for travellers or wayfarers, and cannot lawfully refuse such refreshment or accommodation, unless for reasonable and lawful cause or excuse, and for a breach of such duty is indictable, but the keeper of a refreshment bar attached to an hotel, but not being an hotel itself, but a shop for the sale of spirits, is not an innkeeper within the above rule of law; nor is a neighbouring householder, a near resident in the same town, walking about the town for amusement or recreation, a traveller

within the rule. And if a traveller require such refreshment, &c., at an inn when accompanied by a large dog, and insists, after being requested by the innkeeper to withdraw him, on the dog staying with him in the inn, the presence of such dog affords a reasonable and lawful excuse to the innkeeper to refuse to receive such traveller, or afford him refreshment or accommodation. *Reg. v. Rymor* (C.C.R.), 46 Law J. Rep. M.C. 108; Law Rep. 2 Q.B. D. 186.

(B) LIABILITY OF.

(a) *For injury to guest.*

2.—It is the duty of an hotel keeper to take reasonable care of the persons of his guests, so that they are not injured by reason of a want of such care on his part, whilst they are in the hotel as his guests. *Sandys v. Florence*, 47 Law J. Rep. C.P. 598.

A statement of claim alleged that, while the plaintiff was using an hotel, of which the defendant was the proprietor, as a guest for reward to the defendant, by the negligence of the defendant the ceiling of the room in which the plaintiff then was, fell upon and injured him:—Held, on demurrer, that such statement sufficiently shewed a cause of action. *Ibid.*

(b) *Sufficiency of notice under 26 & 27 Vict. c. 41.*

3.—A mere verbal error in a copy of section 1 of the Innkeepers' Liability Act, 1863 (26 & 27 Vict. c. 41), exhibited for the purpose of limiting an innkeeper's liability, will not vitiate the notice so as to make it ineffectual, provided the notice states correctly the provisions of the Act; but the omission of a material portion of the statute will render the notice ineffectual to protect the innkeeper. *Spice v. Bacon* (App.), 46 Law J. Rep. Exch. 713; Law Rep. 2 Ex. D. 463.

In the defendant's hotel a notice was exhibited containing a copy of the first section of the Act, correct in every particular except that in the exception the word "act" was accidentally omitted:—Held, that this was a material omission, and that the notice was insufficient to protect the innkeeper. *Ibid.*

(C) LIEN OF.

4.—An innkeeper's lien is general, and extends to all the goods of the guest under his control, and therefore to his horses and carriages in the inn stables, in respect of his general account. *Mulliner v. Florence* (App.), 47 Law J. Rep. Q.B. 700; Law Rep. 3 Q.B. D. 484.

The sale of a chattel by the holder waives the lien on it, although the retention of it would put him to expense. *Ibid.*

[See, however, 41 & 42 Vict. c. 38.]

## INROLMENT OF DECREE.

[See PRACTICE.]

## INSOLVENCY.

An insolvent in 1854 omitted from his statement of affairs a contingent interest in a fund, and afterwards became lunatic. The fund subsequently became vested, and the Court ordered it to be paid to the credit of the lunacy. On a petition by the provisional assignee under the insolvency the fund was paid out to him. *In re Hinds* (App.), Law Rep. 7 Ch. D. 26.

## INSPECTION OF DOCUMENTS.

[See PRODUCTION OF DOCUMENTS.]

## INSTALMENTS.

*Sale of goods by.* [See COMPANY, H 43; SALE OF GOODS, 11-14.]

## INSURANCE.

[And see MARINE INSURANCE.]

## (A) LIFE INSURANCE.

- (a) *Illegality: insurable interest.*
- (b) *Proposal for policy: concealment.*
- (c) *Assignment under Policies of Assurance Act, 1867.*
- (d) *Payment of moneys into Court: notice of incumbence.*
- (e) *Right to policy money.*
- (f) *Winding-up of insurance company.*
  - (1) *Valuation of policies.*
  - (2) *Contributories: shareholders and participating policy-holders.*
  - (3) *Fire and life members.*

## (B) FIRE INSURANCE.

- (a) *Insurable interest.*
- (b) *Double insurance: subrogation: wharfinger and merchant.*
- (c) *Contract of indemnity.*

## (A) LIFE INSURANCE.

- (a) *Illegality: insurable interest.*

1.—A father effected a policy of assurance on the life and in the name of his son, and paid all the premiums and kept the policy in his own possession. On the death of the son intestate, the father took out letters of administration, and received the insurance money. In a creditor's suit instituted for the administration of the son's estate, the Court being of opinion upon the evidence that the father had effected the policy for his own benefit,—Held, that he was entitled to keep it, and the fact that the policy was void by reason of the father not having an insurable interest in his son's life, within the meaning of 14 Geo. 3. c. 48, though a good ground of defence to the insurance company, if they had chosen to avail themselves of it, could not affect his right after the money had been paid; affirming the decision below. *Worthington v. Curtis* (App.), 45 Law J. Rep. Chanc. 259; Law Rep. 1 Ch. D. 419.

(b) *Proposal for policy: concealment.*

2.—In a contract of life assurance perfect good faith is required on the part of the assured. It is his duty to communicate all material facts to the assurer, and the failure on his part to disclose to them any such facts will vitiate the contract. *The London Assurance Company v. Mansel*, 48 Law J. Rep. Chanc. 331; Law Rep. 11 Ch. D. 363.

In a proposal by the defendant for the issue to him by the plaintiffs of a policy of life assurance, he was asked (*inter alia*) the following questions: "Has a proposal ever been made on your life at any other office or offices? If so, where? Was it accepted at the ordinary or at an increased premium, or declined?" The defendant answered the questions as follows: "Insured now in two offices for 16,000*l.* at ordinary rates. Policies effected last year." The defendant signed a declaration at the foot of the proposal that the particulars given were true, and that the proposal and declaration were the basis of the contract between him and the plaintiffs. The plaintiffs accepted the defendant's proposal, and he paid the first year's premium. Before the issue of the policy the plaintiffs discovered that the defendant had made proposals to several other offices, which had been declined:—Held, that there had been concealment of material facts on the part of the defendant, and that the contract for the issue of the policy must be set aside. *Ibid.*

(c) *Assignment under Policies of Assurance Act, 1867.*

3.—A written agreement by the owner of a policy of life assurance to execute a legal assignment of such policy when requested so to do, is not an assignment within the meaning of the Policies of Assurance Act, 1867, and notice of such agreement duly given to the insurance office and acknowledged by them pursuant to section 6 of that Act, does not give priority, under section 5 of the Act, over the prior equitable title of a person who has not given notice. *Spencer v. Clarke*, 47 Law J. Rep. Chanc. 692; Law Rep. 9 Ch. D. 137.

4.—Under an agreement that S. should assure his life, and either assign the policy to the plaintiff or deposit it with him as security for a debt, S. assured his life in the defendant's office, and delivered the policy to the plaintiff, with a request that he would have the assignment prepared, which the plaintiff omitted to do. S. having died, the plaintiff gave notice of the death, and that he held the policy as security for the debt, which he alleged to exceed the amount of the policy money. The office acknowledged the receipt of the notice, in conformity with section 6 of the Policies of Assurance Act, 1867, but they declined to part with the policy money, on the ground that they were entitled to a discharge from the legal personal representative of S., if and when con-

stituted. In an action by the plaintiff to recover the policy money,—Held, upon evidence, that the debt was due, and that no one had taken or would take out administration to the estate of S., that the Court could proceed under section 44 of 15 & 16 Vict. c. 86, in the absence of his legal personal representative. *Crossley v. The City of Glasgow Life Assurance Society*, 46 Law J. Rep. Chanc. 65; Law Rep. 4 Ch. D. 421.

Held also, that the deposit of the policy did not, under the circumstances, amount to an assignment within section 1 of the Policies of Assurance Act, 1867, so as to enable the plaintiff alone to give a discharge for the policy money. Therefore, that the office were warranted before action in refusing to pay over the policy money except upon the joint receipt of the plaintiff and a duly constituted legal personal representative of S. But that the office must pay interest at the rate of four per cent. on the sum assured by the policy, from the time when the same was payable. *Ibid*.

Dictum in *Desborough v. Harris* (5 De Gex, M. & G. 439) dissented from. *Wolfe v. Findley* (6 Hare, 66) observed on. *Ibid*.

5.—In 1847 A. deposited a policy on his own life with B., as security for a debt. A. died in 1874, insolvent and intestate. The debt for which B. held the policy as security was greater than the amount due on the policy. No written assignment was ever made of the policy, but B. paid all the annual premiums after 1848. When B. applied in 1874 for payment of the policy moneys, the assurance company, although admitting that the proof of death was satisfactory, declined to pay the amount due on the policy except to or by the consent of the legal personal representative of A. No legal personal representative of A. was ever constituted, and B. died in 1878. In an action by the executors of B. against the company for payment of the policy moneys, Jessel, M.R., dispensed with the legal personal representative of A. (under the Chancery Amendment Act, 1852, s. 44), and whilst holding that the company had been justified in refusing to pay the policy moneys without the consent of A.'s legal personal representative, ordered payment of the moneys, with interest at 4l. per cent. from the date when demand of payment had been made. The company appealed on the question of interest:—Held, by the Court of Appeal, that as the delay in payment of the policy moneys arose not from the default of the company, but from the neglect of B. to clothe himself with a legal title to the moneys, interest ought only to be allowed from the date of the order made by the Court for payment. *Crossley v. The City of Glasgow Life Assurance Company* (46 Law J. Rep. Chanc. 65; Law Rep. 4 Ch. D. 421; see last case) overruled on this point. *Webster v. The British Empire Mutual Life Assurance Society* (App.), 49 Law J. Rep. Chanc. 769; Law Rep. 15 Ch. D. 169.

Interest, if it does not arise from contract,

can only be awarded as damages for the wrongful withholding of money. *Ibid*.

Quære, whether the Court ought to have dispensed with the legal personal representative. *Ibid*.

(d) *Payment of moneys into Court: notice of incumbrance.*

6.—A. having assured his life, in 1852 assigned the policy to B. absolutely, who afterwards assigned it to C. absolutely. A. died, and C.'s claim was admitted by the assurance society, subject to proof that a charge created by an assignment by A. in 1851 was no longer subsisting. C. refused to produce that proof, on the ground that no claim had ever been made in respect of the charge, and it must be presumed to be satisfied, whereupon, in July, 1876, the assurance society paid the policy money into Court. On a petition by C. for payment out of the policy moneys,—Held, that, prior to the commencement of the Judicature Act, 1873, the Trustee Relief Act did not authorise an assurance society to pay policy money into Court in case of a disputed claim, unless the policy money belonged to a trust, but that the objection could not be taken on a petition entitled in the matter of the Act. *In re Haycock's Policy*, 45 Law J. Rep. Chanc. 247; Law Rep. 1 Ch. D. 611.

Held also, that the assurance society had a right to proof of the charge being no longer subsisting, as, if the charge had not been satisfied, the incumbrancer might have sued the society in his own name, by virtue of the Policies of Assurance Act, 1867. *Ibid*.

[And see TRUSTEE RELIEF ACT, 3.]

(e) *Right to policy moneys.*

7.—Mortgage of life estate by way of grant of annuity, with right of repurchase. The mortgagee insured the mortgagor's life for the amount of the loan. On the death of the mortgagor,—Held, that the mortgagee was entitled to the policy moneys as against the mortgagor's executor. *Preston v. Neele*, Law Rep. 12 Ch. D. 760.

(f) *Winding-up of insurance company.*

(1) *Valuation of policies.*

8.—The rules of the Life Assurance Companies Act, 1872, for valuing policies, do not apply where under the contract of insurance a stated sum is at the winding-up payable on the policy. *In re The British Imperial Insurance Corporation; Farr's and Whittall's Claims*, 47 Law J. Rep. Chanc. 318.

A contract by an insurance company with insurers that a certain proportion of their premiums shall be invested and appropriated for payment of their claims in priority to general liabilities of the company is legal and enforceable by the policy-holders upon the company's insolvency. *Ibid*.

(2) *Contributories: shareholders and participating policy-holders.*

9.—Where the articles of an unlimited insurance company provided for two classes of members, shareholders and participating policy-holders, and gave both classes a voice in the management, a participating policy-holder was placed on a list of contributories separate from the list of shareholder contributories. Semble, regulations of a company relating to proper subject of the articles, though placed in the memorandum of association, may be altered. *In re The Albion Life Assurance Society. Winston's Case*, 48 Law J. Rep. Chanc. 607; Law Rep. 12 Ch. D. 239.

10.—It having been decided in *Winston's Case* (48 Law J. Rep. Chanc. 607; Law Rep. 12 Ch. D. 239; see last case) that assurance members were liable as contributories, a summons was taken out by the official liquidator for the purpose of making a call upon them:—Held, that as this was an unlimited company, in which the shareholders were the only persons liable to pay calls while the company was a going concern, the shareholders were primarily liable to pay this call, and that the assurance members were only secondarily liable. *In re The Albion Life Assurance Society*, 49 Law J. Rep. Chanc. 593; Law Rep. 15 Ch. D. 79.

(3) *Fire and life members.*

11.—It is perfectly lawful for a company, such as a fire and life insurance company, to establish distinct departments with distinct shares for each class of business, and to contract with its policy-holders that they should have the right of resort to the fire or life assets respectively alone; and, therefore, where this is the case, upon the winding-up of the company, the present fire members being exhausted, the liquidator is entitled to make a call in respect of fire liabilities upon a past fire member without first calling upon present life members. *In re The Norwich Provident Insurance Society. Bath's Case*, 48 Law J. Rep. Chanc. 411; Law Rep. 11 Ch. D. 380.

12.—A fire and life insurance company established distinct departments, with distinct shares for each class of business, and contracted with its life and fire policy-holders that they should respectively have the right of resort to the fire or life assets respectively alone. In the winding-up of the company the resources of the existing fire shareholders were exhausted. The liquidator having made a call on the past fire shareholders in respect of the unsatisfied fire liabilities, although there were existing solvent life shareholders,—Held, that, whatever the equities between the fire and life shareholders and their respective creditors might ultimately be *inter se*, no call could in the first instance be made on past fire shareholders until all the existing solvent life members had been exhausted. *In re The Norwich Provident Insur-*

*ance Society. Hasketh's Case* (App.), 49 Law J. Rep. Chanc. 288; Law Rep. 13 Ch. D. 693.

*Amalgamation: novation of contract by policy holder.* [See COMPANT, G 4-9.]

*Evidence of death of insured: presumption of death.* [See PRESUMPTION, I.]

*Married Woman's Property Act: distribution of proceeds on death of husband.* [See HUSBAND AND WIFE, 47, 48.]

(B) FIRE INSURANCE.

(a) *Insurable interest.*

13.—In May, 1868, the plaintiff insured certain houses, of which he was seised in fee, in the defendants' office against loss or damage by fire. The insurance was continued up to Lady-day, 1876. In December, 1872, the Metropolitan Board of Works, unknown to the defendants, served the plaintiff with a notice to treat in respect of certain premises, in pursuance of statutory powers enabling them so to do; and in May, 1873, the amount of compensation to be paid was duly fixed by an arbitrator. In May, 1875, the said premises were injured by fire. At that time the plaintiff's abstract of title had been accepted by the Board of Works, and a draft conveyance to them was in course of preparation, but no purchase-money had been paid:—Held, that the plaintiff had an insurable interest in the houses at the time when the fire occurred, such as would entitle him to recover from the defendants. *Collingridge v. The Royal Exchange Assurance Company*, 47 Law J. Rep. Q.B. 32; Law Rep. 3 Q.B. D. 173.

(b) *Double insurance: subrogation: wharfinger and merchant.*

14.—It appearing that by usage and implied contract in the grain trade of London, the wharfinger is liable to the merchant for any loss by fire of grain stowed in his granaries:—Held (on appeal from the decision of the Master of the Rolls, 45 Law J. Rep. Chanc. 548), that if both merchant and wharfinger insure, the merchant's insurers cannot be called upon to contribute to the wharfinger's insurers in respect of any loss by fire, but can call upon the wharfinger's insurers or (if necessary) the wharfinger himself, to recoup them anything they may be required to pay the merchant. *The North British and Mercantile Insurance Company v. The London, Liverpool and Globe Insurance Company* (App.), 46 Law J. Rep. Chanc. 537; Law Rep. 5 Ch. D. 569.

The only effect of a provision in the wharfinger's policies cutting down the liability thereon to a proportionate contribution in the event of any insurance being effected by the merchant, would be to leave the wharfinger unprotected *pro tanto*. *Ibid*.

Semble, a condition providing that "if at the time of any loss or damage by fire happening to any property thereby insured, there be any



other subsisting insurance or insurances, whether effected by the insured or by any other person, covering the same property, the company shall not be liable to pay or contribute more than its rateable proportion of such loss or damage," has not such a construction or effect. *Ibid.*

(c) *Contract of indemnity.*

15.—A policy of fire insurance is a contract of indemnity, and upon payment of the amount of loss the insurer is entitled to be put into the place of the assured; and if at a subsequent time the assured receives compensation from other sources for the loss sustained by him, the insurer is entitled to recover from the assured any sum which he may have received in excess of the loss actually sustained by him. *The North British and Mercantile Insurance Company v. The London, Liverpool, and Globe Insurance Company* (see last case) commented upon and followed. *Darroll v. Tibbitts* (App.), Law Rep. 5 Q.B. D. 560.

*Landlord and tenant : option to purchase : right to insurance money.* [See LANDLORD AND TENANT, 19.]

## INTEREST.

### *Rate of interest.*

1.—By a mortgage deed reciting an agreement for an advance at 10l. per cent. the mortgagor covenanted for payment of the principal sum at the expiration of twelve months, and for the payment of interest in the meantime at the rate of 10l. per cent. per annum, but there was no covenant as to payment of interest in the event of the principal sum, or any part of it, remaining unpaid after the day named for repayment. The money was not repaid on the day, but interest at 10l. per cent. was paid for several years. The mortgagor having died, and a decree having been made for administration of his estate, the mortgagee proved as a creditor for the principal sum and interest:—Held, that interest was recoverable only as damages, and ought to be limited to 5l. per cent. *In re Roberts. Goodchap v. Roberts* (App.), Law Rep. 14 Ch. D. 49.

2.—A mortgagor covenanted to pay the principal and interest at the rate of 5l. per cent. per month on a fixed day, and charged a reversionary interest with payment of the principal and interest, "at the rate aforesaid," but there was no further covenant for payment of interest. In taking accounts in a mortgagee's action, the mortgagee was allowed interest after the fixed day at the rate of 5l. per cent. per annum only. *Wallington v. Cook*, 47 Law J. Rep. Chanc. 508.

*Advances by parent, on.* [See ADVANCEMENT, 7.]

*Arrears of : recovery of.* [See LIMITATIONS, STATUTE OF, 12; LANDS CLAUSES ACT, 35.]

*Award, on : Companies Act, 1862, s. 162.* [See ARBITRATION, 21.]

DIGEST, 1875-1880.

*Bottomry bond, on.* [See ADMIRALTY, 34.]

*Claim against Crown by next of kin.* [See CROWN, 7.]

*Damages for collision, on : limitation of liability suit.* [See SHIPPING LAW, E 30.]

*Demand for, under 3 & 4 Will. 4. c. 42. s. 28.* [See INSURANCE, 5; SOLICITOR, 15.]

*Foreign debt, on.* [See FOREIGN LAW, 3.]

*Judgment debt, on.* [See COMPANY, H 39.]

*Landowner, right of, to.* [See LANDS CLAUSES ACT, 10.]

*Legacy, on.* [See LEGACY, 24.]

*Purchase-money, on : when payable.* [See VENDOR AND PURCHASER, 27.]

*Redemption action : missing deed : interest ceasing to run on day fixed for redemption.* [See MORTGAGE, 60.]

*Salvage, on.* [See ADMIRALTY, 31.]

*Tenant for life keeping down.* [See TENANT FOR LIFE, 5.]

## INTERLOCUTORY ORDERS AND APPLICATIONS.

[See PRACTICE, O.]

## INTERNATIONAL LAW.

*Marine insurance : destruction of cargo by enemy : compensation paid by neutral states.* [See MARINE INSURANCE, 16.]

## INTERPLEADER.

(a) *Right to order : non-co-extensive claims.*

(b) *Right to immediate return pending interpleader issue.*

(c) *Power to stay action : County Court Act.*

(d) *Appeal.*

(e) *Security for costs.*

(a) *Right to order : non-co-extensive claims.*

1.—The right to an interpleader order is not barred by the fact that the claims are not co-extensive. So held by the Court of Appeal, reversing the Queen's Bench. *Attenborough v. The London and St. Katharine's Docks Company* (App.), 47 Law J. Rep. C.P. 763; Law Rep. 3 C.P. D. 373, 450.

2.—The defendant, the proprietor of a horse repository, sold there by public auction, a horse to the plaintiff, warranted quiet to ride and in harness, but subject to a condition, by which if considered by the buyer incapable of working from any infirmity or disease it might be returned on the second day after the sale, and the matter determined by veterinary surgeons, according to the terms provided for in such condition. The horse was returned accordingly by

B R

the plaintiff, who demanded to have back the money he had paid for the purchase, and this being refused he brought an action against the defendant for damages for breach of the warranty. A. B., who had placed the horse at the repository for sale, claimed of the defendant the proceeds of the sale, stating that the horse had left the repository perfectly sound:—Held, that the defendant was not entitled to an interpleader order. *Wright v. Freeman*, 48 Law J. Rep. C.P. 276.

(b) *Right to immediate return pending interpleader issue.*

3.—Pending an interpleader issue as to the property in goods seized by a sheriff under a writ of *fi. fa.*, the execution creditor has not an absolute right to an immediate return of the writ. *Angel v. Baddeley* (App.), 47 Law J. Rep. Exch. 86; Law Rep. 3 Ex. D. 49.

A sheriff having seized certain goods under a writ of *fi. fa.*, three different persons put in claims to separate portions of the goods. The sheriff interpleaded, and three separate interpleader orders were made. One of the claimants in pursuance of the order paid into Court the value of the goods claimed by him, to an amount sufficient to answer the debt. The other two claimants disobeyed the order; but the sheriff, instead of selling the goods claimed by them, abandoned possession of the whole. The plaintiff, thereupon, obtained a side-bar rule, calling on the sheriff to return the writ:—Held (affirming the judgment of the Queen's Bench Division), that the plaintiff had no right to such return, and that the side-bar rule ought to be set aside. *Ibid.*

(c) *Power to stay action: County Court Act.*

4.—The County Court Act, 1867, provides that where a claim is made by any person to or in respect of any goods taken in execution under process of a County Court, or in respect of the proceeds or value thereof, the high bailiff may interplead by issuing a summons to bring before the Court the party issuing the process and the party making the claim; and the Court shall adjudicate between such parties and the high bailiff, and any action which shall have been brought in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed:—Held (affirming the judgment of the Exchequer Division), that an action brought by a plaintiff whose goods had been taken in execution, against the high bailiff and against the purchasers of the goods, could be stayed against the former; but that there was no power under the above section to stay it against the purchasers. *Hills v. Renny* (App.), 49 Law J. Rep. Exch. 710; Law Rep. 5 Ex. D. 313.

(d) *Appeal.*

5.—An appeal will lie to the Court of Appeal from a judgment on the trial of an interpleader issue, notwithstanding section 17 of 23 & 24

Vict. c. 126, and Order I. rule 2 of the Judicature Act, 1875. *Witt v. Parker* (App.), 46 Law J. Rep. Q.B. 450.

6.—Notwithstanding the provisions of the Judicature Act, 1875, no appeal lies to a Divisional Court against an order made by a Judge at chambers under the Common Law Procedure Act, 1860, in the exercise of his summary jurisdiction upon the facts of an interpleader case, even although the parties and the Judge desire and consent to such an appeal. *Dodds v. Shepherd*, 45 Law J. Rep. Exch. 457; Law Rep. 1 Ex. D. 75.

*Interpleader issue: order on, is interlocutory: time for appeal.* [See PRACTICE, B 32.]

(e) *Security for costs.*

7.—Where a foreigner resident abroad was, for purposes of convenience, made the plaintiff in an interpleader issue, an order to compel him to give security for costs was refused. *Belmonte v. Aynard* (App.), Law Rep. 4 C.P. D. 221, 352. [And see BANKRUPTCY, A 6.]

*Costs: taxation: set-off.* [See COSTS, 35.]

*Foreign attachment in Lord Mayor's Court: garnishes order obtained during existence of attachment.* [See LORD MAYOR'S COURT, 7.]

*Injunction against sale by sheriff.* [See INJUNCTION, 5.]

## INTERROGATORIES.

[See PRACTICE, P.]

## INTOXICATING LIQUORS.

[Prohibition of the Sale of Intoxicating Liquors on Sunday in Ireland. 41 & 42 Vict. c. 72.]

## INVENTORY.

[See BILL OF SALE, 12.]

## INVESTMENT.

*Trust money, of: what investments authorised.* [See TRUST AND TRUSTEE, B 2-6.]

## IRRELEVANCY.

*Discovery.* [See PRACTICE, P.]

*Pleadings, in.* [See PRACTICE, W 3-14.]

## IRREMOVABILITY OF PAUPER.

[See POOR LAW, 14.]

## ISSUE.

*Gifts to "issue."* [See WILL CONSTRUCTION H 19, 20.]

*Trial of, practice as to.* [See PRACTICE, H H 5-12.]

## ISLE OF MAN.

The Act of Settlement of the Isle of Man, 1708, confirmed to the tenants their customary estates of inheritance, "saving always all mines and minerals, of what kind and nature soever, quarries and delfs of flag slate or stone:—" Held, that a custom by the tenants to dig for clay and sand did not contravene the saving clause, and that such tenants were entitled to dig for clay and sand. *The Attorney-General of the Isle of Man v. Mylohnrest*, 48 Law J. Rep. P.C. 36; Law Rep. App. Cas. 294.

## JAMAICA.

[See COLONIAL LAW, 25, 26.]

*Land in, Statute of Limitations.* [See LIMITATIONS, STATUTE OF, 4.]

## JERSEY.

[See COLONIAL LAW, 27, 28.]

## JERVIS'S ACT.

[See JUSTICE OF THE PEACE, 11.]

## JOBBER.

[See COMPANY, D 89, 90.]

## JOINDER.

*Actions, of causes of.* [See PRACTICE, Q.]

*Parties, of.* [See PRACTICE, U 1-16.]

## JOINT DEBTORS.

*Release of one.* [See BANKRUPTCY, D 13; JUDGMENT, 1.]

## JOINT TENANTS.

*Severance of joint tenancy.*

Two joint tenants by mutual arrangement made simultaneous wills, giving their respective property to one another for life with identical remainders. One having died,—Held, that the agreement carried out by the will made a severance of the joint tenancy; so that the survivor did not take the whole property absolutely. *In re Wilford's Estate. Taylor v. Taylor*, 48 Law J. Rep. Chanc. 243; Law Rep. 11 Ch. D. 267.

*Gift to A. for life and afterwards to his lawful issue: issue taking as joint tenants.* [See WILL CONSTRUCTION, H 15.]

## JOINTURE.

A fund in Court, the proceeds of the sale of part of a settled estate, was, under the trusts of the settlement, liable to be laid out in land to be settled to certain uses, all of which were ex-

hausted except a legal jointure. On a petition that the fund might be paid out to the heir-at-law of the person entitled, subject to the jointure,—Held, as between his real and personal representatives, that the equity of the jointress to have the fund re-invested in land was sufficient to cause it to retain its character as real estate. *Walrond v. Rosslyn. Walrond v. Fulford*, 48 Law J. Rep. Chanc. 602; Law Rep. 11 Ch. D. 640.

## JOURNEY.

*Costs of.* [See SOLICITOR, 28, 30.]

## JUDGMENT.

[And see PRACTICE, R.]

(A) EFFECT OF JUDGMENT AGAINST ONE JOINT CONTRACTOR.

(B) REMEDIES AND RIGHTS OF JUDGMENT CREDITOR.

(a) *Right to receiver.*

(b) *Charging order.*

(A) EFFECT OF JUDGMENT AGAINST ONE JOINT CONTRACTOR.

1.—The defendant being jointly interested with W. & Co. in a contract in respect of which they were indebted to the plaintiff, the plaintiff recovered judgment against W. & Co. W. & Co. afterwards became bankrupt. The plaintiff proved against their estate, and then brought an action on the contract against the defendant:—Held (affirming the judgment of the Court of Appeal, 47 Law J. Rep. C.P. 665; Law Rep. 3 C.P. D. 403), that the judgment obtained against W. & Co. was a bar to the action. *Kendall v. Hamilton (H.L.)*, 48 Law J. Rep. C.P. 705; Law Rep. 4 App. Cas. 504.

(B) REMEDIES AND RIGHTS OF JUDGMENT CREDITOR.

(a) *Right to receiver.*

2.—The equitable remedies which a judgment creditor had prior to the 27 & 28 Vict. c. 112, are not prejudicially affected by that Act, nor by the Judicature Act, 1873. Where, therefore, a judgment creditor issued writs of *elegit*, and was unable to obtain a delivery in execution by reason of the judgment debtor's real estate being mortgaged,—Held, in an action instituted by the judgment creditor to obtain a charge on the debtor's real estate, and for a sale, that he was entitled to have a receiver appointed pending the trial of the action. *Anglo-Italian Bank v. Davies (App.)*, 47 Law J. Rep. Chanc. 833; Law Rep. 9 Ch. D. 275.

Semble, that a creditor who recovers judgment for a sum of money can now under the Judicature Act, 1873, s. 25. sub-s. 8, and Order XLII. rule 1, by motion after judgment, obtain equitable execution in the same way as he could

have done before the statute in a separate action instituted to enforce his equitable rights. *Ibid.*

Section 25, sub-section 8, has much enlarged the powers which Courts of Equity formerly possessed of granting injunctions and receivers, and is not applicable merely to applications before the trial. *Ibid.*

8.—Where a judgment debtor's interest in land is of an equitable nature, and a writ of *elegit*, if issued at the instance of the judgment creditor, will result in nothing, the latter need not issue the writ before taking proceedings to obtain equitable execution. In such a case an order appointing a receiver of the rents and profits of the land at the suit of the judgment creditor, in an action by him to enforce payment of the judgment debt, is a delivery in equitable execution by virtue of a lawful authority within 27 & 28 Vict. c. 112, although the receiver may not perfect his appointment until afterwards; and the judgment creditor is thereby constituted a "secured creditor" within sub-section 5 of section 16 of the Bankruptcy Act, 1869. *In re Watkins; ex parte Evans* (App.), 49 Law J. Rep. Bankr. 7; Law Rep. 13 Ch. D. 257.

*Receiver: motion for, in lieu of sequestration.* [See RECEIVER, 11.]

(b) *Charging order.* [See PRACTICE.]

*Creditor holding under writ of elegit: secured creditor.* [See BANKRUPTCY, D 21.]

*Impeachment of judgment on ground of fraud.* [See PRACTICE, B 4.]

*Judgment creditor of railway company: right of, to receiver.* [See RAILWAY, 30.]

*Money attachable: money payable to preference shareholders.* [See ATTACHMENT, 6.]

*Order dismissing action not a judgment: Order XLV, rule 2.* [See ATTACHMENT, 1.]

*Rights of judgment creditor where debtor bankrupt.* [See BANKRUPTCY, F 25, 26.]

*Right to issue execution as against holder of bill of sale.* [See BILL OF SALE, 18.]

*Stay of execution on winding-up of company.* [See COMPANY, H 87; I.]

#### JUDICIAL COMMITTEE.

[See PRIVY COUNCIL.]

#### JURISDICTION.

[Regulation of the law relating to the trial of offences committed on the sea within a certain distance of the coasts of Her Majesty's dominions. 41 & 42 Vict. c. 73.]

*Action in another division: enforcing compromise.* [See COMPROMISE, 3.]

*Admiralty: foreign ship.* [See ADMIRALTY, 1, 15, 16, 63; SHIPPING LAW, E 2.]

*Admiralty: offences within three miles of coast.* [See CENTRAL CRIMINAL COURT.]

*Admiralty: salvage: county court.* [See COUNTY COURT, 7.]

*Archdeaconry Court: surrogate.* [See CHURCH AND CLERGY, 29.]

*Bankruptcy, in.* [See BANKRUPTCY, A.]

*Case stated by quarter sessions for opinion of Queen's Bench Division: jurisdiction of Court of Appeal.* [See PUBLIC HEALTH, 14.]

*Chancery Division, of, to grant probate of will.* [See PROBATE, 1.]

*Charge on property in foreign country: jurisdiction of foreign court.* [See FOREIGN LAW, 2.]

*Collision at sea: jurisdiction not extending beyond low water mark.* [See PRACTICE, BB 9.]

*Compromise: jurisdiction to enforce, by summons in winding-up.* [See COMPANY, H 49.]

*Criminal matters: appeals.* [See CRIMINAL LAW, 1, 2.]

*Delivery up of deeds, to order.* [See MORTGAGE, 25.]

*Dismissal of bill on neglect of plaintiff to file affidavit of documents.* [See PRODUCTION, 20.]

*Divorce court, of.* [See DIVORCE, 1-9.]

*Embezzlement: venue.* [See EMBEZZLEMENT, 2.]

*Foreclosure action: interlocutory order for sale.* [See MORTGAGE, 45.]

*Foreign court: claim to property in India.* [See FOREIGN LAW, 1.]

*Foreign country: venue: action of debt for arrears of rent charge.* [See VENUE.]

*Foreign government: action to enforce bond against property of government in hands of English agent.* [See FOREIGN GOVERNMENT, 1.]

*Future rights, to decide questions as to.* [See REMOTENESS, 6.]

*Hearing in camera.* [See PRACTICE, HH 9.]

*Heirlooms, sale of.* [See HEIRLOOMS.]

*Injunction, to grant.* [See INJUNCTION, 1-11.]

*Judge at chambers, of: transfer of action.* [See PRACTICE, GG 3.]

*Justices, of.* [See JUSTICE OF THE PEACE, 1-13.]

*Lancaster Palatine Court: jurisdiction over property beyond local limits.* [See LANCASTER PALATINE COURT, 1.]

*Legitimacy Declaration Act, under.* [See LEGITIMACY DECLARATION ACT, 1, 2.]

*Lunacy Regulation Act, 1862: costs: no fund in court.* [See LUNACY, 10.]

*Mayor's Court, London, of.* [See LORD MAYOR'S COURT, 1-4.]

*Petition: removal of trustee.* [See TRUST, D 1.]  
*Petition for payment out of court: setting aside unconscionable bargain.* [See UNCONSCIONABLE BARGAIN, 2.]  
*Probate Court, of.* [See FRAUD, 9; PROBATE, 3.]  
*Prohibition, to issue.* [See LAND DRAINAGE.]  
*Railway Commissioners, of.* [See RAILWAY, 35.]  
*Receiver: payment of claims by strangers to action.* [See RECEIVER, 14.]  
*Rectification of deed on petition.* [See SETTLEMENT, 29.]  
*Rent issuing out of premises abroad.* [See PRACTICE, W 44.]  
*Service out of.* [See PRACTICE, BB 9-25.]  
*Setting aside deed.* [See MINES, 6.]

### JURY.

[Amendment of the procedure connected with trial by jury in Ireland. 39 & 40 Vict. c. 78.]  
*Libel: duty of judge in directing jury.* [See LIBEL, 12.]  
*Negligence: question for jury.* [See CARRIER, 16.]  
*New trial: misdirection.* [See MARINE INSURANCE, 19.]  
*Trial by, right to.* [See PRACTICE, HH 13-23.]

### JUST ALLOWANCES.

[See MORTGAGE, 58, 59.]

### JUSTICE OF THE PEACE.

#### (A) JURISDICTION OF JUSTICES.

- (a) *Locality.*
- (b) *Claim of right.*
- (c) *Disqualification of.*
- (d) *Case for opinion of superior court.*
- (e) *Demolition of buildings: limitation of time for making complaint.*
- (f) *Power to reject irrelevant evidence.*
- (g) *Discretion to refuse to issue summons.*
- (h) *Breach of the peace: evidence: duty of justice.*
- (i) *Warrant, backing.*

#### (B) FEES TO JUSTICES' CLERK.

[Amendment of the law relating to the appointment, payment and fees of clerks of justices of the peace and clerks of special and petty sessions. 40 & 41 Vict. c. 43.]

#### (A) JURISDICTION OF JUSTICES.

##### (a) *Locality.*

1.—In a proceeding for a penalty under the Contagious Diseases (Animals) Act, before the

justices for the county of Pembroke, against the master of a vessel for having carried sheep on board such vessel without having the places used for such sheep divided into pens, as required by the Animals Order of 1875, it was proved that the vessel brought the sheep from Ireland to New Milford, in Milford Haven, which is in the body of the county of Pembroke, and that the vessel arrived there without having the places on board for the sheep divided as required by the said Order. On these facts the justices determined that they had no jurisdiction to convict the master:—Held, that the justices had jurisdiction as the offence continued, so as to be in Pembrokeshire within the jurisdiction of the justices, when the vessel arrived at New Milford with the sheep without pens, as required by the Order. Held also, that though section 108 of 32 & 33 Vict. c. 70 gives a power of appealing from the justices to the Quarter Sessions, it does not deprive a party of the right to have a case stated for the opinion of the Superior Court, under 20 & 21 Vict. c. 43. And held further, that the justices having necessarily heard the case before they determined that they had no jurisdiction, the opinion of the Court was properly applied for on a case under 20 & 21 Vict. c. 43, instead of on an application for a *mandamus* to the justices to hear. *Muir v. Hore*, 47 Law J. Rep. M.C. 17.

##### (b) *Claim of right.*

2.—The question as to property which will oust the jurisdiction of justices to determine a charge of assault under 24 & 25 Vict. c. 100. s. 42, must be a question as to real property. Where two persons who were gamekeepers in the employ of a landlord of a farm to whom the right to game and rabbits was reserved, were charged before the justices by the tenant of such farm, under 24 & 25 Vict. c. 100. s. 42, with assaulting and beating him, and the acts complained of were done in a scuffle to take from the tenant whilst on his farm his bag, in which were rabbits claimed as the landlord's property:—Held, that the fact that the justices were of opinion that the gamekeepers acted under a *bona fide* belief that they had a right to do the acts complained of did not oust the jurisdiction of the justices, no question having arisen as to title to any interest in land within the meaning of section 46 of 24 & 25 Vict. c. 100. *White v. Fox*, 49 Law J. Rep. M.C. 60.

##### (c) *Disqualification of.*

3.—Where a justice of the peace is interested in a matter tried before him sufficiently to give him a real bias, it is immaterial what part he takes in the trial. Where the case tried arises out of a matter in which the justice is a litigant party as chairman of a local board, there is such an interest as gives him a real bias. *Reg. v. Meyer*, Law Rep. 1 Q.B. D. 173.

4.—A justice of the peace who is appointed sheriff cannot, during his year of office, act as a

justice of the peace for the county of which he is sheriff. This disqualification extends to financial matters or "county business," as well as to criminal questions. *Ex parte Colville*, 45 Law J. Rep. M.C. 108; Law Rep. 1 Q.B. D. 133.

5.—Section 258 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), which enacts, "No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority," does not extend to enable a justice, being a member of an urban sanitary authority, to adjudicate upon a prosecution, which in the latter capacity he has been a party to instituting. *Reg. v. The Justices of Weymouth*, 48 Law J. Rep. M.C. 189; Law Rep. 4 Q.B. D. 332 (*nom. Reg. v. Milledge*).

6.—Justices of the peace who as members of a town council had passed an order under 34 & 35 Vict. c. 56, sat to hear a complaint of non-observance of the order:—Held, that they had not such an interest in the subject-matter as would oust their jurisdiction. *Reg. v. The Justices of Huntingdon*, Law Rep. 4 Q.B. D. 522.

(d) *Case for opinion of superior court.*

7.—An application, under 20 & 21 Vict. c. 43, s. 5, for a rule calling on justices to shew cause why a case should not be stated for the opinion of the Court, is properly made to the Queen's Bench Division, and not to the Divisional Court of Appeal constituted under s. 45 of 36 & 37 Vict. c. 66. *Ex parte Longbottom*, 45 Law J. Rep. M.C. 163; Law Rep. 1 Q.B. D. 481 (*nom. in re Ellershaw*).

8.—Where application was made to justices under section 305 of the Public Health Act, 1875, for an order authorising the entry, for the purposes of that Act, of a local authority upon the lands of a person who had refused to permit such entry, and the justices after hearing declined to make an order,—Held, that the justices had no power to state a case under 20 & 21 Vict. c. 43, s. 2, their decision not being the determination of a complaint within that section, and the application being one wholly within their jurisdiction to grant. *The Diss Urban Sanitary Authority v. Aldrich*, 46 Law J. Rep. M.C. 183; Law Rep. 2 Q.B. D. 179.

[And see No. 1 supra.]

(e) *Demolition of buildings: limitation of time for making complaint.*

9.—An order was made by a justice for the demolition of a building made contrary to the requirements of the Corporation of Leeds, under the Leeds Improvement Act, 1869, s. 22. The building was completed more than six months before the making of the complaint upon which such order was made. No time was specially limited by the Leeds Improvement Act for making such complaint:—Held, that the above complaint was one whereon the justices had power to make an order for the payment of money, "or otherwise," within the 11 & 12 Vict.

c. 43, and therefore was out of time, as not being made within six months from the time when the matter of the information arose under section 11 of that statute, and that the order was bad. *Morant v. Taylor* (App. Div.), 45 Law J. Rep. M.C. 78; Law Rep. 1 Ex. D. 188.

(f) *Power to reject irrelevant evidence.*

10.—A magistrate has power to reject on the ground of irrelevancy evidence offered under s. 60. sub-s. 7 of the Metropolitan Police Act, 2 & 3 Vict. c. 47. *Read v. Perrett* (App. Div.), Law Rep. 1 Ex. D. 349.

*Jurisdiction of magistrate on criminal charge of libel: reception of evidence of truth of libel.* [See LIBEL, 23.]

(g) *Discretion to refuse to issue summons.*

11.—An information for a conspiracy against a number of persons, supported by evidence, which, if true, clearly proved the charge, was laid before justices, with an application to grant summonses against such persons. The justices, without hearing any evidence in contradiction, or saying that they disbelieved the evidence tendered, refused the application. By affidavit, on shewing cause against a rule for a *mandamus* to compel them to hear and determine the application, they stated that they came to the conclusion that they should not be justified in granting the summonses against the said persons for the offence of conspiracy:—Held, that although a discretion is given to justices by Jervis's Act (11 & 12 Vict. c. 42), s. 9, whether or no they will issue their summons or warrant, yet they must exercise that discretion upon the facts before them; and that here, as the justices had not said that they disbelieved the evidence, but only that they came to the conclusion that they should not be justified in granting the summonses, they must have acted upon some extraneous knowledge or belief, and had, in effect, declined jurisdiction; that therefore a *mandamus* might go to compel them to proceed to hear and determine the application. *Reg. v. Adamson*, 45 Law J. Rep. M.C. 46; Law Rep. 1 Q.B. D. 201.

(h) *Breach of the peace: evidence: duty of justice.*

12.—Where articles of the peace are exhibited against any person, the person against whom they are exhibited may not give evidence before the justices in contradiction of the facts stated in the articles. If it appears on oath to the satisfaction of the justices that the complainant has been threatened, it is their duty to require recognizances to be entered into to keep the peace. *Lort v. Hutton*, 45 Law J. Rep. M.C. 95.

(i) *Warrant, backing.*

13.—C. was convicted of an assault on two police constables in the execution of their duty. The constables were members of the county

police force of Worcestershire, and were apprehending C. in the city of Worcester under a warrant issued by two justices of the county of Worcestershire, for his commitment to prison for default in payment of a fine. Worcester is a borough having a separate commission of the peace with exclusive jurisdiction, and a separate police force. The warrant was not backed by any justice of the city of Worcester, and C. was not pursued from the county, but found in the city:—Held, that the conviction was wrong, because the constables were not acting in the execution of their duty in so executing such warrant. *Reg v. Crompton*, 49 Law J. Rep. M.C. 41; Law Rep. 5 Q.B. D. 341.

*Employers and Workmen Act*, 1875, under.  
[See MASTER AND SERVANT, 3.]

*Friendly society and members, disputes between.*  
[See FRIENDLY SOCIETY, 8.]

*Land Drainage Act*, under. [See LAND DRAINAGE.]

*Mandamus: quashing conviction on a point of law without hearing evidence.* [See MANDAMUS, 1.]

*Nuisance, abatement of.* [See NUISANCE, 15.]

*Refusal of licence: obligation to state grounds of refusal.* [See ALIHOUSE, 4, 5.]

*Report of proceedings before: privilege.* [See LIBEL, 7.]

*Warrant of apprehension: extradition: description of offence: "crimes against bankruptcy law."* [See EXTRADITION, 1.]

#### (B) FEES TO JUSTICES' CLERK.

14.—A railway station-master gave a person into the custody of a police constable on the charge of picking pockets at the railway station, and he afterwards appeared and gave evidence before two justices, who convicted the prisoner under the Vagrant Act, 5 Geo. 4. c. 83, of frequenting a place of public resort with intent to commit a felony:—Held, that the station-master was not liable for the fees payable to the clerk of the justices in respect of such conviction. *Reddish v. Hitchinor*, 48 Law J. Rep. M.C. 31.

#### KIDNAPPING ACT.

By the Kidnapping Act, 1872, it is unlawful for a British vessel to carry native labourers, not part of the crew, without a licence, or to ship natives without their consent, and naval officers may seize "any British vessel which shall upon reasonable grounds be suspected of being employed in the commission of" the above offences. The plaintiff's vessel started on a trading expedition in 1871. Natives were shipped, with their consent, but under circumstances which the Court held not to constitute them part of the crew. During the voyage the Act was passed, and the captain did not hear of

it until he was returning to land the natives. The defendant, a naval officer, finding the natives on board, seized the vessel. In an action for such seizure the jury, being asked whether the defendant had reasonable cause for thinking that the vessel was employed in breaking the Act, found a verdict for the defendant:—Held (affirming the judgment of the Queen's Bench Division), that there was no misdirection, and the defendant was not liable. Held also, that the carrying of the natives, having been commenced before the Act was passed, was not an offence against the Act. *Burns v. Novell* (App.), 49 Law J. Rep. Q.B. 468; Law Rep. 5 Q.B. D. 444.

#### LABOURERS' DWELLINGS.

[See ARTIZANS' DWELLINGS.]

#### LAKE.

*Inland non-tidal lake: several fishery.* [See FISHERY, 1.]

*Rights of riparian proprietors.* [See SCOTCH LAW, 21.]

#### LAMMAS LANDS.

[See COMMON, 2.]

#### LANCASTER PALATINE COURT.

1.—A Manchester corporation, with its office within but its property beyond the limits of the jurisdiction of the County Palatine Court of Lancaster, moved to stay an action by certain debenture holders of the company for foreclosure or sale, on the ground that the Palatine Court had no jurisdiction over the property:—Motion refused with costs, it being held that the jurisdiction of the Court being the jurisdiction *in personam* of the old Court of Chancery within the boundary, and accordingly in effect extending to property wherever situate, could be exercised over the property in the present case, and any order of the Court in the action could be enforced by an application being made to the Supreme Court under the Court of Chancery of Lancaster Act, 1873, s. 7, and Judicature Act, 1873, s. 18, sub-sec. 2. *In re The Longdendale Cotton Spinning Company*, 48 Law J. Rep. Chanc. 54; Law Rep. 8 Ch. D. 150.

An order for winding up a company does not deprive a debenture holder of his right of action to realise his security. *Ibid.*

2.—All appeals from orders of the Lancaster Palatine Court, whether interlocutory or final, are now governed by the rules in the 1st schedule to the Judicature Act, 1875, and not by the Lancaster Palatine Court Act, 1850. Such appeals, therefore, as to time, are subject to Order LVIII. rule 15. *In re Neville. Lee v. Nuttall* (App.), 48 Law J. Rep. Chanc. 616; Law Rep. 12 Ch. D. 61.

3.—The jurisdiction of the Lancaster Palatine Court and of the High Court of Justice over its infant wards is not ousted by the fact that the wards during their infancy may become of unsound mind. In such cases, therefore, such Courts have jurisdiction to entertain applications respecting the custody and education of the infants, although they may be of unsound mind, and although the question of their sanity may be the principal point in dispute. *In re Edwards. M'Neile v. Chambers* (App.), 48 Law J. Rep. Chanc. 233; Law Rep. 10 Ch. D. 605.

[And see INFANT, 6.]

#### LAND DRAINAGE.

A., a landowner, committed certain acts of trespass upon the lands of B. and C., neighbouring landowners. A. subsequently gave B. and C. notice under the Land Drainage Act, 1861, stating that he was desirous of draining his land, and that he deemed it to be and that it was necessary that a new drain should be made through part of B. and C.'s land, or that an existing drain should be improved. The notice described the nature of the proposed drain and improvements, and was accompanied by a sectional plan, but there was no surface plan delineating the course or shewing the length of the proposed drain. On motion to restrain any further acts of trespass on A.'s part, and to restrain him from proceeding under the Act upon his notice, A.'s counsel admitted that he had no further intention of trespassing, and that he did not claim the right to trespass.—Held, that on such admission being entered in the order, the Court would not grant any injunction in reference to the trespass. Held, also, that the notice was bad, under the 72nd section of the Act, as not being "an application for leave" to make the drains, and because the accompanying map did not sufficiently delineate the "length, width and depth" of the proposed drain, within the meaning of the 73rd section, and that the Court would restrain A. from proceeding upon his notice before the justices in Petty Sessions under the 76th section. *Hedley v. Bates*, 49 Law J. Rep. Chanc. 170; Law Rep. 13 Ch. D. 498.

The Court would have granted the injunction, even if the justices had power of determining whether the notice given was good or bad; but semble, the justices have only power to determine the questions of fact mentioned in section 76, sub-sections 1 and 2, and have no jurisdiction to decide any questions as to the validity of the notice given. *Ibid.*

All the Judges of the High Court have, since the Judicature Act, 1873, jurisdiction to issue a writ of prohibition to an inferior Court; and in the above case the Court could have issued a writ of prohibition to the justices, but as such writ would only be directed to the inferior tribunal, the Court in such a case will consider it "just and convenient," within the meaning of

section 25, sub-section 8 of the Judicature Act, 1873, to grant an injunction which takes effect *inter partes* to restrain the defendant proceeding upon his notice instead of issuing a writ of prohibition to the inferior Court. *Ibid.*

#### LAND TAX.

*Redemption acts: lands of ecclesiastical corporation: reservation of minerals.*

1.—The statute 39 Geo. 3. c. 21. s. 12, in effect provides that upon sales of lands by ecclesiastical corporations for redemption of land tax, the minerals shall not pass by the conveyance of the lands, but shall be always absolutely excepted or reserved to such ecclesiastical corporations. A conveyance of prebendal land, executed under the statute in 1799, contained a general exception of minerals, but purported to except out of such exception the clay under twenty perches of the land:—Held, that the exception out of the exception was not rendered effectual by the amending statute 57 Geo. 3. c. 100. s. 25, for that that Act was intended to remedy defects in the mode of conveyance, and not in the subject-matter conveyed, and that the property in the clay under the twenty perches did not pass by the deed of 1799. *Whidborne v. The Ecclesiastical Commissioners for England*, 47 Law J. Rep. Chanc. 129; Law Rep. 7 Ch. D. 375.

2.—An hospital which was erected before the passing of 4 Will. & M. c. 1, imposing a land tax, and the site of which was exempted from that tax by the provisions of 38 Geo. 3. c. 5, ss. 25, 29, was by a decree of the Court of Chancery removed to another site, and the old site was discharged from the charitable trusts to which it was then subject:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. Q.B. 498; Law Rep. 3 Q.B. D. 307), that the removal of the hospital and secularisation of the site did not remove the exemption from land tax conferred on the site as "land belonging to an hospital before the fourth year of William and Mary," by 38 Geo. 3. c. 5. s. 29. *Cox v. Rabbits* (H.L.), 47 Law J. Rep. Q.B. 385; Law Rep. 3 App. Cas. 473.

*Inclosure: lands awarded under Inclosure Act not liable to land tax.* [See INCLOSURE, 1.]

#### LAND TRANSFER.

[The Conveyancing and Land Transfer (Scotland) Act, 1874, amended. 42 & 43 Vict. c. 40.]

#### LANDED ESTATES COURT.

*Appeal from.* [See LANDLORD AND TENANT, 21.]

#### LANDLORD AND TENANT.

[For cases as to construction of leases or agreements for leases, see LEASE.]



- (A) CREATION OF TENANCY.
- (B) IMPLIED COVENANT OR WARRANTY BY LESSOR.
- (C) OUTGOINGS, CHARGES AND ASSESSMENTS.
- (D) WASTE: COVENANT TO REPAIR.
- (E) RENT.
  - (a) Distress for.
  - (b) Right to prove for, in bankruptcy or liquidation.
  - (c) Surrender after notice of assignment of future rent.
- (F) NOTICE TO QUIT.
- (G) OUTGOING AND INCOMING TENANT.
- (H) RIGHT TO MONEY UNDER FIRE POLICY.
- (I) AGRICULTURAL HOLDINGS ACT.
- (K) LANDLORD AND TENANT ACT (IRELAND), 1870.

[The landlord's right of hypothec for rent in Scotland abolished. 43 Vict. c. 12.]

(A) CREATION OF TENANCY.

1.—The plaintiff was owner in fee of certain cottages and land conveyed to him subject to an unexpired lease for sixty years. He received rent from the tenant under this lease at the nominal rate, reserved under the lease, of 6d. a year, and gave a receipt for it "for chief rent." The lease had been granted by a former tenant for life without leasing power, and contained a covenant for quiet enjoyment. In an action of ejectment by the plaintiff against the tenant in possession under this lease,—Held, that as the void lease gave no action on the covenant for quiet enjoyment to the defendant against the plaintiff, it afforded no defence to this action; and the receipt of rent under the circumstances did not create a tenancy from year to year. *Smith v. Widdlake* (App.), 47 Law J. Rep. C.P. 282; Law Rep. 3 C.P. D. 10.

*Mortgagor and mortgagees: attornment clause.*  
[See MORTGAGE, 1.]

(B) IMPLIED COVENANT BY LESSOR.

2.—In an agreement for the hire of a furnished house, to be occupied from a certain date during a definite period, there is an implied condition or warranty on the part of the landlord that the premises are reasonably fit for habitation. If they are unfit at the commencement of the term, the tenant does not obtain that for which he contracted, and is therefore entitled to rescind the agreement. *Wilson v. Finch-Hatton*, 46 Law J. Rep. Exch. 489; Law Rep. 2 Ex. D. 337.

3.—There were two houses, Nos. 38 and 40, in B. Street. The upper stories of these houses adjoined, but the ground-floors were separated by an archway, which was wholly under No. 40, the north wall of No. 38 thus being in its upper part a party-wall between No. 38 and No. 40, and in its lower part a party-wall between No. 38 and the archway. The defendants

were freeholders of both houses and the archway. They let No. 38 to A. on lease, taking a covenant to repair, which included party-walls. Afterwards and during the term of the lease to A. they let No. 40 to the plaintiff for eleven years, taking a similar covenant, the archway remaining in their own occupation. In 1874, during the currency of both these leases, that part of the wall which formed the party-wall between No. 38 and the archway, and was in the joint occupation of A. and the defendants, bulged and gave way, and the plaintiff's house, which rested on it, became in consequence uninhabitable. The plaintiff then claimed compensation from the defendants, on the ground that there was an implied covenant in the lease that the defendants would keep their premises in such condition as to enable him to perform his covenant to repair:—Held, that there was no such covenant, and that he was not entitled to recover. *Colebeck v. The Girdlers' Company*, 45 Law J. Rep. Q.B. 225; Law Rep. 1 Q.B. D. 234.

(C) OUTGOINGS, CHARGES AND ASSESSMENTS.

4.—A landlord promised his tenant that if he would continue to pay his rent in full without deducting anything for property tax, he (the landlord) would repay to him all sums which he had paid or should pay for such property tax. The tenant having paid his rent in full to the landlord during his lifetime, claimed from his executors the amount of property tax so paid and not deducted from his rent:—Held, on demurrer (affirming the decision of the Queen's Bench Division), that the agreement was not void as "an agreement for the payment of rent in full" within section 103 of 5 & 6 Vict. c. 35. *Lamb v. Brewster* (App.), 48 Law J. Rep. Q.B. 421; Law Rep. 4. Q.B. D. 220, 607.

5.—By the Manchester General Improvement Act, 1851, the town council were empowered to order streets to be sewered and paved by the owners of the adjoining houses, and in case of default by such owners to do the work themselves, and to charge the respective owners with their proportionate part of the expenses thereof, to be recoverable by action of debt; and by way of additional remedy the council were empowered to require payment of any such charges from the person who should then or at any time thereafter occupy such houses, &c., and to levy the same by distress from time to time, to the extent of the rent due from the occupier to the owner:—Held, that a charge made upon the owner of houses under the above section was an "outgoing" from the premises within the meaning of a contract between the vendor and purchaser of such houses, which provided that "all rents, rates, taxes and outgoings should be received and discharged by the vendor up to the time of completion." *Midgley and Edmondson v. Coppock* (App.), 48 Law J. Rep. Exch. 674; Law Rep. 4 Ex. D. 309.

6.—The defendant was tenant of a public-house under a lease by which he covenanted to pay "all rates, taxes, charges and assessments whatsoever which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof, land tax and property tax excepted." The plaintiff, who had acquired the lessor's interest in the premises, received a notice from the local board of health, under the Public Health Act, 1848, s. 69, requiring him as owner to sewer, level, pave, &c., a street adjoining the premises. The plaintiff failing to comply with this notice, the local board executed the required works themselves, and under the above Act and the Acts amending the same, demanded and obtained from the plaintiff the proportion of the expenses and interest assessed in respect of these premises:—Held, that the plaintiff was entitled to recover these expenses from the defendant, for that such expenses were a "charge upon the premises" as well as "upon a person in respect thereof" which the defendant by his covenant had undertaken to pay. *Hartley v. Hudson*, 48 Law J. Rep. Q.B. 751; Law Rep. 4 Q.B. D. 367.

7.—The defendant was tenant to the plaintiffs of certain hereditaments under a lease, by which he was bound to "bear, pay and discharge all other taxes, rates, duties and assessments whatsoever, whether parliamentary, parochial or otherwise." In consequence of the drainage having become defective, the sanitary authority of the borough within which the hereditaments were situate caused a notice to be served upon the plaintiffs requiring them, as owners, to abate the nuisance, and the notice not having been complied with, obtained an order from a Justice to the like effect. The plaintiffs having executed the works necessary to enable them to obey the order, sought to recover the cost of them from the defendant under the foregoing covenant:—Held (by Baggallay, L.J., and Bramwell, L.J., Brett, L.J., dissenting), that the action was maintainable. *Budd v. Marshall* (App.), 50 Law J. Rep. C.P. 24; Law Rep. 5 C.P. D. 481.

[And see *LEASE*, 15.]

#### (D) WASTE: COVENANT TO REPAIR.

8.—Semble: Damage or destruction of premises from the use by the lessee, in the mode for which they were let, due to their being unfit for the purpose of the lease, is not waste. *Sanor v. Bilton*, 47 Law J. Rep. Chanc. 267; Law Rep. 7 Ch. D. 815.

A proviso for reduction of rent in case of damage by "fire, flood, storm, tempest or other inevitable accident," was held not to apply to damage arising from faulty construction. *Ibid.*

A covenant by a lessor to keep premises in good condition implies a covenant to put them in good condition for the purposes for which they are let. *Ibid.*

9.—The plaintiffs by lease demised to the

defendant certain floors in a warehouse for seven years at a yearly rent, the defendant covenanting to repair, maintain and keep the inside of the demised premises in good and tenantable repair and condition, and to deliver them up at the end of the term, damage by fire, storm or tempest, or other inevitable accident, and reasonable wear and tear, only excepted; and the plaintiffs covenanting to keep the walls, roof and main timbers of the premises in good and substantial repair and condition. The lease also contained a proviso for the suspension of the rent in the event of the premises being burnt down or damaged by fire, storm or tempest, and a clause against assigning or underletting without the written consent of the plaintiffs. The defendant sublet some of the floors without the written consent of the plaintiffs; the sub-lessee overloaded one of the upper storeys, in consequence of which the whole building fell. The plaintiffs rebuilt the warehouse, and claimed rent since the fall of the building, and damages occasioned by the fall:—Held, that the proviso for suspension of rent did not include the cause which led to the fall of the building, and that the defendant was consequently liable to pay rent as if it had never fallen; that the plaintiffs were not liable to damages by reason of any implied warranty or covenant by them that the building was fit for the purposes for which it was to be used, nor by reason of their express covenant to keep the walls, roof and main timbers of the building in repair, though they would be liable for any unreasonable delay in the rebuilding; that the defendant was not liable for the fall of the building, provided he could shew it was used in a reasonable manner, having regard to its character and the purposes for which it was intended to be used — *Sanor v. Bilton* (47 Law J. Rep. Chanc. 267; Law Rep. 7 Ch. D. 815; see last case) followed;—that the defendant was liable under his express covenant to make good the cost of putting the inside of the floors demised to him and the fixtures therein in good and tenantable repair. *The Manchester Bonding Warehouse Company v. Carr*, 49 Law J. Rep. C.P. 809; Law Rep. 5 C.P. 507.

[And see *INJUNCTION*, 17; *WASTE*, 1.]

*Fire insurance: contract of indemnity.* [See *INSURANCE*, 15.]

#### (E) RENT.]

##### (a) Distress for.

10.—The privilege from distress which is afforded to goods sent to an auctioneer for the purpose of sale does not extend to them if removed from the premises in his occupation. *Lyons v. Elliott*, 45 Law J. Rep. Q.B. 159; Law Rep. 1 Q.B. D. 210.

An auctioneer advertised a sale of V.'s goods to be held on V.'s premises. The plaintiff sent some plate to the auctioneer, with a request that he would put it into V.'s sale, and the auctioneer took it to V.'s premises for that pur-

pose. While it was there the defendant, V.'s landlord, seized the plate as a distress for rent owing to him by V. :—Held, that the plate was not privileged from distress. *Ibid.*

11.—The 11th section of 56 Geo. 3. c. 50, which makes a purchaser of farming stock bound by the tenant's covenant to consume such stock on the premises, does not enable a landlord to sell his tenant's hay which he has distrained for rent, otherwise than for the best price, as required by 2 Wm. & Mary, c. 5; and therefore he cannot sell the same under a condition that it shall be consumed on the premises, if by reason thereof he fail to obtain the best price, although the tenant be under a covenant to so use it on the premises. *Hankins v. Walrond*, 45 Law J. Rep. O.P. 772; Law Rep. 1 C.P. D. 280.

12.—The mere fact of a person being an under-tenant is not sufficient to prevent his being a lodger within the meaning of the Lodgers Protection Act, 34 & 35 Vict. c. 79. *Phillips v. Henson*, 47 Law J. Rep. O.P. 273; Law Rep. 3 C.P. D. 26.

F., who was tenant of a house under a lease for a term of years, made an agreement in writing with the plaintiff, by which F. let to the plaintiff, as a quarterly tenant, and at a quarterly rent, certain specified rooms, being all the rooms in such house except three, in which F. resided :—Held, that such agreement was not inconsistent with the plaintiff being a lodger, and as such entitled to the protection given to lodgers by 34 & 35 Vict. c. 79. *Ibid.*

13.—A gas company, having under its private Act of Parliament a power to levy by distress all sums of money due for the supply of gas, &c., is not a landlord or other person to whom rent is due within the meaning of section 34 of the Bankruptcy Act, 1869, and such a company having distrained upon the goods of a liquidating debtor will be restrained from dealing with the distress. *In re Roberts; ex parte Hill* (App.), 46 Law J. Rep. Bankr. 116; Law Rep. 6 Ch. D. 63.

14.—A debtor covenanted to pay rent in advance. After he had filed his petition for liquidation, and while the trustee was still in possession of the premises, a further sum became due for rent under the covenant to pay in advance :—Held, that the landlord was entitled to distrain for such rent. *Ex parte Hale; in re Binns*, 45 Law J. Rep. Bankr. 21; Law Rep. 1 Ch. D. 285.

*As against company in liquidation.* [See COMPANY, H 34-36.]

*Not restrained by injunction.* [See INJUNCTION, 14.]

*Voluntary liquidation: distress for rent: landlord not "secured creditor."* [See COMPANY, H 34.]

(b) *Right to prove for, in bankruptcy or liquidation.*

[See BANKRUPTCY, 43, 60; COMPANY, H 32.]

(c) *Surrender after notice of assignment of future rent.*

15.—The plaintiffs sublet a portion of premises, of which they had a lease, to the defendant. They afterwards assigned their interest in the premises to B., and agreed in writing with B., that notwithstanding this assignment they should receive the rent due from the defendant for the remainder of her lease, and notice of this agreement was given to the defendant. The defendant afterwards surrendered her lease to B. In an action for rent claimed as accruing after the surrender,—Held, that even if there was a valid assignment of a *chose in action*, still that the plaintiffs could not recover, for that the assignment was of rent to become due, whereas no rent had accrued due after the surrender, and the defendant could not be prevented by the agreement between the plaintiffs and B. from surrendering her lease to B. *Southwell v. Scotter* (App.), 49 Law J. Rep. Exch. 356.

#### (F) NOTICE TO QUIT.

16.—A landlord gave his yearly tenant six months' notice to quit, in the usual form, and in the same document gave him further notice that he would allow him to retain possession of the premises after the expiration of the notice, at an increased rent payable in advance :—Held (by Bramwell, L.J.; Cotton, L.J.; Brett, L.J., dissenting), a sufficient notice to quit, not vitiated by the further notice contained in the same document. *Ahearn v. Bellman; Sedgwick v. Ahearn* (App.), 48 Law J. Rep. Exch. 681; Law Rep. 4 Ex. D. 201.

17.—A six months' notice to determine a yearly tenancy must be a "customary six months' notice"—that is, from one quarter-day to the next quarter-day but one. A notice, though served more than the number of days which make a half-year (e.g. on the 26th of March, to quit on the 29th of September next), is not valid. *Morgan v. Davies*, Law Rep. 3 C.P. D. 260.

#### (G) OUTGOING AND INCOMING TENANT.

18.—A custom by which the incoming tenant of a farm is alone liable to compensate the outgoing tenant for seeds, acts of husbandry, tillages, &c., for which, as outgoing tenant, he is entitled to be compensated, is unreasonable, and cannot be supported at law. *Bradburn v. Foley*, 47 Law J. Rep. O.P. 331; Law Rep. 3 C.P. D. 129.

*Confusion of boundaries: duty of tenant to leave boundaries distinct.* [See BOUNDARIES.]

#### (H) RIGHT TO MONEYS UNDER FIRE POLICY.

19.—The lease of a mill gave the lessees an option to purchase before a fixed day. The lessor covenanted to insure; it was provided that in case of loss not exceeding 4,000*l.*, the

insurance moneys should be expended in rebuilding, but that if damage by fire occurred over 4,000*l.* in amount, the lease should determine. A fire occurred before the fixed day:—Held, that the option continued till that day; but that in case of exercise of the option, the amount of insurance money received was not to be deducted from the purchase-money. *Edwards v. West*, 47 Law J. Rep. Chanc. 463; Law Rep. 7 Ch. D. 858.

#### (I) AGRICULTURAL HOLDINGS ACT.

20.—Section 51 of the Agricultural Holdings Act, which enacts that, "Where a half year's notice, expiring with a year of tenancy, is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same," does not apply to a yearly tenancy where the parties have expressly agreed for a six months' notice to quit. *Wilkinson v. Calvert*, 47 Law J. Rep. C.P. 679; Law Rep. 3 C.P. D. 360.

#### (K) LANDLORD AND TENANT ACT (IRELAND), 1870.

21.—Semble, no appeal will lie to the House of Lords from the Landed Estates Court in Ireland upon any question of the amount offered for the purchase of an estate sold in that Court, or of the person who is the proposing purchaser. *Walsh v. Pemberton* (H.L. Ir.), Law Rep. 4 App. Cas. 737.

#### LANDS CLAUSES CONSOLIDATION ACT.

##### (A) PURCHASE AND TAKING OF LANDS.

- (a) *Sale in consideration of rent-charge: power of re-entry.*
- (b) *Part of "house" or "manufactory."*
- (c) *Notice by landowner of intention to work mines.*
- (d) *Lands subject to rent-charge in favour of lunatic.*
- (e) *"Owner:" see 76.*

##### (B) RIGHTS OF LANDOWNERS TO COMPENSATION.

- (a) *Lands injuriously affected.*
  - (1) *Diverting streams: permanent injury.*
  - (2) *Disturbance of ferry.*
- (b) *Damage caused in exercise of powers under local Act.*
- (c) *Damage by severance: right of mortgage in possession.*
- (d) *Right of landowner to interest.*

##### (C) ASSESSMENT OF COMPENSATION.

- (a) *Principle of assessment: minerals: lease: surrender.*
- (b) *By Justices: "no greater interest than as tenant for a year."*
- (c) *Several juries.*
- (d) *By arbitration. costs of arbitration.*

##### (D) APPLICATION OF COMPENSATION.

- (a) *Payment into Court: infant's realty: reconversion.*

- (b) *Lands of lunatic.*

- (c) *Interim investment.*

- (1) *On what investments: "cash under the control of the Court."*
- (2) *Service and costs of petition for.*

- (d) *Reinvestment.*

- (1) *Improvements.*
- (2) *Purchase-money of lands of Corporation.*
- (3) *Purchase-money of lands of lunatic.*
- (4) *Purchase-money of globe lands.*
- (5) *Costs of.*

- (e) *Payment out of Court.*

- (1) *To person absolutely entitled.*
- (2) *Representatives of persons entitled by long possession.*
- (3) *To tenant in tail.*
- (4) *Right of mortgagees to arrears of interest.*
- (5) *Costs of petition for.*

- (f) *Deposit under section 85.*

##### (E) SUPERFLUOUS LANDS.

##### (F) SPECIAL ACT.

#### (A) PURCHASE AND TAKING OF LANDS.

- (a) *Sale in consideration of rent-charge: power of re-entry.*

1.—When lands are sold to a railway company in consideration of a rent-charge, the parties may agree for its being secured by a power of entry; and a conveyance made upon such an agreement, whereby the land was conveyed to uses that the grantor should take the rent-charge, and if it fell into arrear should enter until satisfaction, was held to entitle him to leave to enter against a receiver of the undertaking appointed by the Court. *Forster v. The Manchester and Milford Railway Company; in re The Manchester and Milford Railway Company; in re The Railway Companies Act, 1867*, 49 Law J. Rep. Chanc. 454; Law Rep. 14 Ch. D. 645.

- (b) *Part of "house" or "manufactory."*

2.—The plaintiff purchased a piece of land in the rear of his shop (in A. street) and certain cottages in the rear of such piece of land. The cottages fronted to B. street, which ran parallel to A. street. He built on the piece of land, and used the whole block for the purposes of his business of a grocer, miller and baker. His shop formed the front, and one of the cottages the back, entrance to his premises:—Held, by Hall, V.C., that the whole block constituted one "manufactory" within the meaning of the 92nd section of the Lands Clauses Act, and that the defendant company could not take the cottages without taking the whole block. Held, on appeal (affirming Hall, V.C.), that the whole block constituted one "house" within the meaning of the section. *Richards v. The Swansea Improvement and Tramways Company*, Law Rep. 9 Ch. D. 425.

The owner requiring the company to take the whole need not state whether he claims that the premises are a "house" or "building" or a "manufactory" within the section. *Ibid.*

(c) *Notice by landowner of intention to work mines.*

3.—Where a mine-owner gives notice under the Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), which is similar in terms to the English Act, of his intention to work the minerals under a railway, there is no fixed limit of time within which the railway company must give a counter-notice of their intention to pay compensation, but they may do so at any time when they apprehend danger to their line. *Dixon v. The Caledonian and Glasgow and South Western Railway Companies* (H.L. Sc.), Law Rep. 5 App. Cas. 821.

The dictum of Lord Cairns to the contrary, in *Smith v. The Great Western Railway Company* (47 Law J. Rep. Chanc. 97; Law Rep. 3 App. Cas. 165; No. 11 *infra*), questioned. *Ibid.*

(d) *Lands subject to rent-charge in favour of lunatic.*

4.—Where lands which were subject to a rent-charge in favour of a lunatic during his life were taken by a corporation under the Lands Clauses Act, the Court authorised the committee to release the rent-charge upon the corporation purchasing a Government annuity of like yearly amount during the lunatic's life in his name. *In re Brewer* (App.), Law Rep. 1 Ch. D. 409.

(e) "Owner": section 76.

5.—It was found that a small strip, part of property contracted to be sold to a public body, did not belong to the vendors, who had a right of way over the surface:—Held, that the vendors were not "owners" of the strip within section 76 of the Lands Clauses Consolidation Act, 1845. *Wells v. The Chelmsford Local Board*, 49 Law J. Rep. Chanc. 827; Law Rep. 15 Ch. D. 108.

(B) RIGHTS OF LANDOWNERS TO COMPENSATION.

(a) *Lands injuriously affected.*

(1) *Diverting streams: permanent injury to lands.*

6.—The defendants, under their local Waterworks Act, with which were incorporated the Lands Clauses Act, 1845, and the Waterworks Clauses Act, 1847, were empowered to "purchase, enter upon, take, use, divert and appropriate" certain streams, one of which, arising at a distance, came down to and turned a mill, of which the plaintiff was tenant for life. The defendants gave the plaintiff notice of their intention to take and divert the whole of the said stream, and actually diverted part. In pursuance of an agreement made between the

parties, two valuers were appointed (in accordance with the 9th section of the Lands Clauses Consolidation Act, 1845), to assess the compensation to be paid in respect of the damage, both present and future, caused by the abstraction of the whole of the stream. The valuers disagreed, and a third valuer was appointed by Justices, with the consent of both parties, who awarded "the sum of 939*l.* 5*s.* as the compensation money to be paid by the defendants for the permanent damage and injury which the owner or owners for the time being of the above-mentioned mill, lands and premises, may have sustained, or shall or may sustain, by the abstraction of the whole of the stream." In an action on this award, claiming a mandamus to the defendants to pay the money into the bank, —Held, on demurrer (on appeal from the Common Pleas Division, 45 Law J. Rep. C.P. 607; Law Rep. 1 C.P. D. 691), that the interest of the plaintiff and his remainderman was a purchasable interest, within the meaning of the special Act and the Acts incorporated with it, and that it was competent to the defendants to pay for the whole stream at once, though they had only diverted part. Held also, that the parties proceeded rightly under the 9th section of the Lands Clauses Consolidation Act, and that that section applies not only to cases where lands in the occupation of a tenant for life are purchased and taken, but also to cases of compensation for permanent injury to such lands, the words "such lands" in that clause being equivalent to "lands so occupied." Held also, that the agreement between the parties amounted to a binding agreement, on the part of the plaintiff, to accept, and on the part of the defendants, to pay, the sum assessed by the two valuers, or in case of disagreement, by the third valuer. *Stone v. The Mayor, &c., of Yeovil* (App.), 46 Law J. Rep. C.P. 137; Law Rep. 2 C.P. D. 99.

(2) *Disturbance of ferry.*

7.—The owner of an ancient ferry has no right of action for disturbance against a person opening a new highway to meet a public need (e.g. a railway), though such new highway crosses the water near the ancient ferry, and diverts from it a part of the traffic. Consequently, where such new highway or railway has been made under an Act of Parliament, the owner of an ancient ferry disturbed by it is not entitled to compensation under the Lands Clauses Consolidation Act, 1845. *Hopkins v. The Great Northern Railway Company* (App.), 46 Law J. Rep. Q.B. 265; Law Rep. 2 Q.B. D. 224.

Semble, that an action for disturbance of an ancient ferry will lie only where such disturbance is caused by another ferry and not otherwise. *Ibid.*

The injury to an ancient ferry caused by the diversion of traffic to a bridge erected near, arises, not from the construction, but from the user of the bridge, and therefore no compensa-

tion can be obtained under the Lands Clauses Consolidation Act, 1845, in respect of such injury. *Ibid.*

*Reg. v. The Cambrian Railway Company* (40 Law J. Rep. Q.B. 169) overruled. *Newton v. Cubitt* (31 Law J. Rep. C.P. 246) followed. *Ibid.*

(b) *Damage caused in exercise of powers under local Act.*

8.—By a local Act (21 & 25 Vict. c. clx), the defendants were empowered to execute drainage works. Section 43 enacted that "in the execution of this Act the commissioners shall do as little damage as may be, and, subject to the provisions of this Act, shall make to all parties entitled, compensation for all damage or injury so done." By section 45 it was provided that "full compensation shall from time to time, after the passing of this Act, but not beyond twenty years after the completion of the 'works,' be made by the 'defendants' to the owners, lessees and occupiers for the time being, sustaining any damage by reason, or in any way consequential upon, the exercise of any of the powers of this Act, of the lands and hereditaments of F., and in case of dispute as to the amount of such compensation, the same shall be settled by arbitration in the manner provided" in the Lands Clauses Consolidation Act, 1845. The Local Act incorporated the Lands Clauses Consolidation Act:—Held, that the compensation clauses in the Special Act did not extend to any damage, except such as would have been the proper subject of compensation under the Lands Clauses Consolidation Act, viz. damage which, in the absence of the statutory powers, would have given a right of action to the party injured. Judgment of the Court below (45 Law J. Rep. C.P. 337) reversed. *Rhodes v. The Airedale Drainage Commissioners* (App.), 45 Law J. Rep. C.P. 861; Law Rep. 1 C.P. D. 402.

(c) *Damage by severance: mortgages in possession.*

9.—A railway company having given notice of their intention to take a portion of premises upon which a business was being carried on, and of which mortgagees were in possession, the amount of compensation to be paid for the lands taken, and for the damage which might be sustained by reason of severance, or by reason of the execution of the works, or of the exercise of the parliamentary powers of the company, was submitted to arbitration, and the amount awarded was 11,950*l.*, of which the arbitrator certified that 2,800*l.* was given in respect of trade profits. The mortgagees, whose debt exceeded the entire amount of compensation, were held entitled to the whole sum. Decision of Hall, V.C., affirmed. *Pile v. Pile; ex parte Lambton* (App.), 45 Law J. Rep. Chanc. 841; Law Rep. 3 Ch. D. 86.

(d) *Right of landowner to interest.*

10.—A local board under their compulsory powers took lands of which the vendors claimed to be entitled to the fee-simple in possession subject to the existing tenancies. The price was settled by the verdict of a jury on the 18th of April, 1878, but the board did not take possession till 1879, when the tenancies expired:—Held, that the board must pay interest at the rate of 4 per cent. on the purchase-money from the date of the verdict of the jury, allowance being made for the amount of the rents received by the vendors since that date. *In re Eccleshill Local Board*, 49 Law J. Rep. Chanc. 214; Law Rep. 13 Ch. D. 365.

(C) ASSESSMENT OF COMPENSATION.

(a) *Principle of assessment: minerals: lease: surrender.*

11.—A railway company purchased land and constructed their line thereupon. The landowner granted a lease of the mines under the land for fifteen years, being such a term as would suffice for working out the whole of the minerals. The lessee gave notice under the Railways Clauses Consolidation Act, 1845, section 78, of his intention to work the minerals; the company, after some negotiation, came to an arrangement with the lessee whereby he received compensation for leaving the minerals unworked, and covenanted to pay to his lessor the rent reserved by the lease, and to facilitate the assessment of compensation to be paid to the lessor. The lessee having died insolvent, his executors surrendered the lease to the lessor. S. having purchased the mines in fee gave to the company notice of his intention to work the minerals, and claimed as compensation the full saleable value of the minerals; the company submitted to pay as compensation the amount of the rent reserved by the lease:—Held (affirming the decision of the Court of Appeal, 45 Law J. Rep. Chanc. 235; Law Rep. 7 Ch. D. 235), that the compensation to be paid to S. must be assessed as proposed by the company, and that S. must be restrained by a perpetual injunction from working the minerals. *Smith v. The Great Western Railway Company* (H.L.), 47 Law J. Rep. Chanc. 97; Law Rep. 3 App. Cas. 165.

(b) *By justices: "no greater interest than as tenant for a year."*

12.—Section 121 of the Lands Clauses Consolidation Act enacts,—If any such lands (that is, lands authorised to be taken) shall be in the possession of any person having no greater interest therein than as a tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest, and the amount of such com-

pensation shall be determined by two justices in case the parties differ about the same:—Held, that the section applied to the case of a person who had less than one year of a term unexpired at the date of his being required to give up possession; and that such person was not entitled to proceed under section 68, and claim to have the compensation settled by arbitration. *Reg. v. The Great Northern Railway Company*, 46 Law J. Rep. Q.B. 4; Law Rep. 2 Q.B. D. 151.

(c) *Several juries.*

13.—Under 57 Geo. 3. c. xxix, notice was served on the owners in fee of four houses requiring them to treat for the sale to the Commissioners of Sewers.—Held, that the Commissioners could not be allowed to summon a jury to assess the value of one of the houses separately. *The Ecclesiastical Commissioners v. The Commissioners of Sewers of the City of London*, Law Rep. 14 Ch. D. 305.

Proceedings under 57 Geo. 3. c. xxix. for the assessment of compensation are strictly analogous to the like proceedings under the Lands Clauses Consolidation Act. *Ibid.*

(d) *By arbitration: costs of arbitration.*

14.—By the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), s. 34, the cost of an arbitration under the Act is to be borne by the promoters of an undertaking, unless the arbitrators shall award the same or a less sum than has been offered by the promoters, in which case each party is to bear his own costs. A company gave notice to G. that they intended to take certain land belonging to him, under the provisions of the Lands Clauses Consolidation Act, 1845, and of their willingness to treat for the purchase thereof. The company subsequently gave G. notice of their intention to summon a jury to settle the amount of compensation, at the same time offering to pay 315*l.* G. claimed 900*l.*, and expressed a wish to proceed by arbitration. Each side then appointed an arbitrator, and the two arbitrators appointed an umpire. After this had been done the company offered to pay the sum of 472*l.* 16*s.* 10*d.*, which G. declined to accept. The arbitration then proceeded, and the umpire made his award, settling the sum of 447*l.* 5*s.* as the amount of compensation to be paid by the company:—Held, that the second offer was too late, and that the company were bound, under the 34th section, to pay G. his costs. *In re Gray and the North Eastern Railway Company*, 45 Law J. Rep. Q.B. 818; Law Rep. 1 Q.B. D. 696.

15.—Where the costs of an arbitration, held to settle the compensation to be paid for land taken under the Lands Clauses Consolidation Act, 1845, have been taxed by a Master under section 1 of the amending Act of 1869, the Court has no jurisdiction over the taxation and cannot review it.—*Owen v. The London and North Western Railway Company* (37 Law J.

Rep. Q.B. 35; Law Rep. 3 Q.B. 54) approved. *In re The Sanbach Charity Trustees and The North Staffordshire Railway Company* (App.), 47 Law J. Rep. Q.B. 10; Law Rep. 3 Q.B. D. 1.

16.—By a private Act of Parliament a company were empowered to do certain acts, paying compensation to injured parties to be assessed by a special tribunal for arbitration provided by the private Act. By the same Act the Lands Clauses Consolidation Act, 1845, was incorporated therewith, "except where expressly varied" by the special Act:—Held, that the provisions of section 34 of the Lands Clauses Consolidation Act as to the costs of arbitration were not "expressly varied" by the section of the special Act, which provided a new tribunal of arbitration, and therefore applied to arbitrations under that section. *Sharpe v. The Metropolitan District Railway Company*, (App.), 48 Law J. Rep. Q.B. 325; Law Rep. 4 Q.B. D. 645; affirmed on appeal, by the House of Lords (*nom. The Metropolitan District Railway Company v. Sharpe*), 50 Law J. Rep. Q.B. 14; Law Rep. 5 App. Cas. 425).

The assessment of costs by a Master under section 1 of the Lands Clauses Act, 1869, is not a condition precedent to the claimant's right to bring an action for such costs where the right to costs is disputed. *Ibid.*

*Appeal from decision on special case stated by arbitrator.* [See PRACTICE, DD 2.]

*Inquisition to assess compensation: time within which certiorari to quash inquisition should be applied for.* [See CERTIORARI.]

*Power of umpire to state special case.* [See ARBITRATION, 11.]

(D) APPLICATION OF COMPENSATION.

(a) *Payment into Court: infant's realty: re-conversion.*

17.—Real estate, to which an infant was entitled in fee simple, was taken by a railway company for the purposes of their undertaking, and the purchase-money, which amounted to more than 200*l.*, paid into Court under the Lands Clauses Consolidation Act, 1845, section 69:—Held, that, under the provisions of section 69, the purchase-money was to be treated as real estate, and that on the death of the infant his heir was entitled. *Kelland v. Fulford*, 47 Law J. Rep. Chanc. 94; Law Rep. 6 Ch. D. 491.

(b) *Lands of lunatic.*

18.—Where a railway company had purchased land belonging to a lunatic, the purchase-money was ordered to be paid to the credit of the lunacy, and invested to the joint account of the lunatic and the company without its being first paid into Court under section 10. Application for such an order should be made in lunacy only. *In re Milnes* (App.), Law Rep. 1 Ch. D. 28.

(c) *Interim investment.*

- (1) *On what investments: "cash under the control of the Court."*

19.—Purchase-money in Court arising from a sale under the Lands Clauses Act, is "cash under the control of the Court" within the meaning of 23 & 24 Vict. c. 38. ss. 10 and 11, and the Court has accordingly power to invest it as such, in pursuance of the Order of February 1, 1861, r. 1. *In re Fryer's Settlement; Fryer v. The Salisbury and Dorset Junction Railway Company*, 45 Law J. Rep. Chanc. 96; Law Rep. 20 Eq. 468.

(2) *Service and costs of petition for.*

20.—On a petition by tenant for life under the Lands Clauses Act for interim investment and payment of the dividends to him, it is unnecessary to serve persons having charges on the inheritance prior to the life estate. *In re Morris's Settlement*, 45 Law J. Rep. Chanc. 63; Law Rep. 20 Eq. 470.

21.—Where a tenant for life petitions for interim investment of purchase-money of the settled estate paid into Court under the Lands Clauses Act, the company need not pay the costs of serving or giving notice to the trustees. *In re Dowling's Trusts*, 45 Law J. Rep. Chanc. 568.

(d) *Reinvestment.*(1) *Improvements.*

22.—Application of purchase-money of part of a settled estate toward costs of lateral additions to a house forming part of the settled estate. *In re Speer's Trusts*, Law Rep. 3 Ch. D. 262.

23.—Trustees of a term with power to apply surplus income in building and improvement were allowed to apply money standing to real estate capital account in building and improvements, including drainage. *In re Leslie's Trusts*, 45 Law J. Rep. Chanc. 668; Law Rep. 2 Ch. D. 185.

(2) *Purchase-money of lands of corporation.*

24.—Money paid in by a railway company under section 69 of the Lands Clauses Act for the purchase of lands belonging to a corporation ordered to be applied in payment off of mortgages of certain tolls and of bonds of the corporation for money borrowed under 9 & 10 Vict. c. 74. s. 21, and payable out of the borough fund, consisting to a great extent of rents and profits of the lands of the corporation. *In re The Derby Municipal Estates*, Law Rep. 3 Ch. D. 289.

(3) *Purchase-money of lands of lunatic.*

25.—Purchase-money of lunatic's land taken by a public body ordered to be invested in guaranteed railway stock, but the name of the public body was omitted from the title of the

account, the investment being deemed to be equivalent to a re-investment in land. *In re Buckingham (App.)*, Law Rep. 2 Ch. D. 690.

(4) *Purchase-money of glebe lands.*

26.—Part of a fund in Court, proceeds of sale of glebe land to a railway company, ordered to be paid out to the rector towards recouping past outlay in building a farm-house on the glebe. *Ex parte The Rector of Gamston*, Law Rep. 1 Ch. D. 477.

27.—A fund in Court, proceeds of the sale of glebe land to a railway company, applied part for repairs of rectory. Application to apply other parts for restoration of the chancel and in paying off money borrowed from Queen Anne's Bounty refused. *In re The Louth and East Coast Railway Company; ex parte The Rector of Grimoldby*, Law Rep. 2 Ch. D. 225.

(5) *Costs of.*

28.—Costs of a purchase of land ordinarily borne by the vendor, but thrown by special stipulation upon the purchaser, were held under the circumstances not to be costs of reinvestment payable by promoters according to the Lands Clauses Act, 1845. *In re The Temple Church Lands*, 47 Law J. Rep. Chanc. 160.

(e) *Payment out of Court.*(1) *To person absolutely entitled.*

29.—Land was by will vested in trustees without a power of sale upon trust for a class of children who should attain twenty-one or marry. The shares of some of the children, who had attained twenty-one, were so dealt with by devise or marriage settlement that they were vested in trustees with power of sale, and to give receipts and invest the proceeds of sale. Before the youngest child attained twenty-one the land was purchased of the trustees of the original will under the Lands Clauses Act, and the purchase-money was paid into Court. On petition by the trustees of the devised and settled shares for payment out to them respectively of such shares,—Held, that the petitioners were the persons who, within the meaning of the 69th section of the Act, had become "absolutely entitled" to such shares, and payment out ordered accordingly. *In re Hobson's Trusts (App.)*, 47 Law J. Rep. Chanc. 310; Law Rep. 7 Ch. D. 708.

30.—Purchase-money of leaseholds taken by a railway company ordered to be paid out to trustees having a power of sale, the *cestui que trust* being an infant. *In re Gooch's Estate*, Law Rep. 3 Ch. D. 742.

31.—Lands settled in trust for a widow for life or until second marriage, and, after her death or second marriage, in trust for sale, having been purchased from the widow by a railway company under the 7th section of the Lands Clauses Consolidation Act, 1845, the purchase-money, which had been paid into



Court by the company under the 69th section, was, on the petition of the widow, ordered to be paid out to the trustees of the settlement, they undertaking to hold the same upon the trusts thereof. *In re Evans' Settlement*, Law Rep. 14 Ch. D. 511.

(2) *Representatives of persons entitled by long possession.*

32.—H. had been in wrongful possession of a piece of land for 19½ years when it was taken by a railway company. The company contracted with H. for the price of the land, but, when they found he had not a good title, paid the money into Court to the account of "the party interested," and executed a deed poll under section 77 of the Lands Clauses Act. The representative of the real owner made no claim to the land or the money in Court till more than twenty years had expired after H. had taken possession:—Held, that those who claimed under H. were entitled to the money on the ground that the money was paid in under the contract with H., and in respect of such interest as he had in the land at the time it was taken. *In re Winder*, 46 Law J. Rep. Chanc. 572; Law Rep. 6 Ch. D. 696.

33.—A person in possession, as owner, of property taken under the Lands Clauses Act, 1845, and shewing a good title by adverse possession, unless there existed a person, whose claim, if he were under disability, would not be barred, but of whose existence there was no suggestion, is entitled to payment out, under the 79th section, of the purchase-money deposited. *Douglass v. The London and North Western Railway Company* (3 Kay & J. 173) distinguished. *In re The Metropolitan Street Improvements Act, 1877*; *ex parte Chamberlain*, 49 Law J. Rep. Chanc. 354; Law Rep. 14 Ch. D. 523.

(3) *To tenant in tail.*

34.—Fund not allowed to be paid out to persons claiming under a tenant in tail, who had created a base fee, except upon production of a deed enlarging the base fee. *In re Reynolds*, Law Rep. 3 Ch. D. 61.

(4) *Right of mortgagees to arrears of interest.*

35.—In 1875 S. made an equitable mortgage of a public-house in Leeds to secure the repayment of a sum of 400*l.*, with interest at 5*l.* per cent. The mortgagor, and those claiming under him, continued in possession of the house without paying any interest on the debt. There appeared to have been some arrangement as to that, though what exactly, was not shewn. In September, 1875, the corporation of Leeds gave notice to the parties interested in the house of their intention to take it, under their compulsory powers, for the benefit of the borough; and then paid the purchase-money, 1,150*l.*, into Court. The mortgagees presented a petition

for payment out of Court to them of their principal money and interest for nineteen years at 5*l.* per cent., together with their costs:—Held, first, on the authority of *Edmunds v. Waugh* (35 Law J. Rep. Chanc. 234; Law Rep. 1 Eq. 418), that the petitioners were entitled to their principal money, with interest, for the whole period claimed; but on a re-argument, that six years' arrears of the interest could only be recovered. *In re Stead's Mortgage*, 45 Law J. Rep. Chanc. 634; Law Rep. 2 Ch. D. 713.

(5) *Costs of petition for.*

36.—Where two petitions were presented when one would have sufficed the Court ordered the company to pay the costs of the first petition only, and five guineas only towards the petitioner's costs of the second petition, and three guineas for the costs of each of two sets of trustees. *In re Pattison's Devised Estates. In re Pattison's Settled Estates*, Law Rep. 4 Ch. D. 207.

37.—Portions of a settled estate were taken by four different companies, the undertaking of three of which became afterwards amalgamated:—Held, that the costs of payment out of Court of the purchase-money must be borne equally by the two existing companies. *In re The Manchester and Leeds Railway Company; ex parte Gaskell*, 45 Law J. Rep. Chanc. 368; Law Rep. 2 Ch. D. 361.

*In re The Maryport, &c., Railway Act* (32 Beav. 397; 32 Law J. Rep. Chanc. 811), not followed. *Ibid.*

38.—The purchase-money of land belonging to a charity which had been taken compulsorily by a dock company, under the powers of the Lands Clauses Consolidation Act, 1845, was paid into Court, and the usual order was made for investment thereof, and payment of the dividends to the then trustees of the charity. Subsequently, the purposes of the charity having become superseded by the operation of the London School Board, a scheme was sanctioned under which the constitution of the charity was altered, and new trustees were appointed. Upon a petition by the newly appointed trustees, for payment to them of the dividends of the fund in Court,—Held, that (inasmuch as the change of interest was occasioned by the constitution of the charity, and not by the act of the trustees) the dock company were liable to pay the costs of the present application. *In re The Shakespeare Walk School Estate*, 43 Law J. Rep. Chanc. 677; Law Rep. 12 Ch. D. 178.

39.—The purchase-money for land, the property of a charity, taken under the provisions of the Lands Clauses Consolidation Act, 1845, had been paid into Court, and invested in Government securities. A petition was now presented by the trustees of the charity for the transfer of the fund to the account of "The Official Trustees of Charitable Funds":—Held, that this must be considered as a petition for payment of money out of Court; and, there-

fore, that the parties taking the land must pay the costs of the petition. *In re The Estates of the Bristol Free Grammar School*, 47 Law J. Rep. Chanc. 317.

40.—Where purchase-money has been paid into Court under the Lands Clauses Consolidation Act, 1845, or the Artizans' and Labourers' Dwellings Improvement Act, 1875, and a petition is presented for payment out either to or with the consent of incumbrancers, the only costs which the company or local authority can be required to pay, in addition to the petitioner's costs, are the sum of 42s. for the incumbrancers' costs, and such further sum as will cover the costs of an affidavit of service of the petition upon the incumbrancers. *In re The Halstead United Charities* (Law Rep. 20 Eq. 48) followed. *In re The Artizans' and Labourers' Dwellings Improvement Act*, 1875. *Ex parte Jones*, Law Rep. 14 Ch. D. 624.

(f) Deposit under 85th section.

41.—The compensation in respect of which the bond is given by a railway company under section 85 of the Lands Clauses Act, on entering upon lands before agreement, does not include compensation for minerals under sections 78 and 81 of the Railways Clauses Act, 1845. *Ex parte The Neath and Brecon Railway Company*, 45 Law J. Rep. Chanc. 196; Law Rep. 2 Ch. D. 201.

A railway company being desirous of entering upon certain lands before agreement, made the usual deposit and gave the usual bond under section 85 of the Lands Clauses Act. Afterwards, by an agreement in writing between the company and landowner, it was referred to an arbitrator to determine the purchase-money for the lands taken by the company and also the "compensation for any damage sustained by the landowner by reason of the execution of their works, and which, under the special Act, the Lands Clauses Act, or the Railways Clauses Act, the landowner was entitled to claim against the company":—Held, that the bond did not include compensation awarded by the arbitrator in respect of minerals under sections 78 and 81 of the Railways Clauses Act, and that the company, having paid the sum awarded as the purchase-money and compensation in respect of the lands taken by them, had performed the condition of the bond, and were entitled to the return of their deposit. *Ibid*.

42.—The Court has jurisdiction under the 87th section of the Lands Clauses Consolidation Act, 1845, where the condition of the bond given by a railway company to a landowner under the 85th section has not been performed, to order, on the petition of the landowner presented either adversely to or without the consent of the company, payment out to him of the amount deposited in the bank under the 85th section. *In re Mutlow's Estate*, 48 Law J. Rep. Chanc. 198; Law Rep. 10 Ch. D. 131.

(E) SUPERFLUOUS LANDS.

43.—Lands had been acquired by a railway company by agreement under their statutory powers. The time within which they might be sold if not required for railway purposes expired in 1863, at which time they had not been used for such purposes nor sold. The lands were in close proximity to W. station, and since the year 1868 additional sidings had been required at the station, for which the lands would be needed, but for want of funds such sidings had not been constructed. Meanwhile the lands were let, first to an agricultural tenant, and afterwards to a mining company, the lessors having the right to re-enter at any time at short notice. Upon an action brought in 1875 by adjoining landowners to recover the lands as superfluous within 8 & 9 Vict. c. 18. s. 127,—Held (affirming the judgment of the Court of Appeal, 47 Law J. Rep. Q.B. 437; Law Rep. 3 Q.B. D. 258; on appeal from the Queen's Bench Division, 46 Law J. Rep. Q.B. 909; Law Rep. 2 Q.B. D. 339), that the lands were not superfluous, the fact that they were required for the railway in 1868 being strong presumptive evidence that they were so required in 1863, and the burden of proof, especially after so great a lapse of time, being upon the plaintiffs to shew that they were not. The lease to the mining company reserved to the lessors the right to regulate the manner of removing the minerals, so as to prevent injury to the surface:—Held, that the minerals were not superfluous. *Hooper v. Bournes* (H.L.), 49 Law J. Rep. Q.B. 370; Law Rep. 5 App. Cas. 1.

Semble, that where land is bought by a railway company with the mines under it the mines cannot be claimed as superfluous land apart from the surface. *Ibid*.

44.—Lands acquired by a railway company under their Act, and ever since retained *bona fide* for the purposes of the Act, in the belief that they will be required at some future time for such purposes, and with the intention of so applying them, are not "superfluous lands" within the meaning of section 127 of the Lands Clauses Act, 1845, though they have never been actually used for the purposes of the Act during the time specified in that section. *Betts v. The Great Eastern Railway Company* (App.), 47 Law J. Rep. Exch. 461; Law Rep. 3 Ex. D. 182; affirmed on appeal by the House of Lords, 49 Law J. Rep. Exch. 197; Law Rep. 5 App. Cas. 1.

Held, in the Court of Appeal, that, in an action of ejectment to recover lands from a railway company as superfluous, the question to be left to the jury is, whether a reasonable person with a knowledge of all the facts actually existing at the end of the ten years prescribed in section 127, would then have been justified in coming to the conclusion that the lands would be required for the purposes of the company. *Ibid*.

Semble, that lands adjacent to a railway station, occupied by granaries, coal-sheds and a

public-house, let to tenants and used by them in connection with the traffic upon the railway, were "used for the purposes of the undertaking" within the meaning of the Lands Clauses Consolidation Act. *Ibid.*

45.—A railway company constructed a tunnel by arching over a cutting and placing soil on the arch:—Held (per Jessel, M.R., and Cotton, L.J., *dubitante* Baggallay, L.J.), that they could not sell the surface soil over the tunnel as "superfluous land" within the 127th section of the Lands Clauses Consolidation Act, 1845. *In re The Metropolitan District Railway Company and Cosh* (App.), 49 Law J. Rep. Chanc. 277; Law Rep. 13 Ch. D. 607.

Semble, a railway company cannot, without a special power, sell as superfluous land any land in respect of which they wish to reserve an easement. *Ibid.*

Quære, whether land which, at the expiration of the period limited by the 127th section, is not superfluous, but which afterwards becomes superfluous, may be sold. Decision of Fry, J., affirmed. *Ibid.*

#### (F) SPECIAL ACT.

[See No. 16 *supra*.]

#### LAPSE.

[See POWER, 15; WILL, CONSTRUCTION, H 4-6.]

*Lapsed share: administration: costs.* [See ADMINISTRATION, 20.]

#### LATENT AMBIGUITY.

[See MORTGAGE, 35.]

#### LATENT DEFECT.

*Sale of goods for specific purpose.* [See SALE OF GOODS, 7.]

#### LARCENY.

A person who receives a bill of exchange for the purpose of getting it discounted and handing the proceeds over to another, and instead of getting it discounted indorses it to a creditor of his own in payment of his account, intending to pass the property in the bill absolutely to the creditor, is a bailee of a valuable security, and guilty of a fraudulent conversion of the same to his own use within 24 & 25 Vict. c. 96. s. 3. *Reg. v. Owenham* (C.C.R.), 46 Law J. Rep. M.C. 125.

*Wife not liable to be convicted for stealing goods of husband: adulterer of wife not liable for receiving goods of husband taken by her.* [See RECEIVING STOLEN GOODS.]

#### LAY DAYS.

[See EVIDENCE, 3; SHIPPING LAW, G 4.]

#### LEASE.

##### (A) AGREEMENT FOR LEASE.

- (a) *No term stated.*
- (b) *Construction of, as demise.*
- (c) *Usual covenants, what are.*
- (d) *Effect of taking possession of land.*
- (e) *Covenant for renewal of lease: condition precedent.*
- (f) *Mistake: caveat emptor.*
- (g) *Collateral agreement to pay rent.*

##### (B) OPTION TO PURCHASE: INSURANCE MONEY.

##### (C) RIGHT OF LESSEE OF MINES TO COMPENSATION UNDER RAILWAY CLAUSES ACT.

##### (D) COVENANT NOT TO ASSIGN.

##### (E) COVENANT TO PAY RATES.

##### (F) COVENANTS AS TO USER OF PREMISES.

##### (G) FORFEITURE OF LEASE: PROVISIO FOR RE-ENTRY.

- (a) *Non-repair: conduct of landlord.*
- (b) *Waiver of forfeiture: relief of tenant.*
- (c) *Extinguishment of proviso for re-entry: breach of negative covenant.*

##### (H) SURRENDER OF LEASE.

- (a) *By operation of law.*

- (b) *Right to remove fixtures.*

##### (I) RENEWAL OF LEASE BY PARTNER IN HIS OWN NAME.

##### (A) AGREEMENT FOR LEASE.

- (a) *No term stated.*

1.—In 1839 S., who held the lease of a house for a term expiring in 1898, agreed in writing to let the house to W. at 26*l.* yearly rental, and to let W. have a lease at the same rent "at any period he may feel disposed," and "not to molest, disturb or raise the rent of W. after his having laid out moneys in improvements." W. remained in possession under the agreement until 1876, having expended about 150*l.* in improvements, when ejectment being threatened by S.'s executors, he brought an action for specific performance of the agreement:—Held (on appeal from the Chancery Division, 47 Law J. Rep. Chanc. 825), that W. was entitled to a lease for his life, that is to say, to a lease for the residue of the term, less one day, if he should so long live. *Kusel v. Watson* (App.), 48 Law J. Rep. Chanc. 413; Law Rep. 11 Ch. D. 129.

- (b) *Construction of, as demise.*

2.—Action to recover a quarter's rent due under the following agreement, not under seal: "A. agrees to let and B. to take" certain premises "from the 14th of February next until the following Midsummer twelve months, with a right at the end of that term for the tenant by a month's previous notice to remain on for three years and a half more":—Held (reversing the decision of the Exchequer Division, 46 Law J. Rep. Exch. 242), that the agreement constituted a valid demise of the premises from the

14th of February to the following Midsummer twelve months, followed, but not invalidated, by an invalid collateral agreement as to the tenant's option to remain on. *Hand v. Hall* (App.), 46 Law J. Rep. Exch. 603; Law Rep. 2 Ex. D. 318.

3.—An agreement in writing "to let from year to year, and for so long as the lessor has power to let," creates only a tenancy from year to year, which is terminable by a legal six months' notice to quit, though the power of the lessor to let the premises has not come to an end. *Wood v. Beard* (App. Div.), 46 Law J. Rep. Exch. 100; Law Rep. 2 Ex. D. 30.

(c) *Usual covenants, what are.*

4.—A covenant in a lease against assignment is not a usual covenant. *Hampshire v. Wickens*, 47 Law J. Rep. Chanc. 243; Law Rep. 7 Ch. D. 155.

A Judge cannot of his own authority say what should be the "usual covenants," nor should the locality, nature or tenure of the property be, except under special circumstances, regarded. *Haines v. Burnett* (27 Beav. 500) is overruled. *Ibid.*

5.—The defendant, having agreed to take an assignment of an underlease from the plaintiff, found on examining the lease that it contained a covenant by the plaintiff not to underlet without the consent of the lessor, the lessor agreeing not to withhold his consent from any assignment to a respectable and responsible person:—Held, that the fact that the lessor's consent had not been obtained at the time of the agreement to take an assignment was not enough to enable the defendant to resist a claim for specific performance. *Hyde v. Warden*, 47 Law J. Rep. Exch. 121; Law Rep. 3 Ex. D. 72.

A covenant by the lessee not to mow meadowland more than once in a year is not so unreasonable or unusual as to form a valid objection to the lessee's title on the part of a proposed assignee. But a covenant that the lessor and his assigns shall have a right of re-entry on the bankruptcy of the lessee or his assigns, or if execution should issue against him, is a valid and fatal objection, disentitling the lessee to specific performance of an agreement to accept an assignment. *Ibid.*

6.—In a lease of a colliery in Derbyshire a proviso that when the mines demised are incapable of being worked at a profit the lessee should enter is not usual. *Strelley v. Pearson*, 49 Law J. Rep. Chanc. 406; Law Rep. 15 Ch. D. 113.

(d) *Effect of taking possession of land.*

7.—Taking possession of land under a parol agreement for a lease is not in itself an acceptance of the title, but merely evidence of such acceptance which may be rebutted. But taking objection to known defects in title amounts to a waiver of such objections. *Hyde v. Warden* (App.), 47 Law J. Rep. Exch. 121; Law Rep. 3 Ex. D. 72.

(e) *Covenant for renewal of lease: condition precedent.*

8.—A lease to two tenants contained a proviso for re-entry in case the tenants, or either of them, should become bankrupt, or assign the premises without the landlord's consent, or should not observe and perform all the covenants and agreements on their part to be observed and performed; also, joint and several covenants by the lessees to, amongst other things, keep the interior of the premises in repair, and a covenant by the lessor that he would, at the expiration of the term, in case the covenants and agreements on the tenants' part should have been duly observed and performed, upon notice, grant to the tenants, their executors or administrators, a new lease for a further term. One of the tenants assigned his interest to the other without the consent of the landlord, and afterwards became bankrupt, and the landlord from that time accepted the rent from the other tenant alone. At the expiration of the lease the remaining tenant—the premises being slightly out of repair—gave notice to the landlord that he required a new lease to be granted to himself alone:—Held (reversing the decision of one of the Vice-Chancellors), first, that the keeping the premises in repair was a condition precedent which must be strictly performed before the renewal could be called for; and secondly, that, although the landlord had waived the forfeiture by acceptance of rent after the assignment, he could not be compelled to grant a renewal to one only of the lessees so long as the other was living. *Finch v. Underwood* (App.), 45 Law J. Rep. Chanc. 522; Law Rep. 2 Ch. D. 310.

(f) *Mistake: caveat emptor.*

9.—A. granted to B. an underlease of business premises for the whole of A.'s term therein, less ten days. By mistake the underlease was made for twenty-three years, less ten days, A.'s term being only sixteen years. B. had no professional advice and never saw the original lease:—Held, that B. could not recover compensation in respect of the seven years after the expiration of A.'s lease. *Besley v. Besley*, Law Rep. 9 Ch. D. 103.

(g) *Collateral agreement to pay rent.*

10.—By a building agreement, the rent to be paid under a lease to be executed was fixed, and by one of the clauses it was stipulated that "the lessee will in the meantime, and until the said lease hereby to be granted shall be actually executed, hold the premises, at the rent, and subject to the conditions to be contained in the said lease as aforesaid." The lessee had never taken possession. In an action to recover arrears of rent and in the alternative damages for breach of the agreement,—Held, that the defendant was liable. *The Marquis of Camden v. Batterbury* (28 Law J. Rep. C.P. 187) followed. *Adams v. Hagger*, Law Rep. 4 Q.B. D. 480.

*Agreement to let furnished house: implied covenant that house fit for occupation.* [See LANDLORD AND TENANT, 2.]

*Agreement to assign: lessor's option to determine lease.* [See VENDOR AND PURCHASER, 22.]

*Statute of frauds: work done upon premises by intended lessee.* [See FRAUDS, STATUTE OF, 17.]

*Statute of frauds: validity of contract.* [See FRAUDS, STATUTE OF, 6; SPECIFIC PERFORMANCE, 2, 8.]

*Underlease: agreement for sale of: outstanding legal estate.* [See SPECIFIC PERFORMANCE, 6.]

#### (B) OPTION TO PURCHASE: INSURANCE MONEY.

11.—The lease of a mill gave the lessees an option to purchase before a fixed day. The lessor covenanted to insure; it was provided that in case of a loss not exceeding 4,000*l.*, the insurance moneys should be expended in rebuilding, but that if damage by fire occurred over 4,000*l.* in amount, the lease should determine. A fire occurred before the fixed day:—Held, that the option continued till that day; but that in case of exercise of the option, the amount of insurance money received was not to be deducted from the purchase-money. *Edwards v. West*, 47 Law J. Rep. Chanc. 463; Law Rep. 7 Ch. D. 858.

#### (C) RIGHT OF LESSEE OF MINES TO COMPENSATION UNDER RAILWAY CLAUSES ACT.

12.—The lessee of mines whose term is of sufficient length to enable him, working with reasonable diligence, to exhaust them, is, for the purpose of dealing with a railway company who require the support of the minerals, the absolute owner thereof; and the company having paid him compensation under the 78th section of the Railways Clauses Consolidation Act, 1845, are in the position of absolute purchasers of those minerals in perpetuity; and neither the reversioner nor any person claiming under him is entitled to any compensation other than for the loss of royalty by reason of the non-working of the mines. *The Great Western Railway Company v. Smith* (App.), 45 Law J. Rep. Chanc. 235; Law Rep. 7 Ch. D. 235; affirmed on appeal by the House of Lords, 47 Law J. Rep. Chanc. 97; Law Rep. 3 App. Cas. 165.

#### (D) COVENANT NOT TO ASSIGN.

13.—A covenant by two joint lessees, partners, not to assign or part with the possession of the demised premises to any person is not broken by one of the partners leaving the premises in the possession of the other on dissolution. *Varley v. Coppard* (Law Rep. 7 C.P. 505) and *Finch v. Underwood* (45 Law J. Rep. Chanc. 522; Law Rep. 2 Ch. D. 310; No. 8 supra) considered. *The Corporation of Bristol v. Westcott* (App.), Law Rep. 12 Ch. D. 461.

14.—By deed made between A. B., a lunatic, "so found by inquisition, by C. D. and E. F., the committees of his estate," and W. X. and Y. Z. (the said A. B., W. X. and Y. Z. carrying on business in co-partnership, and thereafter called the lessors) of the one part, and G. H. of the other part, the lessors (the said A. B., acting by the said C. D. and E. F. as such committees) demised to G. H. certain premises. At the foot of the deed were two seals. C. D. signed his name against one seal, and E. F. against the other, and the attestation clause was "signed, sealed and delivered by the within-named C. D. and E. F., in the presence of . . .":—Held, that the seals were the seals of A. B., and that the deed was well executed by the committees acting in his behalf. The deed contained a covenant by the lessee not to carry on, or permit to be carried on, during the term, on any part of the demised premises, any trade or business except that of a licensed victualler, without the license of the lessors, and there was a clause of re-entry for breach of covenant. The lessee underlet, without license, parts of the property to other persons who carried on other trades. The premises were afterwards sold, subject to a condition that the production of the last receipt for rent should be conclusive evidence of the performance of the covenants, or the waiver of any breaches of the same, up to the time of the completion of the purchase, whether the lessors should be cognisant of such breaches (if any) or not, and that the purchaser should be deemed to have bought with full knowledge of the contents of the lease:—Held, that the purchaser was bound to accept the title, notwithstanding the continuing breaches of covenant. *Lanorte v. Lees* (App.), 49 Law J. Rep. Chanc. 636; Law Rep. 14 Ch. D. 249.

#### (E) COVENANT TO PAY RATES.

15.—The plaintiff let certain houses to the defendant for a term of years, and the defendant covenanted to pay "all and all manner of taxes, rates, charges, assessments and impositions whatsoever, at any time during the said term to be charged, assessed or imposed on the said premises thereby demised, or in respect thereof or of the said rent as aforesaid, by authority of Parliament or otherwise howsoever." An urban sanitary authority for the district within which the houses were situate, required the defendant, under the Public Health Act, 1875, to abate a nuisance arising from the drains of the said houses, and for that purpose to construct proper and sufficient drains, and the defendant having refused to execute such works or to pay for the same, the plaintiff executed them according to the directions of the said sanitary authority, and then sued the defendant for the expense incurred in executing such works:—Held, that the plaintiff was not entitled to recover the same, as it was not a charge imposed by the Act upon the premises but on the landlord personally, and was therefore not

within the terms of the defendant's covenant. *Rawlins v. Biggs*, 47 Law J. Rep. C.P. 487; Law Rep. 3 C.P. D. 368.

[And see LANDLORD AND TENANT, 6, 7.]

(F) COVENANTS AS TO USER OF PREMISES.

*Covenant to deliver up fixtures.* [See COVENANT, 26.]

*Covenant to keep premises in proper condition.* [See COVENANT, 13.]

*Covenant not to use premises as a beer shop.* [See COVENANT, 6.]

*Covenant not to carry on "business": hospital.* [See COVENANT, 7.]

*Reasonable user: inevitable accident: implied license: proviso for cesser.* [See LANDLORD AND TENANT, 8.]

(G) FORFEITURE OF LEASE: PROVISIO FOR RE-ENTRY.

(a) *Non-repair: conduct of landlord.*

16.—A lessee will be relieved against forfeiture for breach of a covenant to repair contained in his lease, where the conduct of the landlord is such as to lead the lessee to believe that the strict legal right will not be insisted on. *Hughes v. The Metropolitan Railway Company* (H.L.), 46 Law J. Rep. C.P. 583; Law Rep. 2 App. Cas. 439.

The lease of a house contained a covenant to repair upon six months' notice, and a proviso for re-entry for breach of covenant. The under-lease of the house to the defendants contained similar provisions. On the 22nd of October, 1874, the plaintiff, who was the reversioner, gave notice to the defendants to repair within six months. The defendants, on the 28th of November, wrote in reply suggesting that the plaintiff should acquire their interest, and stating that they proposed deferring the commencement of the repairs until they should hear from him as to the probability of an arrangement. After some correspondence, the plaintiff, on the 31st of December, wrote that the price demanded by the defendants appeared to him to be out of all reason, and inviting a modified proposal. No further proposal was made, and in April, 1875, the repairs were commenced by the defendants and completed in June, 1875. The plaintiff then brought ejectment for breach of the covenant to repair after six months' notice:—Held (affirming the decision of the Court of Appeal, 45 Law J. Rep. C.P. 578), that the effect of the correspondence was to lead the defendants to the belief that the notice to repair was suspended during the negotiations, which were continued until the 31st of December, 1874, so that the plaintiff was not entitled to insist on forfeiture, because of the non-completion of the repairs within six months from the giving of the notice; and that the lease having provided that six months' notice should be given, a period of six months from the 31st of December, 1874,

must be taken to be a reasonable time for the completion of the repairs. *Ibid.*

(b) *Waiver of forfeiture: relief of tenant.*

17.—Where a tenant under a lease containing a covenant to insure, had, in consequence of his agent's embezzlement, failed to pay a premium, and so the premises were left for a time uninsured, but the landlord had, on discovering this, afterwards paid the premium, and allowed the tenant to repay him,—Held, that this was such a waiver of a forfeiture under the covenant as to bring the tenant within the exception in section 6 of 22 & 23 Vict. c. 35, and preclude him from obtaining relief under 23 & 24 Vict. c. 126. s. 2. *Mills v. Griffith*, 45 Law J. Rep. Q.B. 771.

Section 6 of 22 & 23 Vict. c. 35, is satisfied by an actual waiver, and it is not necessary to have any formal document expressly waiving the forfeiture. *Ibid.*

The mortgagee of a tenant who has incurred a forfeiture cannot be heard on an application for relief under 23 & 24 Vict. c. 126, s. 2, and cannot be made a party to the action of ejectment under Order XVI rule 13, of the Judicature Act, 1875. *Ibid.*

[And see No. 8 supra.]

(c) *Extinguishment of proviso for re-entry: breach of negative covenant.*

18.—B. was in possession of two farms, of one as freeholder, and of the other for a term of years ending Michaelmas, 1889. B. leased the whole to N. for fourteen years, from Michaelmas, 1870, subject to a covenant for re-entry in case of the lessee's bankruptcy, and the plaintiff became, the assignee of N.'s lease. During the plaintiff's term, B. granted to him a lease of the leasehold farm from Michaelmas, 1884, for five years, ending at the same time as the original lease to B.:—Held, that the last-mentioned lease, as it conferred merely an "*interesse termini*" on the plaintiff, was no severance of the reversion, such as to extinguish the right of re-entry by the original lessor. And further, that such lease for five years, being expressed to be made subject to the former lease, would not affect the right of entry thereby reserved. *Doe d. Freeman v. Bateman* (2 B. & Ald. 168) approved of. *Hyde v. Warden*, 47 Law J. Rep. Exch. 121; Law Rep. 3 Ex. D. 72.

Where two distinct properties, held under separate titles, are comprised in one lease, and the reversion of one of them becomes vested in the lessee, this does not extinguish a right of re-entry in respect of the property of which the reversion remains in the lessor; the rules as to severance of reversion by assignment to third parties not being applicable to cases where a portion of the reversion is vested by assignment in the lessee himself. *Ibid.*

Semble, a power of re-entry on non-performance of covenants does not entitle the lessor to re-enter for breach of a negative covenant,

such as a covenant not to assign without consent. *Ibid.*

#### (H) SURRENDER OF LEASE.

##### (a) *By operation of law.*

19.—Where a tenant on lease has quitted the demised premises before the expiration of the term, and has sent the key to the landlord, with the intention of giving up possession, the mere fact that the landlord has received the key, and attempted unsuccessfully to re-let the premises, does not estop him from alleging that the tenancy still subsists. And if afterwards, before the expiration of the term, the landlord re-lets the premises, the surrender by operation of law takes effect from such re-letting, and does not relate back to the original receipt of the key by him. *Phené v. Popplewell* (12 Com. B. Rep. N.S. 334; 31 Law J. Rep. C.P. 235) explained. *Oastler v. Henderson* (App.), 46 Law J. Rep. Q.B. 607; Law Rep. 2 Q.B. D. 575.

[And see LIMITATIONS, STATUTE OF, 16; PRINCIPAL AND SURETY, 12.]

##### (b) *Right to remove fixtures.*

20.—Whatever may be the rights (if any) of a lessee to sever and remove his trade fixtures within a reasonable time after the determination of his tenancy by forfeiture or effluxion of time, no such right exists in the case of a surrender of a lease. *In re Roberts; ex parte Brook* (App.), 48 Law J. Rep. Bankr. 22; Law Rep. 10 Ch. D. 100.

Where a trustee severed and sold the trade fixtures of a liquidating debtor and afterwards disclaimed the lease,—Held, that as the disclaimer, by force of the 23rd and 125th sections of the Bankruptcy Act, 1869, operated as a surrender of the lease as from the date of the appointment of the trustee, the landlord, and not the trustee, was entitled to the proceeds of the sale. *Ibid.*

Quære.—Whether a trustee, by severing and selling the fixtures, estops himself from disclaiming the lease. *Ibid.*

21.—The defendant was lessor of certain premises, of which Jackson was tenant under a lease for fourteen years, from the 2nd of April, 1876. During his tenancy Jackson erected a greenhouse, the defendant undertaking to allow him to remove the same. The greenhouse was so affixed to the soil that it would not, in the absence of agreement, have been removable. Subsequently Jackson granted a bill of sale to H., whereby he assigned, amongst other things, "all the greenhouses on the premises," and gave the assignee power to enter and sell the same. H. having entered on the 4th of April, 1877, the greenhouse was advertised for sale at an auction of Jackson's chattels, held on the 4th of May, but not then bought. After the auction the plaintiff made an offer for the greenhouse, which was accepted on the 7th of June. In the meantime the auctioneer, who had been in possession

for H. under the bill of sale, and kept the keys of the premises, had on the 11th of May sent the keys to the defendant, and on the 14th of May the defendant had taken possession. On the 7th of June notice was sent to the defendant of the sale to the plaintiff, and that the purchaser was about to remove the greenhouse. The defendant having denied the plaintiff's right to remove,—Held, that a surrender of the term had taken place on the 14th of May, that no claim to remove was made within a reasonable time after, and that therefore the greenhouse was not removable by the plaintiff. *Moss v. James*, 47 Law J. Rep. Q.B. 160.

#### (I) RENEWAL OF LEASE BY PARTNER IN OWN NAME.

22.—In a partnership at will there is no implied authority at law giving to one partner, without the consent of his co-partner, power, on the expiration of the lease of the premises where the partnership business is being carried on, to take a renewed lease of the same premises or a lease of any other premises for the purpose of carrying on the partnership business or any portion of it. *Clements v. Norris* (App.), 47 Law J. Rep. Chanc. 546; Law Rep. 8 Ch. D. 129.

The same rule, in the absence of stipulations to the contrary, applies to partnerships created by deed. *Ibid.*

Semble, that the rule would equally apply where partnership premises are burnt down or otherwise destroyed, or are taken by a railway or any other corporation under the powers of their special Act. *Ibid.*

*Charity, by, void under 13 Eliz. c. 10.* [See CHARITY, 23, 24.]

*Concealment: setting aside lease.* [See MINES, 16.]

*Disclaimer of, by trustee in bankruptcy.* [See BANKRUPTCY, F 39-51.]

*Lease to infant representing himself to be of full age: action for mesne profits.* [See INFANT, 15.]

*Lease and counterpart: discrepancy between: clerical error in lease.* [See DEED, 3.]

*Mining lease.* [See MINES, 1, 15.]

*Mortmain: premium on granting: marshalling assets.* [See CHARITY, 1.]

*Underlease: merger.* [See MERGER.]

*Public-house, of: usual covenants in.* [See COVENANT, 18.]

*Waste: opening quarry.* [See MINES, 3.]

#### LEASEHOLDS.

[See RENEWABLE LEASEHOLDS.]

*Assignment of, consideration for.* [See VOLUNTARY SETTLEMENT, 1.]

*Bequest of, to "right heirs."* [See WILL CONSTRUCTION, H 28.]

*Bequest on trusts corresponding to freeholds.* [See REMOTENESS, 16.]

*Bequest, subsequent purchase of fee.* [See WILL CONSTRUCTION, D 4.]

*Conversion: enjoyment in specie.* [See TENANT FOR LIFE, 11-15.]

*Investment in: real securities.* [See TRUST, B 2, 3.]

*Trustee of: Trustee Acts.* [See TRUSTEE ACTS, 11, 12.]

#### LEE CONSERVANCY BOARD.

The conservators of the river Lee are not entitled to the soil of the towing-path, but are bound to keep it fit for use as a towing-path. Injunction granted to restrain the owner (who used the towing-path as a road for horses and carts carrying merchandise) from using it so as to interfere with its use for the purposes of navigation. *The Lee Conservancy Board v. Button* (App.), Law Rep. 12 Ch. D. 385.

#### LEGACY.

- (A) DESCRIPTION OF LEGATEE: UNCERTAINTY.
- (B) LEGACY TO EXECUTOR.
- (C) LEGACY TO DEBTOR.
- (D) LEGACY TO CREDITOR.
- (E) BEQUEST OF CHATTELS: RIGHT OF CHOICE.
- (F) SPECIFIC, DEMONSTRATIVE AND GENERAL.
  - (a) *Specific or pecuniary.*
  - (b) *Specific or residuary.*
  - (c) *Bequest of railway "shares."*
  - (d) *Bequest of "foreign bonds."*
  - (e) *Ademption of specific bequest.*
- (G) CONTINGENT OR CONDITIONAL LEGACY.
- (H) INTEREST ON LEGACY: RIGHT TO.

#### (A) DESCRIPTION OF LEGATEE: UNCERTAINTY.

1.—A legacy to be applied to any charitable or benevolent purpose the executors might agree upon, is void for uncertainty, although actually destined by the executors for exclusively charitable purposes. *In re Jarman; Leavers v. Clayton*, 47 Law J. Rep. Chanc. 675; Law Rep. 8 Ch. D. 584.

#### (B) LEGACY TO EXECUTOR.

2.—The testatrix bequeathed "to the executors or executrices of A." 100*l.* A. left an executor and two executrices, who all died in the lifetime of the testatrix:—Held, a bequest to the legal personal representatives of A. to hold on the trusts affecting A.'s estate. *Trotter v. Helyar*, 46 Law J. Rep. Chanc. 125; Law Rep. 4 Ch. D. 53.

The testatrix, after directing payment of her

just debts, funeral and testamentary expenses, gave her residuary and personal estate amongst four persons by name, one of whom died in her lifetime:—Held, that the lapsed share was not primarily liable for the costs of an administration suit, but that the costs must be paid before the residue was divided. *Dictum in Goman v. Broughton* (44 Law J. Rep. Chanc. 275; Law Rep. 19 Eq. 77) disapproved. *Ibid.*

3.—The testatrix gave a legacy of 100*l.*, payable at the death of a tenant for life of her residuary estate, to one of the executors of her will, who never proved or acted:—Held, that the circumstance of payment being deferred rebutted the presumption that the legacy was given to him in the character of executor. *In re Reeve's Trusts*, 46 Law J. Rep. Chanc. 412; Law Rep. 4 Ch. D. 841.

At the death of the tenant for life the residuary estate was divisible into shares, some of which were given to individuals, and others to classes:—Held, that the costs of ascertaining the classes were costs of administration, and as such payable out of the residuary estate, and not out of the shares of the classes. *Ibid.*

#### (C) LEGACY TO DEBTOR.

4.—A testator recited that certain debts were due from his son Frederick to himself, and then released those debts, "and all other moneys due from him to me." The testator then made to his son Frederick further advances, and expressly released those by a codicil. The testator then made still further advances, but did not release those. On question whether these last debts were released,—Held (reversing the decision of Malins, V.C.), that there was nothing to shew a contrary intention, and the will therefore spoke from the death of the testator, and released the debts subsequent to the codicil. *Everett v. Everett* (App.), 47 Law J. Rep. Chanc. 367; Law Rep. 7 Ch. D. 428.

5.—A testator distributed his property nearly equally between his wife, son and two daughters; and bequeathed 2,600*l.*, part of the sum owing to him by K. & J. to his daughter Charlotte, the wife of J. E. B.; 1,000*l.*, other part of the money owing to him by K. & J., to his wife for life, with remainder to the children equally; and gave all debts owing to him by J. E. B. to J. E. B. for his own use and benefit, and directed that the trustees of his will should execute, when required by J. E. B., an effectual release for all such debts. At the date of the will and of the testator's death, J. E. B. owed the testator a separate debt of 50*l.*; 2,300*l.* upon joint and several promissory notes given by himself and his partner; and 300*l.* upon a joint promissory note of himself and his partner. The sum owing by K. & J. was 1,000*l.* and no more. After the death of the testator in February, 1873, J. E. B. and his partner continued to pay interest on 2,600*l.*, and were negotiating with the executors as to giving security for that sum as a debt, when they went into liquidation in



March, 1875:—Held (by the Chief Judge, reversing the decision of the Judge of the Leeds County Court), that the whole amount owing by J. E. B. and his partner was effectually released by the will; that no parol evidence could be admitted to take that debt out of the gift to J. E. B., and substitute it in the gift to Charlotte; and that the conduct of J. E. B. after the testator's death did not revive the debt. *Ex parte Close*; in *re Bennett*, 46 Law J. Rep. Bankr. 3.

But held (reversing the decision of the Chief Judge, and restoring that of the County Court Judge), that the separate debt only was comprised in the bequest. *In re Bennett and Glave*; *ex parte Kirk* (App.), 46 Law J. Rep. Bankr. 101; Law Rep. 5 Ch. D. 800.

6.—Absolute bequest of a legacy and gift of a share of residue coupled with a direction that advances by the testator were to be charged against shares of residue:—Held, that the executors were not entitled to retain the legacy in part satisfaction of advances by the testator to the legatees. *Smith v. Crabtree*, Law Rep. 6 Ch. D. 591.

*Bankruptcy of debtor: set-off or retainer by executor.* [See SET-OFF, 4.]

#### (D) LEGACY TO CREDITOR.

7.—A testator directed his debts, including 300*l.* due to his daughter, to be paid immediately. He owed his daughter 150*l.* only:—Held, there was no legacy given by this direction. *Wilson v. Morley*, 46 Law J. Rep. Chanc. 790; Law Rep. 5 Ch. D. 776.

#### (E) BEQUEST OF CHATTELS: RIGHT OF CHOICE.

8.—A testator bequeathed his plate and plated articles to trustees, upon trust to permit A. "to have and appropriate absolutely to herself such parts thereof as she should at any time before the expiration of twelve calendar months after his decease signify her desire to possess:"—Held, that under the above gift A. was entitled to appropriate the whole of the plate and plated articles. *Arthur v. Mackinnon*, 48 Law J. Rep. Chanc. 534; Law Rep. 11 Ch. D. 385.

#### (F) SPECIFIC, DEMONSTRATIVE AND GENERAL.

##### (a) *Specific or pecuniary.*

9.—A testator by his will dated five days before his death, gave "all those my 7,000 dollars payable to me or the produce thereof," in trust for his sisters. He died possessed of twenty dollars in gold and 6,800 dollars in United States 5/20 Bonds. The 5/20 Bonds having been sold by the executor, produced 7,863 dollars:—Held, that the gift was a good specific gift of the 6,800 dollars in 5/20 Bonds or the produce thereof. *Palin v. Brooks*, 48 Law J. Rep. Chanc. 191.

10.—A bequest to a hospital of "all other of

any personal estate which I can by law bequeath to such an institution," held specific. *Shepherd v. Beetham*, 46 Law J. Rep. Chanc. 763; Law Rep. 6 Ch. D. 597.

Heir-at-law, though liable for debts, held not liable to pay Probate Duty, either directly or indirectly, which, in case of a deficiency of the impure personality, after payment of debts and costs, was ordered to be borne by the specific bequest to the hospital. *Ibid.*

##### (b) *Specific or residuary.*

11.—A gift by a testator to his wife of "all my personal property, all sums of money which I may possess or may be owing to me at the time of my decease, together with all the furniture, farming implements, stock and crops belonging to the A. estate,"—Held, not to be a specific gift of the money, furniture, &c. *Fairer v. Park*, 45 Law J. Rep. Chanc. 760; Law Rep. 3 Ch. D. 309.

G. having in his hands, under the will of his father, J., two sums of 1,000*l.* and 500*l.*, as trustee for his, G.'s, two sisters respectively, for life, for their sole and separate use, and after their deaths for their children equally, by his will desired that his real estate should be sold, and that sums of 1,000*l.* and 500*l.* should be paid to his two sisters respectively out of the proceeds, and that the remainder of such proceeds should be paid to certain other persons in equal shares:—Held, that the gifts by G. to his sisters were not in satisfaction of the debts due from him as trustee for them and their children. *Ibid.*

12.—Bequest by a widow of "all I have power over, namely, plate, linen, china, pictures, jewellery, lace," testatrix being entitled to real and personal estate other than that enumerated, of considerable value,—Held, an unlimited residuary gift. *In re George's Estate. King v. George* (App.), 46 Law J. Rep. Chanc. 670; Law Rep. 4 Ch. D. 435; 5 Ch. D. 627.

13.—A testator, after making specific and other dispositions, gave to a charity all such portions of his estate as were by law applicable for charitable purposes, and which had not been already given by his will, and declared that the portions of his estate included in that gift should be exonerated from the payment of his debts, &c., and legacies, with the payment whereof he exclusively charged his residuary estate therein after disposed of:—Held, that the charitable legacy was specific, and abatable for payment of debts, &c., rateably with the other specific gifts according to their respective values at the testator's death. *Halse v. Rumpfard*, 47 Law J. Rep. Chanc. 559.

The testator gave the residue of his real and personal estate in trust to pay debts, &c., including debts secured upon any of the devised estates and in exoneration of such estates. He died indebted to his bankers in a sum secured by mortgage of estates comprised in the will; and possessed of a smaller sum to his

credit upon his current account:—Held, that the balance on the current account was, for the purposes of the will, included in the charitable gift, notwithstanding any lien of the bankers. *Ibid.*

*Conversion: right to enjoyment in specie: tenant for life and remainderman.* [See TENANT FOR LIFE, 10.]

[And see WILL CONSTRUCTION, E 18.]

(c) *Bequest of railway "shares."*

14.—Railway stock will pass under a bequest of railway "shares." *Morrice v. Aylmer* (H.L.), 45 Law J. Rep. Chanc. 614; Law Rep. 7 E. & I. App. 717.

Where a testator bequeathed "all shares in any railway of which he might die possessed, and that might be standing in his name," and died possessed of stock in a certain railway and also of shares in the same railway not fully paid up, which stock and shares were standing in his name at the time of his death,—Held, that both the railway shares and the railway stock passed by the bequest. *Oakes v. Oakes* (9 Hare, 666) overruled. *In re Gibson* (35 Law J. Rep. Chanc. 596; Law Rep. 2 Eq. 669) considered. *Ibid.*

(d) *Bequest of "foreign bonds."*

15.—Where a testatrix bequeathed the foreign bonds, amounting to about 8,000*l.*, which she had purchased:—Held, that colonial bonds which formed part of the amount mentioned did not pass. *Hull v. Hill*, Law Rep. 4 Ch. D. 97.

(e) *Ademption of specific bequest.*

16.—Testator devised and bequeathed his share in an outstanding estate. Before he died he received part of the share in money, most of which could be traced to a particular investment:—Held, that the invested fund passed by the gift. *Morgan v. Thomas*, 46 Law J. Rep. Chanc. 775; Law Rep. 6 Ch. D. 176.

17.—A testator bequeathed 1,000*l.* D stock of the London and North-Western Railway Company, then standing in the names of the trustees of his marriage settlement, and which had been bequeathed to him by his late wife under a power enabling her so to do, contained in the marriage settlement (and which stock it was his intention to have transferred into his name as soon as conveniently could be done) to H. if he should be living at the testator's death. The D stock was redeemed and paid off at par in the life of the testator, and re-invested in the names of the trustees in Lancashire and Yorkshire preference shares, and a cheque for 8*l.* 18*s.*, the balance, was sent to the testator, but was not cashed by him:—Held, that the Lancashire and Yorkshire shares and the 8*l.* 18*s.* did not pass to H. *Le Grice v. Finch* (3 Mer. 50) and *Clark v. Browne* (2 Sm. & G. 524) disapproved. *Harrison v. Jackson*, 47 Law J. Rep. Chanc. 142; Law Rep. 7 Ch. D. 339.

18.—A testator, amongst various specific bequests, gave "1,500*l.* of my Egyptian Nine per

Cent. Bonds" to H., and 500*l.* Egyptian Nine per Cent. Bonds" to L. Before his death he sold his Egyptian Nine per Cent. Bonds, and purchased with the proceeds Khedive Seven per Cent. Bonds:—Held (by Hall, V.C., and not appealed), that the gift of "my" Egyptian Bonds was specific and adeemed, but that the gift of Egyptian Bonds to L. was not specific, and not adeemed. *Macdonald v. Irvine* (App.), 47 Law J. Rep. Chanc. 494; Law Rep. 8 Ch. D. 101.

19.—Testatrix bequeathed all her shares in the Imperial Gas Light and Coke Company. After the date of her will all the testatrix's shares of the above description were, by a statutory scheme of amalgamation of the Imperial and other companies, converted into stock of the Gas Light and Coke Company:—Held, that a provision in the scheme, transferring to the substituted stock the trusts and limitations affecting the old shares, "so as to give effect to and not revoke any testamentary disposition," was effectual to prevent ademption. *In re Loveman. Watson v. Watson*, 48 Law J. Rep. Chanc. 565.

After the amalgamation the testatrix purchased other stock of the Gas Light and Coke Company:—Held, that these also passed by the bequest. *Ibid.*

20.—A testator bequeathed to L. the mortgage of 200*l.* which he had secured to him on certain property. The mortgage having been subsequently paid off, the testator placed the money to a separate account in his name in the bank, and gave L. the pass book:—Held, that the bequest was adeemed, and that L. took nothing. *In re Bridle*, Law Rep. 4 C.P. D. 336.

21.—Where a specific sum of Bank Annuities was appointed among three appointees, under a general power of appointment by will, contained in a marriage settlement, and after the date of the will, part of the fund appointed was sold, and under a power of varying securities contained in the settlement, the produce of the sale was invested in Great Western Stock,—Held, that there was no ademption, and that the appointees under the will took the railway stock in the same proportions as the appointed fund. *In re Johnstone's Settlement*, 49 Law J. Rep. Chanc. 596; Law Rep. 14 Ch. D. 162.

22.—A testator bequeathed to a legatee "all my debentures in the S. P. B. Railway Company." At the date of his will the testator was possessed of ten 5 per cent. debentures of 100*l.* each in the S. P. B. Railway Company. Shortly before his death the debentures fell due, and he accepted in lieu of payment 930*l.* 5½ per cent. perpetual debenture stock in the same company:—Held, that the debenture stock did not pass by the above bequest. *In re Lane. Luard v. Lane*, 49 Law J. Rep. Chanc. 768; Law Rep. 14 Ch. D. 856.

*Charitable legacies.* [See CHARITY, 1-21.]

*Duplicate wills: admission of evidence as to nature of instruments.* [See WILL FORMALITIES, 8.]

*Satisfaction of obligation by legacy.* [See No. 11 *supra*, and PORTIONS, 1.]

*Statute of limitations: express trust.* [See LIMITATIONS, STATUTE OF, 6.]

#### (G) CONTINGENT OR CONDITIONAL LEGACY.

23.—Testator gave legacies charged on the A. estate, not to be paid until his eldest son came into actual possession of the M. estate, which he was entitled to for life after previous life estates, with remainder to his first and other sons in tail male. The eldest son survived his father, but died in the lifetime of a previous tenant for life of the M. estate:—Held, that the legacies never became payable. *Taylor v. Lambert*, 45 Law J. Rep. Chanc. 418; Law Rep. 2 Ch. D. 177.

*Impossible condition: non-compliance with.* [See WILL CONSTRUCTION, O 3.]

*Whether vested or contingent: trust for maintenance.* [See WILL CONSTRUCTION, L 5.]

#### (H) INTEREST ON LEGACY: RIGHT TO.

24.—The presumption that a legacy given by a person *in loco parentis* to an infant on his attaining twenty-one, carries interest by way of maintenance in the meantime, is rebutted if the testator makes any other provision for such maintenance. *In re George* (App.), 47 Law J. Rep. Chanc. 118; Law Rep. 5 Ch. D. 837.

*Charge on real estate: exoneration.* [See ADMINISTRATION, 22.]

### LEGACY DUTY.

[Power to commute legacy or succession duty presumptively payable in certain cases. Discharge of executor from duty on distribution of fund. Relief from duty when whole personal estate less than 100*l*. 43 Vict. c. 14. ss. 11–13.]

Testator gave charitable legacies, to be paid out of pure personalty, and afterwards directed the duties on all legacies to be paid out of residue in exoneration of the legacies:—Held, that the charitable legacies were exonerated from duty only in the proportion to which the residue consisted of pure personalty. *In re Jarman*; *Leavers v. Clayton*, 47 Law J. Rep. Chanc. 675; Law Rep. 8 Ch. D. 584.

*Colonial duties: pecuniary and residuary legacies.* [See COLONIAL LAW, 48–50.]

*Marginal note to holograph will.* [See SCOTCH LAW, 30.]

### LEGITIMACY.

*Evidence of: baptism in India.* [See EVIDENCE, 19.]

*Next of kin: statute of distribution.* [See DISTRIBUTIONS, STATUTE OF.]

### LEGITIMACY DECLARATION ACT.

1.—In a petition filed under the Legitimacy Declaration Act it was set out, in addition to the usual allegations, that the petitioner's father and mother were lawfully married at a certain time and place, and that he was their lawful son, that the petitioner was heir-at-law of his father, and that A. B., his brother, claiming to be the heir-at-law, was illegitimate, and the petition contained a prayer that the petitioner might be declared the lawful heir of his father:—The Court directed the allegations as to the petitioner being the heir-at-law of his father and the prayer founded thereon, and also the allegation as to the illegitimacy of A. B., to be struck out of the petition as irrelevant. *Mansel v. The Attorney-General*, 46 Law J. Rep. P. D. & A. 64; Law Rep. 2 P. D. 265.

2.—In proceedings under the Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), it is not competent for the Court to determine the question of the legitimacy or illegitimacy of any person other than that of the party putting it in motion. A., petitioning under the Legitimacy Declaration Act, for a decree of the Court declaring the validity of the marriage of his parents and his own legitimacy, alleged in his petition a claim to real estate as heir-at-law of his father, the validity of whose marriage he sought to have declared, and sought to have B., his elder brother, who was born before the date of the alleged marriage, cited to see proceedings, on the ground that B. claimed to be heir-at-law of his father, and if so, was entitled, as such heir-at-law, to claim certain real estate in England in remainder under the will of his father in prejudice to the claim of the petitioner. The Court refused to allow the brother to be cited on the ground that he had no interest in disputing the validity of the marriage in question nor the legitimacy of the petitioner, inasmuch as the object of the petitioner was not to establish his own legitimacy, but the illegitimacy of his brother; and the full Court upheld the judgment. A petitioner under the Legitimacy Declaration Act where the petitioner alleges a claim to real estate in England should state in his petition the nature of the claim, but validity of his title cannot be made an issue in the suit. An allegation in the petition that the petitioner claimed to be entitled to real estate as heir-at-law was ordered to be amended by striking out the words "as heir-at-law." The amendment of a petition under the Legitimacy Declaration Act is a matter of pleading, and the Court has power at any time so to mould it as to bring to an issue the matters which are clearly and substantially in litigation between the parties. *Mansel v. The Attorney-General*, 48 Law J. Rep. P. D. & A. 42; Law Rep. 4 P. D. 232.

### LETTERS.

*Assignment by.* [See VOLUNTARY SETTLEMENT, 12.]

*Contract by.* [See CONTRACT, 20, 21; FRAUDS, STATUTE OF, 7.]

*Credit, of.* [See BANKER, 5.]

*Evidence of posting.* [See MINES, 14.]

*Right of solicitor to retain letters.* [See SOLICITOR, 10.]

#### LEVEL CROSSING.

[See RAILWAY, 28.]

#### LEX LOCI.

[See BILL OF EXCHANGE, 7; CONFLICT OF LAWS, 1; MARINE INSURANCE, 12; SHIPPING LAW, B 3.]

*Lex fori or Lex loci.* [See LIMITATIONS, STATUTE OF, 10.]

#### LIBEL.

##### (A) WHAT IS ACTIONABLE.

(a) *Slander of title: construction of letter.*

(b) *Calling man "felon."*

(c) *Act damaging credit.*

##### (B) PRIVILEGED COMMUNICATIONS.

(a) *Evidence of witness in judicial proceeding.*

(b) *Reports of public proceedings.*

(c) *Information acted upon in good faith and without malice.*

(d) *Circular damaging credit of bank.*

(e) *Duty of judge in directing jury.*

##### (C) INJUNCTION TO RESTRAIN LIBEL.

##### (D) PRACTICE AND PLEADING IN ACTIONS FOR LIBEL.

(a) *Setting out words of libel.*

(b) *Staying proceedings.*

(c) *Payment into court and justification: embarrassment.*

(d) *Several plaintiffs.*

##### (E) CRIMINAL INFORMATION.

(a) *Responsibility of newspaper proprietors.*

(b) *Appeal: costs.*

(c) *Jurisdiction of magistrate: evidence of truth of libel.*

#### (A) WHAT IS ACTIONABLE.

(a) *Slander of title: construction of letter.*

1.—The plaintiffs having advertised that they were about to sing at certain music halls at which they had been engaged to sing in public, and that they had the permission of certain music publishers, therein mentioned, to sing any morceaux from their musical publications, the defendant wrote to the proprietors of such music halls letters in which, after referring to such advertisement and expressing a doubt that two of such music publishers had given such unqualified sanction, he stated that he held powers of attorney over certain publications issued by these two publishers as to the sole liberty of public performance, which they never possessed. He also stated that, although he knew it was

quite unintentional on the part of the plaintiffs, the advertisement, if relied upon in every particular by proprietors engaging them, was calculated to lead such proprietors to incur penalties under the Copyright Act. In an action for damages for writing these letters,—Held, that the letters were capable of a construction which was libellous, and ought, therefore, to be submitted to a jury. *Hart v. Wall*, 46 Law J. Rep. C.P. 227; Law Rep. 2 C.P. D. 146.

[And see SLANDER.]

#### (b) Calling man "felon."

2.—In an action of libel for calling plaintiff a "felon," it is no justification to shew that plaintiff has been convicted of felony, without shewing that he actually committed the felony. And per Brett, L.J., and Cotton, L.J., it must also be shewn that the plaintiff has not undergone the punishment awarded to him for his offence, so as to be purged therefrom. *Leyman v. Latimer* (App.), 47 Law J. Rep. Exch. 470; Law Rep. 3 Ex. D. 352; on appeal from the Exchequer Division, 46 Law J. Rep. Exch. 765; Law Rep. 3 Ex. D. 15.

#### (c) Act damaging credit.

3.—The delivery to another for service of a notice requiring a trader to make an assignment for the benefit of his creditors under the Canadian Insolvent Act, 1869 (32 & 33 Vict. c. 16), s. 14, is not ground for an action of libel except upon proof of express malice. *The Bank of British North America v. Strong* (P.C.), Law Rep. 1 App. Cas. 307.

[And see No. 11 infra.]

*Adjoining estates: use of same name.* [See INJUNCTION, 15.]

*Removal of officer from army.* [See CROWN, 8.]

#### (B) PRIVILEGED COMMUNICATIONS.

(a) *Evidence of witness in judicial proceeding.*

4.—A military man giving evidence before a military Court of enquiry which has no power to administer an oath, is entitled to the same protection as that enjoyed by a witness on oath in an ordinary judicial proceeding. *Darwins v. Rokoby* (H.L.), 45 Law J. Rep. Q.B. 8; Law Rep. 7 E. & I. App. 744.

No evidence, whether written or oral, given by him in the course of the enquiry and relative to the enquiry, can be made the foundation of an action at law, however strong the presumption may be that such evidence was not only untrue, but was also known to be untrue by him who gave it, or even that it was dictated by malice. For the correctness of this presumption must always be a question until resolved by a jury, and public policy requires that witnesses should give their evidence freely and openly, and without fear of being harassed by a civil action on an allegation, whether true or false, that they have spoken from malice. *Ibid.*

Where a witness before such a Court handed

in a written statement voluntarily and unasked, after his examination was concluded,—Held, that evidence that the statements contained in such paper were untrue and were made maliciously, was inadmissible. *Ibid*.

5.—No action will lie for defamatory words spoken by a witness in the course of his evidence in a judicial proceeding. *Seaman v. Netherclift* (App.), 46 Law J. Rep. C.P. 128; Law Rep. 2 C.P. D. 53.

In a case of *D. v. M.*, one N., an expert in handwriting, gave evidence that the signature to a disputed will was a forgery, in opposition to strong direct testimony. The jury found in favour of the will, and the presiding Judge commented strongly on N.'s obstinacy. Afterwards in a preliminary enquiry before a magistrate in a case of alleged forgery, N. gave evidence in favour of the genuineness of the document alleged to have been forged. Thereupon he was asked in cross-examination, "Did you give evidence in the case of *D. v. M.*?" He answered "Yes;" and was asked, "Did you read the remarks of Sir J. H. (the presiding Judge) on your evidence in that case?" He answered "Yes." N. then said that he wished to make a statement about the case of *D. v. M.* The presiding magistrate tried to stop him, but he persisted and said, "I believe that will be a rank forgery, and shall believe so till the day of my death." In an action for slander by the attesting witness to the will referred to,—Held (affirming the decision below, 45 Law J. Rep. C.P. 798), that the words were spoken by the defendant in his character of witness, and had relation to the judicial proceeding at which they were used, and that, therefore, such words were absolutely privileged, and not actionable even if express malice were proved. *Ibid*.

(b) *Reports of public proceedings.*

6.—In an action against a newspaper for libel in publishing an *ex parte* statement, made at a meeting of a board of guardians, and a conversation thereon, defamatory of the plaintiff as medical officer of a union,—Held (on appeal from the Common Pleas Division, Law Rep. 1 C.P. D. 781), that although the subject-matter of the libel was of public interest, and the report a fair report without malice, yet the occasion was not privileged; for a meeting of a board of guardians is not necessarily a public meeting; and if public, is not of such importance as to bring the publication of its debates under the rule which applies to judicial proceedings and debates in Parliament. *Purcell v. Sonler* (App.), 46 Law J. Rep. C.P. 308; Law Rep. 2 C.P. D. 215.

7.—The rule that the publication of a fair and correct report of proceedings taking place in a public Court of Justice is privileged extends to proceedings taking place publicly before a magistrate, though such proceedings consist of an *ex parte* application for a criminal summons, terminating in the refusal by the magis-

trate to proceed with the charge on the ground that on the facts stated he had no jurisdiction. *Unill v. Hales*, 47 Law J. Rep. C.P. 323; Law Rep. 3 C.P. D. 319.

Three men who had been employed by the plaintiff, a civil engineer, in the construction of a railway, applied to a magistrate in open Court for criminal process against the plaintiff, alleging, that as they had not been paid their wages, while the plaintiff had been paid, they considered he had been guilty of a criminal offence in withholding their money. The magistrate refused the summons considering that he had no jurisdiction. The defendants afterwards published a report of the proceedings which the jury found was a fair and correct report of what occurred:—Held, that the report was privileged. *Ibid*.

8.—A fair report of a trial, whether published in a newspaper or a pamphlet, is privileged; but it lies on him who sets up the privilege to shew that he comes within it. It is sufficient if such a report is a fair abstract of the trial; but where there is any evidence on which a jury could reasonably find that the report was not absolutely fair, the question of fairness must be left to them. *Milnerich v. Lloyds* (App.), 46 Law J. Rep. C.P. 404.

9.—The defendant, a solicitor, conducted a case in a County Court, and sent a report of the proceedings containing matter defamatory of the plaintiff to several newspapers for publication. In an action for libel the jury found that the report was a fair one, but sent with malice:—Held (affirming the judgment of Cockburn, C.J.), that no absolute privilege attached to the publication of a report, though a fair one, of proceedings in a Court of justice, and that the defendant, having been actuated by malice in sending the report, was liable in the action. *Stevens v. Sampson* (App.), 49 Law J. Rep. Exch. 120; Law Rep. 5 Ex. D. 53.

(c) *Information acted upon in good faith and without malice.*

10.—The declaration stated that the plaintiff was employed as master of a ship insured by the defendant, and that the defendant refused to continue such insurance if the plaintiff was placed in command, whereby the plaintiff lost his employment. Plea, that the defendant acted in good faith and without malice, and in the belief that certain information was true:—Held, that such plea, if proved, was a good defence to the action. *Hamon v. Falle*, 48 Law J. Rep. P.C. 45; Law Rep. 4 App. Cas. 247.

(d) *Circular damaging credit of bank.*

11.—The defendants were brewers, and had been accustomed to receive, in payment for beer supplied to a number of their tenants in Sussex, cheques drawn upon different branches of the plaintiffs' bank. A dispute arose between the defendants and the manager of the plaintiffs' branch bank at Chichester, through the latter

refusing to cash cheques for the defendants drawn upon any other of the branch banks, and the defendants thereupon sent round to the tenants a printed circular in the following terms: "Messrs. H. & Sons hereby give notice that they will not receive in payment cheques drawn on any of the branches of the Capital and Counties Bank." In an action for libel the statement of claim set out the circular with the innuendo, "meaning thereby that the plaintiffs were not to be relied upon to meet the cheques drawn upon them, and that their position was such that they were not to be trusted to cash the cheques of their customers." At the trial evidence was given that the plaintiffs incurred a loss through the issue of the circular, and that the defendants, on being informed of it, took no steps to prevent the loss increasing. The case was left to the jury, who, being unable to agree, were discharged without a verdict.—Held (by the Common Pleas Division, on motion to enter judgment for the defendants), that the circular was capable of the defamatory meaning suggested by the innuendo; that there was evidence for the jury that it had that meaning; that, assuming the publication of it to be privileged, there was evidence for the jury of express malice on the part of the defendants, and therefore that the case was rightly left to the jury. Held (by the Court of Appeal—Brett, L.J., and Cotton, L.J.; Theisger, L.J., dissenting), that the circular, according to the ordinary or primary meaning of the language, could not reasonably be read as defamatory of the plaintiffs; that there was no evidence upon which the jury could reasonably find that it had any secondary meaning defamatory of the plaintiffs; that the publication of it was privileged, and there was no evidence of express malice on the defendants' part to destroy the privilege; and therefore that the defendants were entitled to judgment. Judgment of the Common Pleas Division reversed. *The Capital and Counties Bank v. Henty* (App.), 49 Law J. Rep. C.P. 830; Law Rep. 5 C.P. D. 514.

(c) *Duty of judge in directing jury.*

12.—In an action of defamation, where the Judge has ruled that the occasion on which the defamatory matter was published is a privileged one, it is his duty to direct the jury.—That unless they are satisfied that the defendant did not use the occasion for the reason which conferred the privilege, but for some indirect reason or motive, they must find for the defendant.—That the burden of proof of the existence of such indirect reason or motive is on the plaintiff.—That where the direct motive suggested by the plaintiff is malice, he must shew the existence of actual malice—that is, a wrong feeling; and it is not enough to shew that the defendant acted unreasonably, or without just cause or excuse. *Clark v. Molyneux* (App.), 47 Law J. Rep. Q.B. 230; Law Rep. 3 Q.B. D. 237.

A defamatory communication made by a

clergyman to his curate, for the purpose of obtaining his advice as to the course to be pursued by him in an ecclesiastical matter, is privileged.—So held per Brett, L.J., and Cotton, L.J., *dubitante* Bramwell, L.J. *Ibid.*

(C) INJUNCTION TO RESTRAIN LIBEL.

13.—The jurisdiction of the Court of Chancery to restrain libel as injurious to property has been enlarged by the Judicature Act, 1873. And semble—that *The Prudential Assurance Company v. Knott* (44 Law J. Rep. Chanc. 192) is no longer binding. *Thorley's Cattle Food Company (Lim.) v. Massam*, 46 Law J. Rep. Chanc. 713; Law Rep. 6 Ch. D. 582.

14.—The Court has jurisdiction to grant an injunction to restrain a defendant from publishing matter, which a jury have found to be libellous, to the injury of the plaintiffs' trade. *The Prudential Assurance Company v. Knott* (44 Law J. Rep. Chanc. 192; Law Rep. 10 Chanc. 142) and *Thorley's Cattle Food Company v. Massam* (46 Law J. Rep. Chanc. 713; Law Rep. 6 Ch. D. 582) considered. *Saaby v. Easterbrook*, Law Rep. 3 C.P. D. 339.

15.—The issues of fact in an action to restrain the publication of a trade libel may be tried before a Judge alone. An injunction was granted restraining the circulation of a trade letter which imputed that the plaintiffs' goods were spurious, and it was held not necessary to prove actual damage. *Thomas v. Williams*, 49 Law J. Rep. Chanc. 605; Law Rep. 14 Ch. D. 864.

(D) PRACTICE AND PLEADING IN ACTIONS FOR LIBEL.

(a) *Setting out words of libel.*

16.—Notwithstanding Order XIX. rules 4 and 24, the precise words alleged to be libellous must be set out in a statement of claim for libel. *Harris v. Warre*, 48 Law J. Rep. C.P. 310; Law Rep. 4 C.P. D. 215.

(b) *Staying proceedings.*

17.—The plaintiff brought three actions, charging in each that the defendant conspired with other persons to make a false and malicious representation to the Commander-in-Chief that he, the plaintiff, was unfit to command his regiment. The defendants did not plead, but took out a summons to stay proceedings on affidavits stating that some years ago they were respectively members of a military Court of Enquiry, and that the actions were brought solely in respect of official and judicial acts done by them as members of the Court, and that until they were appointed members of the Court they knew nothing of the plaintiff. These statements being uncontradicted, the Court ordered all the proceedings to be stayed. *Damkins v. Prince Edward of Saxe-Weimar: Same v. Wynyard; Same v. Stephenson*, 46 Law J. Rep. Q.B. 567; Law Rep. 1 Q.B. D. 499.

(c) *Payment into court and justification: embarrassment.*

18.—In an action for libel the defendants pleaded denial and justification of the libel without the innuendo, and pleaded alternatively an apology and payment into Court of 40s. as amends:—Held (reversing the judgment of the Queen's Bench Division, 49 Law J. Rep. Q.B. 207; Law Rep. 5 Q.B. D. 22), that these defences could be pleaded together, and that they were not embarrassing so as to be liable to be struck out under Order XXVII. rule 1 of the Rules of Court. *Hawksley v. Bradshaw* (App.), 49 Law J. Rep. Q.B. 333; Law Rep. 5 Q.B. D. 302.

(d) *Several plaintiffs.*

19.—Under Order XVI. rule 1 an action of libel may be brought by two or more persons jointly, although they are not in partnership or otherwise jointly interested. Where in such a joint action a single verdict of 40s. had been returned for the plaintiffs, the Court of Appeal refused to disturb the verdict on the motion of the defendant. *Booth v. Briscoe*, Law Rep. 2 Q.B. D. 496.

*Discovery in action for.* [See PRACTICE, P 11, 13, 14.]

(E) CRIMINAL INFORMATION.

(a) *Responsibility of newspaper proprietors.*

20.—On the trial of a criminal information for libel it was proved on the part of the defendants, proprietors of a newspaper, that they had appointed a competent editor to undertake the literary management of the paper, and that the article in question was inserted by him without their knowledge, and without any specific authority or consent of theirs; and it was sought upon such evidence to raise a defence under section 7 of Lord Campbell's Act (6 & 7 Vict. c. 96). The learned judge having ruled that upon proof of the general authority of the editor who had inserted the article, it was not open to the defendants to claim the protection of the statute, and having thereupon directed a verdict of guilty,—Held (by Cockburn, L.C.J., and Lush, J., *dissentiente* Mellor, J.), that a new trial ought to be had on the ground that the section did apply to the case of a libel published by an editor having admittedly general authority; and that it was a question which ought to have been left to the jury whether within the words of exemption in that section the defendants were criminally responsible for his act. *Reg. v. Holbrook*, 47 Law J. Rep. Q.B. 35; Law Rep. 3 Q.B. D. 60.

21.—On the trial of a criminal information for libel, it was proved that the defendants, proprietors of a newspaper, had appointed an editor to undertake the literary management of the paper, and given him general authority and discretion as to the insertion of articles therein, and that the article in question was inserted by him without their knowledge, and without any

specific authority or consent from them. The Judge left to the jury the question whether the general authority to the editor included an authority to publish the libel, and a jury found the defendants guilty. Upon motion for a new trial on the ground of misdirection, and that the verdict was against evidence,—Held (by Cockburn, L.C.J., and Lush, J., *dissentiente* Mellor, J.), that, inasmuch as the "authority" mentioned in section 7 of 6 & 7 Vict. c. 96, means authority to publish the libel, and as the general authority to an editor to conduct a newspaper must, in the absence of anything to give it a different character, be taken to mean authority to conduct it according to law, the direction of the Judge was defective in not so explaining the law to the jury as bearing on the question left to them; and that the general authority given to the editor to use his discretion in the insertion of articles was not of itself sufficient to make the defendants criminally responsible as being evidence that the publication had been made with their authority, consent or knowledge within section 7 of 6 & 7 Vict. c. 96. *Reg. v. Holbrook*, 48 Law J. Rep. Q.B. 113; Law Rep. 4 Q.B. D. 42.

(b) *Appeal: costs.*

22.—Upon the trial of a criminal information for a defamatory libel the defendant obtained a verdict, whereupon the Master on taxation allowed him the costs which he had incurred in shewing cause unsuccessfully against the rule *nisi* for filing the information, under 6 & 7 Vict. c. 96. s. 8, which enacts that "in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information:—Held (by Mellor, J., and Lush, J., *Blackburn, J., dubitante*), that the allowance was properly made. The intention of the statute was to indemnify the defendant in respect of all costs incurred by him, and those of unsuccessfully shewing cause against the rule for the filing of the criminal information are included under the words "sustained by reason of such information." *Reg. v. Steel*, 45 Law J. Rep. Q.B. 391; Law Rep. 1 Q.B. D. 482. *Reg. v. Cavendish* (12 Irish Law Rep. 230) not followed. *Ibid.*

23.—The effect of section 47 of the Judicature Act, 1873, explained by section 19 of the Act of 1875, is to prohibit appeals not only from the Court of Criminal Appeal, but also in all criminal matters and proceedings in the High Court. *Reg. v. Steel* (App.), 46 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. D. 27.

The taxation of costs allowed to a successful defendant in a criminal information for libel is a "proceeding in a criminal cause" within the meaning of the above sections, and, therefore, no appeal lies from an order of the Queen's Bench Division as to such taxation. *Ibid.*

*(c) Jurisdiction of magistrate: evidence of truth of libel.*

24.—On the hearing before a magistrate of an information under section 5 of Lord Campbell's Act (6 & 7 Vict. c. 96) for maliciously publishing a defamatory libel, the magistrate has no jurisdiction to receive evidence, whether on cross-examination of the plaintiff's witnesses or on the direct testimony of witnesses called by the accused, to prove the truth of the libellous matter charged, on the ground that the truth is not in issue before him, and cannot at that stage constitute any defence. *Reg. v. Carden*, 49 Law J. Rep. M.C. 1; Law Rep. 5 Q.B. D. 1.

## LIBRARIES.

[The Public Libraries Acts amended. 40 & 41 Vict. c. 54.]

## LICENCE.

*Copyright, assignment of: writing.* [See COPYRIGHT, 18.]

*Keeping carriage without.* [See CARRIAGE.]

*Patent: licensee cannot question validity.* [See PATENT, 16, 18.]

## LICENSING ACTS.

[See ALMHOUSE.]

## LIEN.

*Agent, of, on goods.* [See PRINCIPAL AND AGENT, 25.]

*Banker's, on shares standing in name of partner.* [See BANKRUPTCY, D 26.]

*Broker's, on policy of marine insurance.* [See MARINE INSURANCE, 27.]

*Factor: extent of lien.* [See BANKRUPTCY FACTORS' ACTS, 2.]

*Innkeeper, of.* [See INNKEEPER, 4.]

*Packer, of, on goods.* [See PACKER.]

*Partnership assets, on, where partnership induced by fraud.* [See PARTNERSHIP, 22.]

*Ship or cargo, on.* [See SHIPPING LAW, M.]

*Solicitor, of, for costs.* [See SOLICITOR, 25-48.]

*Trustee: beneficial interest of trustee committing breach of trust.* [See TRUST, C 5.]

*Unpaid vendors.* [See RAILWAY, 29; SALE OF GOODS, 22-25; VENDOR AND PURCHASER, 32, 33.]

*Unsettled property: agreement for settlement.* [See PRACTICE, B 64.]

*Warehouse charges, for.* [See TRADE MARK, 29.]

## LIFE ASSURANCE COMPANIES ACT, 1872.

[See INSURANCE, 8.]

## LIFE ESTATE.

[See TENANT FOR LIFE.]

*By implication.* [See WILL CONSTRUCTION, I 15.]

*Equity to a settlement.* [See HUSBAND AND WIFE, 18.]

## LIFE INSURANCE.

[See INSURANCE, 1-12.]

## LIFE SALVAGE.

[See SHIPPING LAW, T 4, 5.]

## LIGHT AND AIR.

## (A) ACQUISITION AND ABANDONMENT OF RIGHT TO.

(a) *Implied grant: unity of ownership.*

(b) *Prescription Act.*

(1) "Consent or agreement in writing."

(2) *Abandonment.*

(c) *Suspension of easement.*

(d) *Loss of easement.*

## (B) INFRINGEMENT OF RIGHT TO.

(a) *Right to injunction or damages.*

(b) *Measure of damages: right not limited by actual user.*

## (C) CONSTRUCTIVE NOTICE OF RIGHT TO.

## (A) ACQUISITION AND ABANDONMENT OF RIGHT TO.

(a) *Implied grant: unity of ownership.*

[See EASEMENT, 3, 4.]

(b) *Prescription Act.*

(1) "Consent or agreement in writing."

1.—Agreement in writing dated 1814, whereby K., the owner in fee of a house at W., who had put out four windows overlooking the adjoining house of S., declared that "these windows were put out and remained upon the leave or indulgence of S., and that he (K.) would at the request of S., his heirs or assigns, wall and block up the same, and in the meantime, until such request was made, he thereby promised to pay to S., his heirs and assigns, the sum of sixpence yearly, to commence from the day of the date of the said agreement, in consideration of such indulgence." This document was signed by K. only. The rent of sixpence had been admittedly paid up to the year 1854, and the Court, upon the evidence adduced, was satisfied that the rent had been paid up to 1859, being within twenty years from the commencement of the action. K. had devised the house to his widow in fee, who



devised it to trustees upon trust for sale, and they on her death sold it, when the plaintiff's father purchased it with full notice of the agreement. He dying intestate, the house became the property of the plaintiff as his heir-at-law. The defendants, who now represented S., obstructed the four windows mentioned in the agreement, and the plaintiff brought an action claiming a mandatory injunction to restrain the defendants from obstructing the access of air and light to the windows, and to remove an existing obstruction, and claiming damages:—Held (affirming the decision of Hall, V.C., 49 Law J. Rep. Chanc. 6), that the agreement, although signed by the licensee only, was a sufficient consent and agreement in writing within the terms of the third section of the Prescription Act; that it was not limited to the life of the licensee, but was binding on his successors in title. *Bewley v. Atkinson* (App.), 49 Law J. Rep. Chanc. 153; Law Rep. 13 Ch. D. 283.

An agreement for valuable consideration with reference to the windows of a house is as much enforceable in equity as any other agreement with respect to real property. *Ibid.*

Per Thesiger, L.J.—The principle upon which written entries of a deceased person are admissible in evidence is this, that in the interest of justice where a person who might have proved important material facts in an action is dead, his statements before death relating to that fact are admissible, provided that there is a sufficient guarantee that the statements made by him are true; and it is properly considered that when the statements made by a person were against his interest, those statements in the general run of cases are true. Nor is there any distinction between the written entries of such a deceased person, under such circumstances, and his verbal declarations, although the evidence adduced to prove mere verbal declarations must of course be more carefully watched. *Ibid.*

## (2) Abandonment.

2.—The right acquired under the Prescription Act to the access of light is a right to the light coming through a certain space over the servient tenement. Therefore the putting back of an ancient light in parallel lines or so as to be in a plane inclined to the original plane does not amount to an abandonment. *The National and Provincial Plate Glass Company v. The Prudential Insurance Company*, 46 Law J. Rep. Chanc. 871; Law Rep. 6 Ch. D. 757.

## (c) Suspension of easement.

3.—Where a building with ancient lights has been pulled down, and the actual enjoyment of that easement (though not the easement itself) has been in consequence suspended, the owner of the building can apply to the Court to restrain an erection which would interfere with the easement, when the Court is satisfied that he is about to restore the building with its ancient

light. Accordingly, when under their Act and Order in Council a church has been vested in the Ecclesiastical Commissioners upon trust to pull it down and sell the materials and site, and the church had been taken down, the commissioners were held entitled to an injunction, restraining the defendant from erecting a building which would necessarily interfere with the access of light to windows to be erected in the same position as those of the church which had been pulled down, and the fact that there were no windows then existing did not at all interfere with their right to such injunction, there being no intention of abandonment of the right to light. The Ecclesiastical Commissioners, as owners in fee-simple of a church which they have under an order pulled down, are not in a different position from any other owner, and can give to a purchaser from them exactly the same rights which he would have had if he had bought the building as it stood. *The Ecclesiastical Commissioners for England v. Kino* (App.), 49 Law J. Rep. Chanc. 529; Law Rep. 14 Ch. D. 213.

Semble, there is no legal impossibility in a grant or a covenant by a rector to or with the churchwardens on behalf of the parish, if made with the proper consents, that the church shall have a perpetual right to access of air and light to its windows over the glebe. In cases of obstruction to light the rule of the angle of forty-five degrees is only to be used as a test in the absence of any other mode of arriving at a conclusion; it is no rule or presumption of law. *Ibid.*

The angle of forty-five degrees is not taken from the windows, but from the top of one house to the level of the street on the other side. An undertaking given by a defendant to pull down if his works should interfere with the plaintiff's access of light should always be rigorously enforced. *Ibid.*

## (d) Loss of easement.

4.—In 1868 three cottages, containing ancient lights, were pulled down, and a large warehouse built on their site, containing three large windows. There was no evidence on which the Court could rely as to the position of the windows in the cottages, though it was admitted that small parts of the new windows might occupy portions of space through which light was admitted to the cottages:—Held, that in the absence of evidence as to the position of the ancient lights, the easement was lost as to the new building. *Fowlers v. Walker*, 49 Law J. Rep. Chanc. 598.

## (B) INFRINGEMENT OF RIGHT TO.

### (a) Right to injunction or damages.

5.—E., the owner of houses on both sides of a street, sold the houses on one side to the defendants by a general conveyance, which purported to convey the wall of E.'s premises. The

defendants pulled down the houses so purchased, and erected large buildings in place of them, thereby obstructing the flow of light to the windows of E.:—Held, that although before the conveyance E. had an absolute and indefeasible right to the light, yet he could not maintain an action against the defendants for obstruction of his ancient lights as the defendants were not guilty of wrongful obstruction. *Ellis v. The Manchester Carriage Company*, Law Rep. 2 C.P. D. 13.

6.—As a general rule, in the absence of special circumstances, the owner of a house in a narrow street will be restrained from raising it to a height which will obstruct the access of light below the angle of forty-five degrees to ancient windows opposite. *Hackett v. Baiss*, 45 Law J. Rep. Chanc. 13; Law Rep. 20 Eq. 494; and *Theed v. Debenham*, Law Rep. 2 Ch. D. 165.

7.—Where a reversioner who sued for an injunction to restrain buildings so as to obstruct access of light, failed to prove substantial damage, the Court refused to direct any enquiry as to damages. *Kino v. Rudkin*, 46 Law J. Rep. Chanc. 807; Law Rep. 6 Ch. D. 160.

8.—Damages were given in respect of an obstruction of access of air to a slaughterhouse which had been used for upwards of thirty years on the ground of implied covenant. *Hall v. The Lichfield Brewery Company*, 49 Law J. Rep. Chanc. 655.

*Angle of forty-five degrees.* [See No. 3 supra.]

(b) *Measure of damages: right not limited by actual user.*

9.—Where the access of light to ancient windows is interfered with, the measure of damages is the diminished value of the premises, having regard to any purpose to which they may reasonably be put. The right of the owner of the dominant tenement is to the quantum of light which has always entered the windows, without reference to the purpose for which it has been used. *Martin v. Goble* (1 Campb. 322) dissented from. *Moore v. Hall*, 47 Law J. Rep. Q.B. 334; Law Rep. 3 Q.B. D. 178.

#### (C) CONSTRUCTIVE NOTICE OF RIGHT TO.

10.—The mere physical fact of the existence of a window overlooking land does not put the purchaser of that land upon enquiry as to whether the window is privileged or not. *Allen v. Seckham* (App.), 48 Law J. Rep. Chanc. 611; Law Rep. 11 Ch. D. 790, reversing the Court below, 47 Law J. Rep. Chanc. 742.

Where, therefore, an agreement between adjacent owners provided for enjoyment of a certain window without obstruction,—Held, that a purchaser for value of the servient tenement, without notice of the agreement, but knowing of the existence of the window, was not bound by the agreement. *Dictum* of Chelmsford, L.C., in *Miles v. Tobin* (16 W. R.

465), that a window challenges enquiry whether it is privileged or not, disapproved of. *Ibid.*

#### LIGHTHOUSE.

[Reduction of local light dues. 39 & 40 Vict. c. 27.]

[Provisions as to expenses incurred by lighthouse authorities, &c. 43 & 44 Vict. c. 23. ss. 5-7.]

#### LIMITATION OF LIABILITY.

[And see SHIPPING LAW, E 21-25.]

The defendants admitted liability in respect of damage to property and loss of life, but no claim had been asserted in respect of loss of life. The Court ordered all proceedings against the ship to be stayed upon the defendants paying in the value of the ship at the rate of 8*l.* per ton, and giving bail for the rest of the value at 15*l.* per ton. *The Clutha*, 45 Law J. Rep. P. D. & A. 108.

#### LIMITATIONS, STATUTE OF.

##### (A) WHEN STATUTE OPERATES AS A BAR.

- (a) *Recovery of land.*
- (b) *Land in Jamaica.*
- (c) *Express trust.*
- (d) *Arrears of rent.*
- (e) *Specialty debt contracted in India.*
- (f) *Balance consisting of several items.*
- (g) *Arrears of interest.*
- (h) *Partnership action.*
- (i) *Bribe to director: concealed fraud.*

##### (B) WHEN STATUTE BEGINS TO RUN.

- (a) *Lease by hospital.*
- (b) *Renewable leaseholds: reversioner.*
- (c) *Abstraction of minerals.*
- (d) *Promissory note payable three months after demand.*

##### (C) HOW BARRED.

- (a) *Acknowledgment of debt: promise to pay.*
- (b) *Part payment by partner.*
- (c) *Mortgagee in possession: bankruptcy of mortgagee.*

##### (D) PLEADING STATUTE.

##### (A) WHEN STATUTE OPERATES AS A BAR.

###### (a) *Recovery of land.*

1.—The Statute of Limitations (3 & 4 Will. 4. c. 27) fixes, by s. 2, twenty years as the limit within which a claimant can sue to recover land; but provides, by s. 29, that deans and other ecclesiastical corporations sole may do so within sixty years. By 3 & 4 Vict. c. 113. s. 57, the Ecclesiastical Commissioners are to have, for the purpose of recovering lands vested in them as successors to ecclesiastical corporations sole, all the rights and powers which belong to those to whose estates they have succeeded. Certain decanal estates vested in the commis-

sioners in 1854; in 1877 they sued to recover possession of part of these estates from the defendant who had been in possession adversely to the plaintiffs for more than twenty and less than sixty years.—Held (by the Court of Appeal, 48 Law J. Rep. Q.B. 152; Law Rep. 4 Q.B. D. 63), that the claim of the plaintiffs was barred, the Statute of Limitations being a restrictive and not an enabling statute; that the rights of plaintiffs to sue to recover land are defined by section 2 of the Statute of Limitations; and that they cannot sue for this purpose after the lapse of twenty years, although those to whose estates they succeed could have done so within sixty years. On appeal to the House of Lords:—Held (by Lord Selborne, L.C., and Lord Watson, *dissentiente* Lord Blackburn), that the Ecclesiastical Commissioners had, for the purpose of obtaining possession of the lands transferred to them, the right to bring an action at any time within which an incumbent of the deanery might have brought it if no transfer had taken place. Held (by Lord Blackburn), that the words in 3 & 4 Vict. c. 113. s. 57, being merely general, and containing no reference to the Statute of Limitations, do not give the commissioners the right to the extended period for bringing an action allowed to corporations sole. *The Ecclesiastical Commissioners for England v. Rowe*, 49 Law J. Rep. Q.B. 771; Law Rep. 5 App. Cas. 736.

2.—A cavity under the defendant's ground had been used for more than twenty years as a cellar for the plaintiff's house:—Held, that the plaintiff had a good title to the cellar. *Rains v. Burton*, 49 Law J. Rep. Chanc. 473; Law Rep. 14 Ch. D. 537.

3.—Commissioners, under the authority of a local Act, erected a town-hall at B., and afterwards by a subsequent Act passed in 1850, they purchased an estate called the P. estate. By this Act of 1850 the said commissioners were empowered to sell and convey such estate, provided that no such sale should be without the consent of the inhabitants of the parish in vestry assembled. From the time of the erection of the town-hall until 1853, the guardians of the poor of B. had the use of portions of the town-hall for offices, and in 1853 they removed to a part of the P. estate, which by arrangement with the said commissioners they were to be permitted to have for their permanent use in lieu of their offices in the town-hall. The said guardians laid out money in rendering this part of the estate suitable for their offices, and they used the same as such from that time until November, 1879, without paying any rent or giving any acknowledgment in writing of the title of the commissioners or of the plaintiffs, to whom the property of the said commissioners was transferred by statute in 1855. In March, 1863, the plaintiffs wrote to the said guardians for an acknowledgment in writing that they held the offices from the plaintiffs on sufferance, but the guardians refused to give such acknowledgment. In an action brought in November, 1879,

by the plaintiffs against the guardians to recover possession of the said offices,—Held, that under the above circumstances the plaintiffs had been out of possession for more than twelve years, and were barred by the Statute of Limitations. Held also, that the statutory prohibition against alienation without the consent of the inhabitants in vestry did not prevent the plaintiffs from being so barred by the Statute of Limitations. *The Mayor, &c., of Brighton v. The Guardians of the Poor of Brighton*, 49 Law J. Rep. C.P. 648; Law Rep. 5 C.P. D. 368.

3 & 4 Will. 4. c. 27, ss. 8, 34: *non-payment of rent for twenty years: lease of dissenting chapel.* [See CHARITY, 25.]

#### (b) Land in Jamaica.

4.—An annuity charged by will on an estate in Jamaica fell into arrear through the estate proving unproductive, and eleven years' arrears were due to the annuitant at her death. Seventeen years after her death rents were received from the estate:—Held, that the Statute of Limitations (3 & 4 Will. 4. c. 27) did not apply to Jamaica, and that the rents so received were applicable towards payment of the arrears. *Pitt v. Dacre*, 48 Law J. Rep. Chanc. 796; Law Rep. 3 Ch. D. 295.

#### (c) Express trust.

5.—A testator after creating certain trusts and giving legacies, bequeathed *inter alia* land called Seskin Ryan to his son L., and other lands to other sons, J. and S., and directed that all the "said bequests shall stand and hold good to L., J. and S., only on condition of well and truly paying the several legacies herein directed, and discharging with fidelity the different trusts of this will committed to them:—Held, that the will did not create a trust with regard to the lands of Seskin Ryan, for payment out of them of an annuity. *Cunningham v. Ffote* (H.L. Ir.), Law Rep. 3 App. Cas. 974.

6.—Where a beneficiary has allowed a very long time to elapse without attempting to enforce an express trust, equity will when enforcing the trust apply the principle of the Statute of Limitations, so far as regards interest. *Thomson v. Eastwood* (H.L. Ir.), Law Rep. 2 App. Cas. 215.

7.—A testator by will, in 1807, appointed O. E. his executor, "to be trustee for the following legacies." He then gave certain legacies, and proceeded as follows: "Considering that money will be more essential to my brother, S. E., than a distant possession of land, I bequeath to S. E. during his life the interest of 3,000*l.*, and after his death to his eldest son, T. E., by his last wife Margaret, till he attains twenty-one, and then to obtain the principal. I order that my youngest brother, C. E., shall be liable to all my lawful debts of every description, and pay them so soon as he can, and also pay my legacies when regularly due, and all expenses, &c.; and to enable him to do all

this I bequeath unconditionally to him all my estates and landed property, with all emoluments belonging to them in the county of A.:"—Held, that the will created an express trust, so as to take the case out of the Statute of Limitations; but in consequence of delay in taking the proceedings interest was allowed on the legacy for six years only. *Thomson v. Eastwood* (H.L.), Law Rep. 2 App. Cas. 216.

8.—A mortgagee of an equitable life interest in leaseholds was put in receipt of the rents during the mortgagor's lifetime, by order of the Court, in an administration suit. The mortgagor disappeared, and was absent more than seven years, the mortgagee remaining in possession. The Court having assumed (affirming the decision of Hall, V.C.), that the mortgagor must be presumed to be dead, and that on the facts her death must be taken to have happened shortly after her disappearance,—Held (overruling the decision of Hall, V.C.), that the mortgagee occupied no fiduciary position towards the persons entitled in remainder; but that the remaindermen had been guilty of no *laches* in not disturbing the mortgagee's possession before the end of the seven years, and that, therefore (in analogy to the legal remedy), an account of the rents received should be directed for the period of six years from the presentation of the remaindermen's petition claiming an account, and not merely from the presentation of the petition. *Hickman v. Upsall* (App.), 46 Law J. Rep. Chanc. 245; Law Rep. 2 Ch. D. 617.

The rule that where an account in equity is directed against a person in receipt of rents without any title to the same, the account will be taken only from the time the proceedings were commenced, does not apply where there has been no *laches* on the part of the person really entitled. *Ibid.*

*Mortgage in form of conveyance on trust.* [See MORTGAGE, 5.]

#### (d) Arrears of rent.

9.—To bring a person rightfully entitled to a rent within section 3 of the Statute of Limitations, 3 & 4 Will. 4. c. 27, so as to divest him of his rights, there must be a discontinuance of the receipt by him, either by not applying for payment, or omitting to enforce his remedies with knowledge that the payment has not been made. *Adnam v. The Earl of Sandwich*, 46 Law J. Rep. Q.B. 612; Law Rep. 2 Q.B. D. 485.

In 1812 certain lands, subject to a fee farm rent, were sold by C. to E., and subsequently became vested in the plaintiffs. From 1812 to 1872 C. and his successors in title continued regularly to pay the fee farm rent, notwithstanding that they had ceased to hold any of the lands out of which the rent issued. During this time neither the defendant nor his predecessors had any notice that C. had parted with his interest in the lands by the sale in 1812. In 1872 the successors of C. declined to continue payment of the rent in question, and the defen-

dant in 1874 applied to the plaintiff, the then owner, for the two years' arrears. The plaintiff declined to pay the rent, and denied her liability to do so. Accordingly a distress was levied, whereupon the plaintiff replevied and brought an action, alleging that the receipt of the rent having been discontinued for more than twenty years, the defendant's title to the rent was barred by 3 & 4 Will. 4. c. 27, ss. 2, 3:—Held, that the defendant was entitled to judgment, on the ground that there had been no discontinuance of the receipt of the rent within the meaning of the statute; and also, because, on the above facts, the fair presumption was that the continual payment had been made by C. and his successors under some arrangement entered into at the time of the purchase by E. in 1812, to which the latter was a party, and by which his successors were bound. *Ibid.*

[And see CHARITY, 25.]

#### (e) Specialty debt contracted in India.

10.—Specialty debts have in India no higher value than simple contract debts, and the same period of limitation, namely, three years, applies. But the right to sue on a specialty debt in England cannot be barred by a less period than twenty years, although the debt was contracted in India, and the right to recover was barred in India by the shorter period of limitation. *The Alliance Bank of Simla v. Carey*, 49 Law J. Rep. C.P. 781; Law Rep. 5 C.P. D. 429.

[And see FOREIGN LAW, 3.]

#### (f) Balance of debt consisting of several items.

11.—In 1877 an action was commenced to administer the estate of A., who owed B. 1,864*l.* for cash advances from time to time made to her by B., from the year 1851 down to the time of her death in 1877. Most of the advances were made before 1871. B. claimed to prove for the entire debt, alleging that small cash payments made by A. in 1872, and again in 1873, were payments made on account of the general balance of the debt:—Held, on the evidence, that the payments in question were specific repayments made in respect of particular advances, and that the general balance of the debt was statute-barred. Judgment of Fry, J. (48 Law J. Rep. Chanc. 725), reversed. *In re Rainforth Gwynn v. Gwynn* (App.), 49 Law J. Rep. Chanc. 5.

#### (g) Arrears of interest.

12.—The legatee in remainder of residuary personal estate, which was subject to a trust for investment, and consisted, in fact, of a sum of money outstanding on mortgage of real estate, mortgaged his interest in that sum:—Held, that this mortgage was not a charge upon land, within the meaning of 3 & 4 Will. 4. c. 27, s. 42. —*Bowyer v. Woodman* (Law Rep. 3 Eq. 313) distinguished. *Smith v. Hill*, 47 Law J. Rep. Chanc. 788; Law Rep. 9 Ch. D. 143.

A mortgagee of a reversionary interest in land

is precluded from recovering more than six years' arrears of interest, although accruing whilst the property was reversionary.—*Sinclair v. Jackson* (17 Beav. 405) approved; *Wheeler v. Howell* (3 Kay & J. 198) disapproved. *Ibid.*

[And see LANDS CLAUSES ACT, 35.]

(A) *Partnership action.*

13.—A demurrer setting up the Statute of Limitations as a bar to the plaintiff's claim will be allowed in a partnership action, when it appears on the face of the statement of claim that the partnership was dissolved or came to an end more than six years before the issuing of the writ, nothing having occurred within that period to take the case out of the statute. *Noyes v. Crawley*, 48 Law J. Rep. Chanc. 112; Law Rep. 3 Ch. D. 31.

(i) *Bribe to director: concealed fraud.*

14.—In the year 1879 an action was brought by a company against a former director to recover 250*l.*, on the ground that it had been received by the defendant from a debtor to the company as a bribe, to induce him to use his influence to obtain favourable terms of compromise for the debtor. In 1872 the charge that this bribe had been given had been laid before the directors at a board meeting, they had investigated it, and apparently came to the conclusion that the charge was unfounded; no proceedings were taken, and it was not alleged that the other directors had been acting otherwise than *bona fide* in the matter:—Held (affirming the decision of Stephen, J.), that the claim of the company was barred by the Statute of Limitations.—Although where a trustee receives money upon an express trust and wastes it, the Statute of Limitations does not run against the claim of the *cestui que trust*, yet where a trustee receives money not belonging to the *cestui que trust*, but which the *cestui que trust* can claim on the ground that the receipt of it was a fraud upon him, the Statute of Limitations will run against the claim of the *cestui que trust* from the time when he discovers the fraud. *The Metropolitan Bank v. Heiron* (App.), Law Rep. 5 Ex. D. 319.

*Highway, soil of: dispossession and discontinuance of possession by owner.* [See PRESUMPTION, 6.]

*Judgment creditor: annulling adjudication: Real Property Limitation Act, 1874, s. 8.* [See BANKRUPTCY, C 15.]

*Trust, whether preventing application of.* [See TRUST, E 5.]

(B) WHEN STATUTE BEGINS TO RUN.

(a) *Lease by hospital.*

15.—A corporation created in 1783 to maintain a house for the reception of penitent prostitutes is a hospital within the meaning of 14 Eliz. c. 14, and, therefore, also of 13 Eliz.

c. 10, notwithstanding that it has no head, and that its officers and members have no beneficial interest in the corporate property. Where the governors of a hospital within the Act 13 Eliz. c. 10 have no beneficial interest in the corporate property, a lease made by them not warranted by the Act is not merely voidable, but void *ab initio*. A hospital granted a void lease at a peppercorn rent, and the lessee entered, and paid no rent for more than twenty years. Upon an action by the hospital to recover the property comprised in the lease,—Held (affirming the decision of the Court of Appeal, 47 Law J. Rep. Chanc. 726; Law Rep. 8 Ch. D. 709), that no tenancy was created, and that the Statute of Limitations ran against the hospital from the entry, and barred the action. *The Governors of Magdalen Hospital v. Knotts and Others* (H.L.), 48 Law J. Rep. Chanc. 579; Law Rep. 4 App. Cas. 324.

Decision of the Master of the Rolls (46 Law J. Rep. Chanc. 149; Law Rep. 5 Ch. D. 175) reversed. *Ibid.*

(b) *Renewable leaseholds: reversioner.*

16.—Sections 3 and 5 of the Statute of Limitations, 3 & 4 Will. 4. c. 27, enact that the right to bring an action to recover any land shall be shewed to have first accrued with respect to estates or interests in reversion, "at the time when such estate or interest became an estate or interest in possession." During the continuance of a lease for years the reversioner in fee granted a new lease of the premises for years to his tenant:—Held, that, although the first lease became surrendered by operation of law on the granting of the second, the reversioner's estate did not thereby become an "estate in possession" within the meaning of sections 3 and 5, and therefore that time did not begin to run against him under the Act. *The President and Scholars of Corpus Christi College, Oxford v. Rogers* (App.), 49 Law J. Rep. Exch. 4.

(c) *Abstraction of minerals.*

*Abstraction of minerals: statute running only from time of discovery of abstraction.* [See MINES, 8.]

*Lease to charity: non-payment of rent for twenty years: payment of arrears.* [See CHARITY, 25.]

*Mines: account: wrongful working.* [See MINES, 13.]

(d) *Promissory note payable three months after demand.*

17.—A promissory note, payable three months after demand, more than twenty years old, was found amongst the papers of the promisee after his death. The note was indorsed with payments of two instalments of interest, also more than twenty years old:—Held (reversing the decision of Hall, V.C., 49 Law J. Rep. Chanc. 345), first, that after such a lapse of time the

note must be presumed satisfied; and, second, that the payment of interest was evidence of demand made, so that the Statute of Limitations would begin to run. *In re Rutherford. Brown v. Rutherford* (App.), 49 Law J. Rep. Chanc. 664; Law Rep. 14 Ch. D. 687.

### (C) HOW BARRED.

#### (a) Acknowledgment of debt: promise to pay.

18.—To an action on a promissory note, the defendant pleaded the Statute of Limitations. As an answer the plaintiffs put in evidence the following letter written by the defendant to the plaintiffs:—"The old account between us, which has been standing over so long, has not escaped our memory, and as soon as we can get our affairs arranged we will see you are paid. Perhaps in the meantime you will let your clerk send me an account of how it stands":—Held (*dissentiente* Lord Coleridge, C.J.), reversing the judgment of the Court of Queen's Bench (Law Rep. 10 Q.B. 500), that the letter was a sufficient acknowledgment of the debt to bar the statute, and that the plaintiffs were entitled to recover. *Chasemore v. Turner* (Ex. Ch.), 45 Law J. Rep. Q.B. 66.

19.—The testator, whose executors the defendants were, had employed the plaintiff to do work for him, and he afterwards wrote to the plaintiff, "Send me your account, made up to Christmas last:":—Held, that the statute was barred. *Quincey v. Sharpe*, 45 Law J. Rep. Exch. 347; Law Rep. 1 Ex. D. 72.

20.—In answer to an application by the plaintiff for payment of a debt the defendant wrote, "I return to S. about Easter. If you send me there the particulars of your account with vouchers, I shall have it examined and cheque sent for the amount due. But you must be under some great mistake in supposing that the amount due to you is anything like the sum you now claim":—Held, that the debt was taken out of the operation of the Statute of Limitations by this letter containing an absolute acknowledgment of a balance due, and that the promise to pay implied by law from such acknowledgment was not made conditional by the passage relating to the particulars and vouchers which were required only for the purpose of arriving at a correct balance. *Sheat v. Lindsay*, 46 Law J. Rep. Exch. 249; Law Rep. 2 Ex. D. 314.

21.—The defendant having owed the plaintiffs money since 1865, and having paid no instalments since 1870, in May, 1874, wrote to them as follows:—"Believe me that I shall never lose out of sight my obligations towards you; and I shall be glad, as soon as my position becomes somewhat better, to begin again and continue my instalments." It was proved that in one year, and one year only, since 1874, the defendant's income exceeded its amount at the date of the promise by 14*l*.—Held, that the letter contained, not an unconditional acknowledgment of the debt from which a promise to pay

could be implied, but an acknowledgment coupled with a promise conditional on the defendant's position becoming somewhat better, and that the condition had not been fulfilled. *Meyerhof v. Froelich* (App.), 48 Law J. Rep. C.P. 48; Law Rep. 3 C.P. D. 333; *ibid.* 4 C.P. D. 63.

#### (b) Part payment by partner.

22.—W. & B., partners, were employed by X. as his solicitors and general agents to receive moneys for him from time to time and apply them according to his directions. By a dissolution deed of the 1st of June, 1866, it was agreed that W. should retire from the firm, and that the business should belong exclusively to B.; and B. covenanted to pay out of the partnership assets, or out of his own moneys, all debts due from the partnership, and also to pay W. a moiety of the profits made by B. between the 1st of June and the 31st of December, 1866. B. thereupon continued to act alone as X.'s solicitor and agent from the 1st of June, 1866, to X.'s death in 1870, and W. shortly after the date of the dissolution deed advanced various sums to B. to enable him to pay the partnership debts. At the date of the deed a considerable sum was due to X. from the partnership, and in reduction of the debt B., on the 20th of July, 1866, gave X. a cheque drawn in his favour by B. for 300*l*., which was paid on the following day out of moneys standing to B.'s credit at his bankers, though B. was at that time in embarrassed circumstances:—A bill filed on the 20th of July, 1872, by X.'s residuary legatee, to compel W. to pay the balance of the debt, was dismissed with costs, on the ground that the debt was barred by the Statute of Limitations and section 14 of the Mercantile Law Amendment Act, 1856, and that there was no evidence that B. was acting as W.'s agent in paying the 300*l*. *Watson v. Woodman*, 45 Law J. Rep. Chanc. 57.

Section 14 of the Mercantile Law Amendment Act, 1856, is inapplicable to a subsisting partnership, payments made by either partner being payments of the firm; but on the dissolution of the partnership, payments by one of the late partners can only be held to be payments of both on proof that such one has been authorised, either expressly or by implication, to make the payments as the payments of the other. *Ibid.*

#### (c) Mortgage in possession: bankruptcy of mortgagor.

23.—M. in 1828 mortgaged freehold property to B., and in 1832, being about to reside abroad, gave a full power of attorney to H., a solicitor, to receive the rents and profits of all his property, and to apply them in payment of the incumbrances. In 1841 accounts were settled between M. and H., shewing a large balance due to H., which M. agreed to secure by a mortgage of his real estates when required. M. became bankrupt in 1845, but his assignee

did not interfere with the mortgaged property, and H. continued to receive the rents and profits. In 1849 H. took a transfer to himself of B.'s mortgage, to which M. was not a party, and in 1865 H. wrote a letter to M. expressing his readiness to settle all accounts. In 1877 M.'s bankruptcy was annulled, and he brought an action against H. claiming to redeem the mortgage, and claiming an account against him as mortgagee in possession, and, by amendment, as agent and trustee for him. H. pleaded the Statute of Limitations:—Held (reversing the decision of Hall, V.C.), that on M.'s bankruptcy H. ceased to be the agent and attorney of M., and did not become the agent of the assignee: that even if the assignee would have been entitled to call upon H. to account M. did not, on the annulment of the bankruptcy, succeed to such right; that M.'s estate as mortgagor having ceased on the bankruptcy the letter written to him in 1865 could not operate as an acknowledgment, either of his title or that of the assignee, to the equity of redemption, so as to take the case out of the Statute of Limitations; and that as the assignee was barred by the statute M. was also barred, notwithstanding that the bankruptcy had been annulled. *Markwick v. Hardingham* (App.), Law Rep. 15 Ch. D. 339.

*Quære*, whether an acknowledgment of the title of a mortgagor is effectual to take the case out of the Statute of Limitations, if it is not made till after the time limited by the statute has expired. *Ibid*.

[And see BANKRUPTCY, C 15.]

#### (D) PLEADING STATUTE.

24.—Where a creditor issued a writ in the Common Pleas against an administrator for a debt not then statute-barred, and within six months after the issuing of the writ (which was never served), at which time the debt was barred unless saved by the writ, he took out an administration summons:—Held, that the writ only saved the bar for six months in the Court of Common Pleas, and that the statute was a bar to the administration suit. *Manby v. Manby*, Law Rep. 3 Ch. D. 101.

*By demurrer*. [See PRACTICE, W 48.]

#### LIQUIDATED DAMAGES.

[See COVENANT, 3; CONTRACT, 37.]

#### LIQUIDATION BY ARRANGEMENT.

[See BANKRUPTCY, K.]

#### LIQUIDATOR.

[See COMPANY, H 20–30.]

#### LIS PENDENS.

An action registered as a *lis pendens* having been dismissed, an order *nisi* to vacate regis-

tration was made *ex parte*, the plaintiff to have a week to shew cause. *Pooley v. Bosanquet*, Law Rep. 7 Ch. D. 541.

*Assignment pendente lite*. [See CHAMPERTY.]

*Registration of*. [See REGISTRATION, 2.]

#### LIVERPOOL PASSAGE COURT.

1.—Section 91 of the Judicature Act, 1873, which provides that "the several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate, shall be respectively cognisable by such Courts," extends Order LV. in the first schedule of the Judicature Act, 1875, to the Liverpool Court of Passage, so that a plaintiff in an action of slander, who has recovered 1s. damages, is entitled to his costs in the absence of any order depriving him of them. *King v. Harkworth*, 48 Law J. Rep. Q.B. 484; Law Rep. 4 Q.B. D. 371.

2.—An appeal from the Passage Court of Liverpool in an Admiralty cause is subject to the same rules as the like appeal from a County Court. Security for costs must be given before lodging the instrument of appeal, otherwise the appeal will not be entertained—*The Forest Queen* (Law Rep. 3 A. & E. 299) approved. *The Ganges*, Law Rep. 5 P.D. 247.

#### LOAN.

*Foreign government, to*. [See FOREIGN GOVERNMENT, 2; BOND.]

*Partnership, to: participation in profits*. [See PARTNERSHIP, 1–6.]

*Repayable by drawings of bonds*. [See BOND, 1.]

#### LOAN SOCIETY.

*Winding-up: number of members less than seven*. [See COMPANY, H 10.]

#### LOCAL AUTHORITY.

*Scotland: public well*. [See SCOTCH LAW, 19.]

#### LOCAL BOARD.

[Constituted urban sanitary authority. 38 & 39 Vict. c. 55. s. 6.]

*Election of*. [See PUBLIC HEALTH ACT, 1, 2.]

#### LOCAL GOVERNMENT.

[See PUBLIC HEALTH ACT.]

#### LOCAL TAXATION.

[Amendment of the law relating to Local Taxation Returns. 40 & 41 Vict. c. 66; 42 & 43 Vict. c. 6. s. 3; c. 39.]

## LOCKE KING'S ACT.

[See ADMINISTRATION, 13-16.]

## LOCOMOTIVE.

*Width of wheels.*

1.—The 24 & 25 Vict. c. 70 (an Act for regulating the use of locomotives on roads), by section 3 provides, that the "wheels of every locomotive shall be cylindrical and smooth-soled, or used with shoes or other bearing surface of a width of not less than nine inches:"—Held, that the part of the wheels which is in contact with the ground must always have an uninterrupted pressing surface of nine inches from side to side of the wheel; and that therefore, where a locomotive wheel had, upon its tyre which was eighteen inches broad, shoes only four and a half inches wide, but in length extending from edge to edge of the tyre, and placed diagonally at distances of three inches apart, so that in some positions of the wheel the bearing surface pressing on the ground would, indeed, be more than nine inches, but would be broken by the interstices between two bars which together made up the requisite superficial area of bearing surface,—the locomotive was not constructed in compliance with the Act. *Stringer v. Sykes*, 46 Law J. Rep. M.C. 139; Law Rep. 2 Ex. D. 240.

2.—Upon an information for an offence against the enactment of section 3 of the Locomotive Act, 1861 (24 & 25 Vict. c. 70), that "the wheels of every locomotive" propelled by other than animal power and used upon a highway "shall be cylindrical and smooth-soled, or used with shoes or other bearing surface of a width not less than nine inches," it appeared that the wheels in question, admittedly not smooth-soled, had for bearing-surface strips placed across the tyre, itself eighteen inches wide, in a line parallel to the axle, each measuring ten inches in that direction and three inches in the line of the circumference of the wheel, laid alternately against the inner and the outer edge of the tyre, so as to overlap each other by two inches in the centre of the tyre, and succeeding each other without interval other than the interval of three inches, save where they overlapped, caused by the fact that each strip did not reach from side to side of the tyre:—Held, going beyond *Stringer v. Sykes* (see last case), that the wheels had not a bearing-surface complying with the statute, the bearing-surface, although of an unbroken width of nine inches across the wheel, not being unbroken in the line of the circumference, but now on one side of the wheel, now on the other. *Boddy v. Jeffery*, 47 Law J. Rep. M.C. 69; Law Rep. 3 Ex. D. 95.

*Person preceding locomotive on foot.*

3.—The 3rd section of 28 & 29 Vict. c. 83, which, as amended by 41 & 42 Vict. c. 77. s. 29, requires one of the three persons employed to

conduct a steam locomotive on a public highway to precede such locomotive on foot by twenty yards, and in case of need to assist horses or carriages drawn by horses, in passing the same, is not the less complied with because such person, whilst preceding the locomotive on foot, leads a horse and cart of his own. *Davis v. Browne*, 48 Law J. Rep. M.C. 92.

*Excessive weight.*

4.—Section 23 of the Highways and Locomotives Amendment Act, 1878, enacts that where by a certificate of their surveyor it appears to the authority which is liable to repair any highway that, "having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway, by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon," the authority may recover in a summary manner the amount of such expenses from the person by whose order the weight or traffic has been conducted. The appellant used on a highway a locomotive engine and waggons in order to carry goods and materials for the ordinary purposes of his estate. The engine was constructed and used in accordance with the Locomotives Acts, 1861 and 1865, and the weight of the engine and the width of its wheels were in compliance with section 28 of the Highways and Locomotives Amendment Act, 1878. Justices having made an order for the payment by the appellant of a sum to cover extraordinary expenses incurred by the highway authority by reason of the damage caused to the road by the use of the engine and waggons, it was—Held, on a case stated by the justices, that the question of what was "excessive weight" and "extraordinary traffic" within section 23, must be determined with reference to the ordinary traffic of the road, and its capacity for bearing weights, and not with reference to abnormal traffic merely, or to weight in excess of that authorised by statute, and therefore that the order of the justices was rightly made. *Lord Aveland v. Lucas* (App.), 49 Law J. Rep. C.P. 643; Law Rep. 5 C.P. D. 351.

*Liability of owner.*

5.—A person who, without negligence and in accordance with the provisions of the Locomotive Act, 1865, uses a locomotive engine on roads, is liable for injuries caused to the property of others by such use. *Ponell v. Fall* (App.), 49 Law J. Rep. Q.B. 428; Law Rep. 5 Q.B. D. 597.

## LODGER.

*Borough vote.* [See PARLIAMENT, 27.]

## LODGERS' GOODS PROTECTION ACT.

The mere fact of a person being an under-tenant is not sufficient to prevent his being a



lodger within the meaning of the Lodgers' Protection Act, 34 & 35 Vict. c. 79. *Phillips v. Hanson*, 47 Law J. Rep. C.P. 273; Law Rep. 3 C.P. D. 26.

F., who was tenant of a house under a lease for a term of years, made an agreement in writing with the plaintiff, by which F. let to the plaintiff, as a quarterly tenant, and at a quarterly rent, certain specified rooms, being all the rooms in such house except three, in which F. resided:—Held, that such agreement was not inconsistent with plaintiff being a lodger, and as such entitled to the protection given to lodgers by 34 & 35 Vict. c. 79. *Ibid*.

# LODGING-HOUSE.

[Statutory regulations as to lodging-houses in certain cases. 39 & 40 Vict. c. 20. s. 5; 41 & 42 Vict. c. 52. ss. 128, 129; 43 & 44 Vict. c. 16. s. 9.]

*Keeper of, a trader within the Bankruptcy Act.*  
[See BANKRUPTCY, B 27.]

# LONDON.

[See METROPOLIS.]

*Port of.* [See SHIPPING LAW, B 1.]

*School board, transfer of school to.* [See CHARITY, 27.]

# LORD MAYOR'S COURT.

## (A) JURISDICTION OF.

- (a) *Cause of action.*
- (b) "*Carrying on business*" within city.
- (c) *Defence and counter-claim.*
- (d) *Under Debtors Act.*

## (B) APPEAL FROM.

## (C) FOREIGN ATTACHMENT.

## (A) JURISDICTION OF.

### (a) *Cause of action.*

1.—The defendant, by a letter, which was posted within the jurisdiction of the Mayor's Court, London, and which was addressed to and received by the plaintiff at his office outside such jurisdiction, ordered goods of the plaintiff at a specified price. The plaintiff did not reply thereto by letter, but by delivering the goods, as ordered, to the defendant within such jurisdiction:—Held, that the contract was made within the jurisdiction of the said Mayor's Court, and that there was nothing in the above facts to take any part of the cause of action out of such jurisdiction. *Taylor v. Jones*, 45 Law J. Rep. C.P. 110; Law Rep. 1 C.P. D. 87.

### (b) "*Carrying on business*" within city.

2.—A railway company having a station within the city at which a considerable portion of their business is transacted, but whose principal station, where the general meetings are

DIGEST, 1875-1880.

held and general business transacted, is without the city, is not a company "carrying on business within the jurisdiction" of the Mayor's Court within section 12 of the Mayor's Court Extension Act. *Le Tailleur v. The South Eastern Railway Company*, Law Rep. 3 C.P. D. 18.

### (c) *Defence and counter-claim.*

3.—Under sections 89 and 90 of the Judicature Act, 1873, inferior Courts may give effect to counter-claims relating to matters beyond the jurisdiction of the Court, by way of defence to, and to the extent of, the plaintiff's claim, but such Courts have no power to award to a defendant, in respect of such counter-claim, damages in excess of the claim. *Davis v. The Flagstaff Silver Mining Company of Utah* (App.), 47 Law J. Rep. C.P. 503; Law Rep. 3 C.P. D. 228.

### (d) *Under Debtors Act.*

4.—The power of making an order for payment of a debt due on a judgment of a Superior Court, and of committing the debtor in case of default, which is conferred on Inferior Courts by section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), cannot be exercised by the Mayor's Court of London if the debtor does not reside or carry on business within the City of London at the time he is summoned on such judgment. *Washer v. Elliott*, 45 Law J. Rep. C.P. 144; Law Rep. 1 C.P. D. 169.

## (B) APPEAL FROM.

5.—The Lord Mayor's Court is an inferior Court within section 45 of the Judicature Act, 1873, and where there has been an appeal from that Court to a Divisional Court under that section no further appeal lies to the Court of Appeal except by special leave of the Divisional Court. *Appleford v. Judkins* (App.), 47 Law J. Rep. C.P. 615; Law Rep. 3 C.P. D. 489.

6.—The Court of Appeal from inferior Courts has no jurisdiction to hear and determine questions of law arising upon the records of the Mayor's Court, London; the proper tribunal is the Court of Appeal. *Le Blanch v. Reuter's Telegraph Company*, Law Rep. 1 Exch. D. 408.

## (C) FOREIGN ATTACHMENT.

7.—The operation of a garnishee order made under the Common Law Procedure Act, 1854, is not suspended by the existence of an attachment in the Lord Mayor's Court, the former being a process of execution, the latter merely a process to compel an appearance. *Richter v. Lawton*, 48 Law J. Rep. Q.B. 184.

[See ATTACHMENT, 13, 14.]

# LORD'S DAY.

[See COVIN AND COLLUSION.]

# LOST WILL.

[See PROBATE, 33.]

Y Y

## LOTTERY ACTS.

1.—An association of more than twenty persons was formed in 1872 with the object of buying foreign bonds and other securities below par value, and, after payment of expenses and a fixed rate of interest to all the members, dividing the profits which should be made by the sale of the bonds or their payment off at par, amongst some of the members, who were to be chosen by lot at annual drawings for that purpose. The association was not registered under the Companies Act. There was a trust deed which set out in detail the working of the scheme. In an action against a former trustee for alleged breaches of trust,—Held, that the action could not be maintained, inasmuch as the association was one formed for gain, and, not being registered, was illegal. *Semble*, that it was also illegal under the Lotteries Acts. *Sykes v. Beadon*, 48 Law J. Rep. Chanc. 822; Law Rep. 11 Ch. D. 170.

[But see COMPANY, C 4.]

2.—A society avowedly constituted for the benefit of its members making certain of them entitled to particular benefits by the process of periodical drawings does not come within the Lottery Acts. *Wallingford v. The Mutual Society (H.L.)*, Law Rep. 5 App. Cas. 685; 50 Law J. Rep. C.P. 49.

## LUGGAGE.

*Passengers', carriage of.* [See CARRIER, 1-14.]

## LUNATIC.

## (A) JURISDICTION AND PRACTICE IN LUNACY.

- (a) *Trustee Act: vesting order: appointment of new trustees.*
- (b) *Custody, maintenance and guardianship of lunatic.*
- (c) *Committee: powers of.*
- (d) *Inspection of documents.*
- (e) *Costs of lunacy proceedings.*
- (B) PROPERTY OF LUNATIC.
  - (a) *Real estate: powers of court.*
    - (1) *Reservation of minerals.*
    - (2) *Repairs and improvements.*
    - (3) *Raising charges.*
    - (4) *Barring estate tail.*
    - (5) *Foreign lunatic.*
  - (b) *Summary jurisdiction where property 1,000*l.* or less.*
  - (c) *Payments and re-investments under Lands Clauses Act.*
  - (d) *Authority to pledge credit of lunatic.*
- (C) PAUPER LUNATIC, MAINTENANCE OF.
- (D) CRIMINAL LUNATIC.
- (E) RECEPTION OF LUNATIC IN UNLICENSED HOUSE.

[Application of sum payable by friendly society to pauper having wife, &c., dependent on him, for benefit of wife, &c. 42 & 43 Vict. c. 12.]

[Jurisdiction in Lunacy conferred upon the

County Courts in Ireland in certain cases. 43 & 44 Vict. c. 39.]

## (A) JURISDICTION AND PRACTICE IN LUNACY.

(a) *Trustee Act: vesting order: appointment of new trustees.*

1.—A petition under the Trustee Acts, for the appointment of new trustees in the place of two deceased trustees, and of one of the surviving trustees who was lunatic, though not so found by inquisition, need not be presented in lunacy, no vesting order being asked for. *In re Vickers' Trusts*, 46 Law J. Rep. Chanc. 16; Law Rep. 3 Ch. D. 112.

2.—On a petition in lunacy and in the Chancery Division, the Court of Appeal appointed new trustees of land partly in Ireland, on the lunacy of the sole surviving trustee. *In re Lamotte*, Law Rep. 4 Ch. D. 326.

(b) *Custody, maintenance and guardianship of lunatic.*

3.—The Chancery Division has jurisdiction to make orders for the custody and maintenance of persons of unsound mind not so found by inquisition, although their property exceed the limit of 1,000*l.* of capital or 50*l.* of income, fixed by the Lunacy Regulation Act, 1862, section 12; but *semble*, such an order will not be made in a case where there is any likelihood of a commission of lunacy being issued. *Vane v. Vane*, 45 Law J. Rep. Chanc. 381; Law Rep. 2 Ch. D. 124.

4.—A testator devised real estate, and bequeathed his residuary personal estate to trustees upon trust, that they, in their discretion and of their uncontrollable authority, should pay and apply the whole or such portion only of the annual income of his real and residuary personal estate as they should think expedient to or for the maintenance of his wife (a lunatic) at such time or times and in such proportions and manner in all respects as his trustees should think most conducive to her comfort, enjoyment and convenience, without being liable to account for such payment and application. The lunatic became, on her husband's death without issue, entitled under her marriage settlement to a life interest in certain funds, and absolutely to other funds therein respectively comprised. By an order of the Lords Justices in Lunacy it was ordered that without prejudice to the question as to the primary liability of the testator's estate to provide for the maintenance of the lunatic, the sum of 696*l.* a year should be applied for that purpose:—Held (affirming the decision of the Court of Appeal, with a slight variation), that the trustees had an absolute discretion as to whether or not they would apply any and what part of the income of the testator's estate for the maintenance of the lunatic, and that the Court was not entitled to control or interfere with such discretion. *Gisborne v. Gisborne (H.L.)*, 46 Law J. Rep. Chanc. 556; Law Rep. 2 App. Cas. 300.

5.—The Chancery Division has no jurisdiction to appoint a guardian to a person of unsound mind not so found; it only has power, in administering the trusts of such a person's property, to direct the income of that property to be applied for his maintenance. *Vane v. Vane* (45 Law J. Rep. Chanc. 381; No. 3 supra) questioned. *In re Bligh* (App.), 49 Law J. Rep. Chanc. 56; Law Rep. 12 Ch. D. 361.

6.—A claim for the past maintenance of a lunatic being simply a debt of the lunatic, the Court will not pay out of the lunatic's estate in Court more than six years' arrears of such maintenance. *In re Gibson* (Law Rep. 7 Chanc. 52) explained. *In re Harris* (App.), 49 Law J. Rep. Chanc. 327.

7.—A person of unsound mind not so found petitioned for payment out of a fund in Court and for the appointment of a guardian. The fund was ordered to be paid to the proposed guardian, he undertaking to apply it for the maintenance, comfort and support of the petitioner. *Vane v. Vane* (No. 3 supra) corrected. *In re Brandon's Trusts*, Law Rep. 13 Ch. D. 773.

*Infant of unsound mind: jurisdiction of court as to custody and education.* [See LANCASTER PALATINE COURT, 3.]

(c) *Committee: powers of.*

*Divorce suit: power to institute.* [See DIVORCE, 14.]

*Execution of lease by committee.* [See LEASE, 14.]

*No power to appoint proxy to prove in liquidation.* [See BANKRUPTCY, K 16.]

(d) *Inspection of documents.*

8.—Before a committee had been appointed of a lunatic's estate the Court made an order for the official solicitor to inspect securities and other documents deposited by the lunatic with a company for safe custody. *In re Campbell* (App.), Law Rep. 13 Ch. D. 323.

9.—The Court will order production of all documents in the custody of the Master or Registrar relating to the estate of a deceased lunatic, on the application of a person claiming under him. But such person must make out a *prima facie* title to the estate. *In re Smyth* (App.), Law Rep. 15 Ch. D. 286.

(e) *Costs of lunacy proceedings.*

10.—When costs have been properly incurred for the protection of a lunatic and of his estate, the Court has jurisdiction under section 11 of the Lunacy Regulation Act, 1862, to order such costs to be paid out of the lunatic's estate, although the lunatic has died before a committee has been appointed, and there are no funds in Court. *In re Meares* (App.), 48 Law J. Rep. Chanc. 190; Law Rep. 10 Ch. D. 552.

11.—On a petition for an enquiry in lunacy, the medical visitor was directed to visit the

alleged lunatic, and on his report an enquiry was directed, on which the alleged lunatic was found sane. The petitioner was only a neighbour of the alleged lunatic, and it appeared that he was indemnified by his solicitor against costs. On an application by the petitioner for payment of his costs out of the estate, and a cross application to charge the petitioner with all the costs,—Held, under the circumstances, that no order should be made as to costs. *In re S. (an alleged lunatic)* (App.), 46 Law J. Rep. Chanc. 233; Law Rep. 4 Ch. D. 301.

(B) *PROPERTY OF LUNATIC.*

(a) *Real estate.*

(1) *Reservation of minerals.*

12.—Under the Lunacy Regulation Act, 1853, section 124, the Court has power to make an exchange of the land of a lunatic without the minerals under it. *In re Dicconson* (App.), Law Rep. 15 Ch. D. 316.

(2) *Repairs and improvements of estate.*

13.—Where the income of a lunatic was far more than sufficient for his requirements, and repairs and improvements were expedient upon an estate of which he was tenant-in-tail in possession, and there was a sufficient fund of personalty to which the lunatic was absolutely entitled, the Court nevertheless ordered that the amount required for repairs and improvements should be raised by mortgage of the real estate. *In re Gist* (App.), Law Rep. 5 Ch. D. 881.

(3) *Raising charges.*

14.—Where portions were raiseable by mortgage of an estate of which a lunatic was tenant-in-tail, the Court directed that the mortgage should be made for a term of years, and without a power of sale, holding that the interest of the remainderman ought not to be barred further than necessary. *In re Pares* (App.), Law Rep. 2 Ch. D. 61.

(4) *Barring estate tail.*

15.—Where a lunatic was tenant for life and protector, the Court refused to consent to the barring of the entail for a purpose which would benefit the remainderman only and not the lunatic. *In re Tharp* (App.), Law Rep. 3 Ch. D. 59.

16.—The Court under its lunacy jurisdiction has power to bar the estate tail of a lunatic, but such jurisdiction will only be exercised so as not to affect the rights of the persons entitled in remainder. *In re Pares. Lillingston v. Pares* (App.), Law Rep. 12 Ch. D. 333.

(5) *Foreign lunatic.*

17.—A fund of upwards of 13,000*l.* Consols, representing the proceeds of sale of real estate, the absolute property of a foreign lunatic, which had been sold by order of the Court

under the powers of the Partition Act, 1868, was standing in Court to the credit of the lunatic. The *curator ad bona* of the lunatic, duly appointed according to the law of the country in which the lunatic resided, and who according to that law had the fullest powers and control over the lunatic's real and personal estate, petitioned for the transfer of the fund to him:—Held, that the fund, as representative of real estate sold under special legislation, was subject to the laws of this country relative to real estate, and must remain in Court as a fund which might devolve upon the heir-at-law of the lunatic, and that the *curator ad bona* was only entitled to receipt of the dividends. *Grimwood v. Bartels*, 46 Law J. Rep. Chanc. 788.

Correction of erroneous reference in the judgment in *Scott v. Bentley* (1 Kay & J. 281; 24 Law J. Rep. Chanc. 244). *Ibid.*

(b) *Summary jurisdiction where property 1,000l. or less.*

18.—In order to ascertain whether the property of a person of unsound mind is of the amount of 1,000l. or less, so as to bring the case within 25 & 26 Vict. c. 86. s. 12, his debts and the expenses incurred in his past maintenance must be deducted. *In re Faircloth (a supposed lunatic)* (App.), Law Rep. 13 Ch. 307.

(c) *Payments and re-investments under Lands Clauses Act.*

*Payment out to tenant in tail.* [See LANDS CLAUSES ACT, 34.]

*Payment in and re-investment of lunatic's money under Lands Clauses Act.* [See LANDS CLAUSES ACT, 18, 25.]

(d) *Authority to pledge credit of lunatic.*

19.—The defendant having held out his wife to the plaintiff as having authority to pledge his credit, afterwards became insane. The plaintiff, being unaware of the insanity, continued to supply the wife with goods on credit:—Held, that the defendant was liable to the plaintiff for the price of the goods so supplied. *Drew v. Nunn* (App.), 48 Law J. Rep. Q.B. 591; Law Rep. 4 Q.B. D. 661.

Insanity so great as to deprive the insane person of any contracting mind revokes an authority given by him, when sane, to an agent, and an agent who, after knowledge of such insanity on the part of the principal, continues to act on the authority so given will himself be liable to the person with whom he so deals. *Ibid.*

(C) PAUPER LUNATIC, MAINTENANCE OF.

20.—A pauper, born in 1840 in the appellant union, had never acquired a settlement in her own right. The pauper's father was born in the L. union, and he had never acquired a settle-

ment elsewhere:—Held (following the decision in *The Guardians of the Westbury Union v. The Overseers of Barrow-in-Furness*, 47 Law J. Rep. M.C. 79), that the 35th section of 39 & 40 Vict. c. 61 was retrospective in its operation, and that therefore the pauper at the age of sixteen acquired her father's settlement, which was a birth settlement, and could be ascertained without enquiry into his derivative settlement. *The Guardians of the Hereford Union v. The Guardians of the Warwick Union*, 48 Law J. Rep. M.C. 111.

21.—Where, under 16 & 17 Vict. c. 97. s. 96 (the Lunatic Asylums Act), an order is made for the payment to the proprietor of an asylum, in which a pauper lunatic is confined, of the reasonable charges of his maintenance by the guardians of the union from which such lunatic has been sent for confinement, there is no limit to the retrospective character of such order, but the guardians upon whom it is made must pay under it in respect of any number of previous years' charges comprised in it, notwithstanding that, by section 97, they can only recover one year's charges from the union that may ultimately be adjudged to be the union of settlement of the pauper. *Finch v. The Guardians of the York Union*, 46 Law J. Rep. M.C. 120; Law Rep. 2 Q.B. D. 15.

22.—An order of removal was made by justices in 1875, for the removal of a pauper to the appellants' union, on the ground of his having acquired a settlement by birth there. On the 21st of April, 1877, the Queen's Bench Division, on a Special Case stated by the Sessions, quashed the order, on the ground that the pauper's settlement was that acquired from his grandfather in the parish of B., which was no part of the appellants' union. Between the date of the hearing at the Sessions and the decision of the High Court, namely, on the 15th of August, 1876, the Divided Parishes, &c., Act (39 & 40 Vict. c. 61) came into operation, and abolished, *inter alia*, the derivative settlement upon which the appellants relied; and on the 15th of May, 1877, the justices made a fresh order for the removal of the pauper to the appellants' union:—Held, that such last-mentioned order of removal was wrongly made, inasmuch as the parties were concluded by the quashing of the previous order of removal. Held also, that as there was in respect of the pauper a pending order of removal within the meaning of 39 & 40 Vict. c. 61. s. 36, the provisions of that Act relating to settlements had no application. *The Guardians of Barton Regis Union v. The Churchwardens, &c., of Liverpool*, 47 Law J. Rep. M.C. 62; Law Rep. 3 Q.B. D. 295.

23.—An order on petition in 1856 directed that a pauper lunatic should continue in a specified asylum, and that 80l. per annum should be paid for his maintenance out of a fund in Court to which he was entitled. In 1859 he was removed to another asylum by the order of justices, and without any order in Chancery,

and the payment ceased. On his death in 1875,—Held, that his legal personal representative was entitled to the fund, and any claim for his maintenance was a mere debt. *In re Marman's Trusts* (App.), Law Rep. 8 Ch. D. 256.

24.—Where the visitors of an asylum have ordered a pauper lunatic confined therein to be discharged therefrom under section 80 of the Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), the overseers of the parish from which the lunatic was sent to the asylum are bound under that section to remove him to their parish, notwithstanding that it has been adjudged that the lunatic was not settled in that parish, and that his parish of settlement could not be ascertained. *The Overseers of Liverpool v. The Lancaster Lunatic Asylum*, Law Rep. 5 Ex. D. 215.

[And see POOR LAW, 16, 17.]

#### (D) CRIMINAL LUNATIC.

25.—The last legal settlement of a criminal lunatic into which the justices are directed to enquire by section 7 of 3 and 4 Vict. c. 54, upon an application for an order of maintenance, is the settlement at the date of such enquiry, and not at the date of the order for removal to the asylum. *The Guardians of Barton Regis Poor Law Union v. The Clerk of the Peace for Berks*, 48 Law J. Rep. M.C. 51; Law Rep. 4 Q.B. D. 37.

#### (E) RECEPTION OF LUNATIC IN UNLICENSED HOUSE.

26.—8 & 9 Vict. c. 100. s. 44, makes it an offence for any person to receive two or more lunatics into any house, unless such house shall be an asylum or hospital registered under the Act, or a house duly licensed under the Act:—Held, that to constitute such an offence, knowledge or absence of knowledge of the person receiving lunatics as to their lunacy is immaterial. The defendant was convicted under such Act, but it was specially found by the jury that though the persons so received were lunatic, the defendant honestly, and on reasonable grounds, believed that they were not lunatic. Held, that such belief was immaterial, and that the conviction was right. *Reg. v. Bishop* (C.C.R.), 49 Law J. Rep. M.C. 45; Law Rep. 5 Q.B. D. 259.

*Liquidation petition: signature of next friend.* [See BANKRUPTCY, M 28.]

*Wife of, equity of, to a settlement.* [See HUSBAND AND WIFE, 21.]

#### LUNATIC ASYLUM.

*Inhabited house duty payable in respect of.* [See INHABITED HOUSE DUTY, 2.]

*Reception of lunatic in unlicensed house: honest belief.* [See LUNATIC, 26.]

*Statute of Limitations: past maintenance of lunatic, claim for.* [See LUNATIC, 6.]

#### MACHINERY.

*New combination of.* [See PATENT, 6.]

#### MAINTENANCE.

*Gift of income for.* [See WILL CONSTRUCTION, L 4-6.]

*Infant, of.* [See INFANT, 1-7.]

*Lunatic, of.* [See LUNATIC, 3-7.]

*Lunatic, pauper, of.* [See LUNATIC, 21-25.]

*Suit, of.* [See CHAMPERTY.]

#### MALICIOUS INJURY TO PROPERTY.

1.—Placing poisoned flesh in an enclosed garden in order to destroy a dog which is in the habit of straying there is not an offence under 24 & 25 Vict. c. 97. s. 41, but (seemingly) is within 27 & 28 Vict. c. 115. s. 2. *Daniel v. James*, Law Rep. 2 C.P. D. 351.

2.—By the side of the highway and under the entrance to T.'s premises a drain ran. T. substituted for it a culvert, and by so doing raised the entrance and the part of the highway adjoining it. The surveyor of the highways served T. with a notice to reinstate, alleging that the culvert caused a nuisance to the highway. On T.'s failing to reinstate the highway the surveyor himself removed the culvert, and in doing so broke some of the tiles:—Held, that an information against the surveyor under the 52nd section for malicious injury to property ought to be dismissed. *Denny v. Thwaites*, 46 Law J. Rep. M.C. 141; Law Rep. 2 Ex. D. 21.

3.—If a man cause the death of a mare from internal injuries, not intending by his act to kill, maim or wound her, but knowing that the act would or might kill, maim or wound her, and acting recklessly, and not caring whether she was injured or not, though without any ill-will or spite either towards the owner of the animal or the animal itself, and without any motive except the gratification of his own depraved tastes, he is guilty of maliciously killing the mare contrary to the 24 & 25 Vict. c. 97. s. 40. *Reg. v. Welch* (C.C.R.), 45 Law J. Rep. M.C. 17; Law Rep. 1 Q.B. D. 23.

#### MALICIOUS PROSECUTION.

1.—Creditors have reasonable and probable cause for the arrest of a debtor under the Revised Statute of Nova Scotia, c. 94. s. 31 if they believe that the debtor (the drawer of bills of exchange) is about to leave the country, and that their remedy will be lost, although they may have a remedy against the indorsees. *The Bank of British North America v. Strong* (P.C.), Law Rep. 1 App. Cas. 307.

2.—L. was mortgagee in fee of a dwelling-house, the possession being left in the mortgagor. The mortgagor while in possession let the house to T. for a goods store. It was otherwise unoccupied. Early one morning during

the continuance of T.'s tenancy, L., without giving any notice to the mortgagor or to T., went to the house in company with a carpenter and another man. The carpenter opened the front door, and the other man entered the house. L. and the carpenter remained on the door-step, the latter being employed in putting on a new lock. While this was happening T. and his brother-in-law W. with several other persons came up, and T. and W. climbed into the house through a window, and after a slight struggle expelled L. and his men from the premises. L. indicted T. and W. and others for a forcible entry, riot, affray and assault. T. and W. were tried and acquitted. They defended themselves by the same solicitor, and incurred joint costs. T. and W. then brought an action against L. for malicious prosecution, and obtained a verdict, subject to leave to move to enter a verdict for L. upon the grounds—first, that there was no reasonable and probable cause for the prosecution; second, that there was no evidence of malice; third, that there was no joint cause of action. The Court of Exchequer having set aside the verdict, and entered a verdict for L., and the Court of Exchequer Chamber having reversed the decision of the Court of Exchequer,—Held (reversing the decision of the Court of Exchequer Chamber), that there was reasonable and probable cause for the prosecution, on the ground that the facts shewed that T. and W. were, at the time of the expulsion of L., disturbing a possession which had been lawfully acquired by him. *Lowe v. Telford* (H.L.), 45 Law J. Rep. Exch. 613; Law Rep. 1 App. Cas. 414.

Per Lord Cairns.—That under the circumstances of the case it was not necessary to decide the question whether there was or was not a joint cause of action in T. and W.; but semble, that had the question been before the House, it would probably have been answered negatively. *Ibid.*

*Authority of bank manager to prosecute on behalf of bank.* [See *BANKER*, §.]

### MALT.

[Repeal of duties on malt and provisions as to malt in stock. 43 & 44 Vict. c. 20.]

### MANDAMUS.

#### (A) JURISDICTION TO GRANT.

#### (B) WHEN GRANTED.

#### (A) JURISDICTION TO GRANT.

*Quashing conviction on a point of law without hearing evidence.*

1.—Where, on an appeal against a conviction coming on for hearing at the Sessions, objection was taken to the conviction by reason of the omission of certain words alleged to be material, and the justices, after discussion, quashed such

conviction, declining either to amend or hear the evidence, the Court has no power to interfere by mandamus, there having been a decision on the legal merits. *Reg. v. The Justices of Middlesex. Slade's Case*, 46 Law J. Rep. M.C. 225; Law Rep. 2 Q.B. D. 516.

#### *Pending cause.*

2.—A writ of *mandamus* under section 25, sub-section 8 of the Judicature Act, 1873, can only be obtained in a pending cause or matter; the prerogative writ being preserved to the Queen's Bench Division by section 34. *In re The Paris Shating Rink Company (Limited)*, 46 Law J. Rep. Chanc. 831; Law Rep. 6 Ch. D. 731.

#### *Discretion of court.*

3.—A writ of *mandamus* is a prerogative writ, and not a writ of right, and in this sense the granting of it is in the discretion of the Court, and that discretion cannot be questioned. A peremptory *mandamus* is not a mere dealing with the writ, but is a determining of the right, and in granting it the Court decides upon the merits of the case, and not upon their own discretion, and their judgment is subject to review, per Lord Chelmsford. *Reg. v. All Saints, Wigan, Churchwardens of* (H.L.), Law Rep. 1 App. Cas. 611.

#### (B) WHEN GRANTED.

*To railway company to comply with order of Board of Trade.*

4.—A *mandamus* will not lie to compel a railway company to construct a bridge in lieu of a level crossing pursuant to an order of the Board of Trade where it appears that the company are wholly without funds, and have not the means of providing the money required for that purpose. *In re The Bristol and North Somerset Railway Company*, 47 Law J. Rep. Q.B. 48; Law Rep. 3 Q.B. D. 10.

#### *To justices to hear proceedings.*

5.—An information for a conspiracy against a number of persons, supported by evidence which, if true, clearly proved the charge, was laid before justices, with an application to grant summonses against such persons. The justices, without hearing any evidence in contradiction, or saying that they disbelieved the evidence tendered, refused the application. By affidavit, on shewing cause against a rule for a *mandamus* to compel them to hear and determine the application, they stated that they came to the conclusion that they should not be justified in granting the summonses against the said persons for the offence of conspiracy:—Held, that although a discretion is given to justices by Jervis's Act (11 & 12 Vict. c. 42), s. 9, whether or no they will issue their summons or warrant, yet they must exercise that discretion upon the facts before them; and that here, as the justices had not said that they disbelieved

the evidence, but only that they came to the conclusion that they should not be justified in granting the summonses, they must have acted upon some extraneous knowledge or belief, and had, in effect, declined jurisdiction; that therefore a *mandamus* might go to compel them to proceed to hear and determine the application. *Regina v. Adamson*, 45 Law J. Rep. M.C. 46; Law Rep. 1 Q.B. D. 201.

*Companies Act, section 42, under.* [See COMPANY, D 16.]

*To admit director to office.* [See COMPANY, D 45.]

*To local board: neglect of public duty.* [See NUISANCE, 5.]

*To justices to hear application for certificate under 32 & 33 Vict. c. 27.* [See ALHOUSE, 2.]

*To college to examine candidate for fellowship.* [See UNIVERSITY.]

*To Quarter Sessions: appeal: insufficiency of notices.* [See ALHOUSE, 24.]

#### MANDATORY INJUNCTION.

[See INJUNCTION.]

#### MANOR.

*Custom: evidence of: allowing lord to approve.* [See COMMON, 4.]

*Custom: rights of common: prescription.* [See COMMON, 2.]

*Minerals: right of lord to take and sell marl.* [See COMMON, 5.]

*Pannage, right of.* [See COMMON, 3.]

*Waste of manor: county vote.* [See PARLIAMENT, 10.]

#### MANSLAUGHTER.

1.—By 31 and 32 Vict. c. 122. s. 37, when any parent shall wilfully neglect to provide medical aid for his child, being in his custody and under the age of fourteen years, whereby the health of such child shall be seriously injured, he is guilty of an offence punishable summarily before justices. Since that statute, if from a conscientious religious conviction that in answer to prayer God would heal the sick, and in obedience to the tenets of a sect called the Peculiar People, and not from any intention to avoid the performance of his duty to his child or to break the law, the parent of a sick child, being one of such sect, while furnishing it with all necessary food and nourishment, refuse to call in medical aid, though well able to do so, and the child, in the opinion of the jury, die from not having such medical aid, it is manslaughter. *Reg. v. Downes* (C.C.R.), 45 Law J. Rep. M.C. 8; Law Rep. 1 Q.B. D. 26.

#### MANUFACTORY.

*Meaning of term.* [See LANDS CLAUSES ACT, 2.]

#### MARGINAL NOTE.

*In will, effect of.* [See SCOTCH LAW, 30.]

#### MARINE INSURANCE.

##### (A) VALIDITY OF POLICY.

(a) 'Without benefit of salvage': 19 Geo. 2. c. 37.

(b) Concealment of material fact.

(1) Antecedent average loss.

(2) Description of subject-matter: nature of interest.

(c) Insurable interest.

(d) Ratification of authority of agent.

(e) Under 30 & 31 Vict. c. 123. s. 7.

##### (B) CONSTRUCTION AND EFFECT OF POLICY.

(a) Localised policy with power of transit: delay.

(b) Deviation.

(c) Duration of risk: voyage varied by memorandum.

(d) Voyage or time policy: further period after arrival.

(e) 'Stranding.'

(f) Insurance to cover loss of freight: mode of calculating underwriter's liability.

(g) Loss by perils of the sea: French law: English policy.

(A) Valued policy: 'freight.'

(i) Suing and labouring clause: liability of underwriter.

##### (C) RESTRAINT OF PRINCIPLES.

##### (D) PARTIAL AND TOTAL LOSS.

(a) Partial loss: measure of damages where shipowner elects to repair.

(b) Constructive total loss: notice of abandonment.

(c) Sale of ship by master.

(d) Insurance limited to actual damage: by-law.

(e) Total loss: refitting: salvage and costs.

(f) Insurance of freight.

##### (E) SEAWORTHINESS.

(a) Warranty of: time policy.

(b) Burden of proof of unseaworthiness.

##### (F) GENERAL AVERAGE.

##### (G) RE-INSURANCE.

##### (H) BROKER'S LIEN ON POLICIES.

##### (I) ACTIONS AND PROCEEDINGS.

##### (K) MUTUAL MARINE INSURANCE ASSOCIATION.

(a) Winding up: outside debts.

(b) Action by manager for contributions.

[Amendment of the law relating to the stamping of policies of marine insurance. 39 Vict. c. 6.]

##### (A) VALIDITY OF POLICY.

(a) "Without benefit of salvage": 19 Geo. 2. c. 37.

1.—The plaintiff effected a policy "on commission and [or] profits" on goods "on ship and [or] ships, steamer and [or] steamers, war-

ranted free from all average, and without benefit of salvage, but to pay loss on such part as does not arrive." The goods on which the plaintiff claimed the commission and profits intended to be insured by the policy, were shipped on board two British ships, which were lost by the perils of the seas; part of the goods were lost, and the remainder arrived in a damaged condition. The plaintiff having sued the defendant, the underwriter of the policy, to recover the amount subscribed, or if the policy were void, to recover the premiums paid,—Held, that the policy was void, by 19 Geo. 2. c. 37, for that the statute forbade the use of the clause "without benefit of salvage to the insurers," and though the policy omitted the words "to the insurers," yet it was sufficiently obvious the insurers were not to have the benefit of salvage to be within the prohibition of the statute. *Alkins v. Jope*; *Same v. Pembroke*; *Same v. Oppenheim*; and *Same v. Choisy*, 46 Law J. Rep. C.P. 824; Law Rep. 2 C.P. D. 375.

That policies on commission and profits were within the prohibition of the statute. *Ibid.*

That the policy by giving the assured the option of taking goods either on British or foreign ships did not exclude British ships, so as to take the policy out of the statute. *Ibid.*

That the contract being wholly illegal, and both parties being equally in fault, the premium paid could not be recovered. *Ibid.*

#### (b) Concealment of material fact.

##### (1) Antecedent average loss.

2.—Action by shipowner on policies of insurance on the J. and her freight, lost or not lost, at and from M. to U.K. The J. had arrived at M. after a seventeen days' voyage on the 27th of December. Shortly afterwards she lost an anchor in a storm, as to which loss the captain made a protest. On the 9th of January he wrote to the plaintiff, to the effect that he had commenced loading, did not know when he would finish, but would write again. He made no mention of the loss of the anchor. This letter was received on the 24th of January. No subsequent letter was received by the plaintiff. The J. sailed on the 15th of January, and was never heard of again. On the 24th of February the plaintiff wrote to his agents to insure the ship and freight, saying, "I do not know when he was ready to sail. I have not had the sailing letter yet." No mention was made of the letter of the 9th of January, or of its contents. The agents on the 26th of February effected the policies which were sued on:—Held, first, that the mere fact that when the policy was effected there was an antecedent average loss, which the captain had omitted to communicate to the owner, and the owner therefore could not communicate to the underwriter, was not enough to avoid the policy altogether. Held, secondly, that the question which ought to have been left to the jury was not whether the J. was at the time when the policy was effected

an overdue or missing ship, but whether the facts connected with the letter of the 9th of January, its date and contents, the time of its receipt and so forth, were such facts as would have properly influenced the judgment of a reasonable underwriter in determining whether to accept the risk. *Stribley v. The Imperial Marine Insurance Company*, 45 Law J. Rep. Q.B. 396; Law Rep. 1 Q.B. D. 507.

##### (2) Description of subject-matter: nature of interest.

3.—Where the subject-matter of insurance is properly described, the nature of the interest, if immaterial to the risk, may be left at large. *Mackenzie v. Whitworth* (App.), 45 Law J. Rep. Exch. 233; Law Rep. 1 Ex. D. 36 (affirming the decision of the Court of Exchequer, 44 Law J. Rep. Exch. 81; Law Rep. 10 Exch. 142).

An underwriter having subscribed a marine policy of insurance on certain goods, afterwards insured his risk by effecting with other underwriters a policy on the goods, without stating that the latter transaction was a re-insurance. In an action by him on the second policy it was admitted to be the practice on re-insurance to declare the nature of the interest. The jury negatived concealment, and found that the nature of the interest was immaterial to the risk:—Held, that the plaintiff was entitled to recover. *Ibid.*

##### (c) Insurable interest.

4.—A., a London merchant, contracted with B. S. & Co., of Calcutta, for the purchase of a cargo of rice. The contract was effected by a bought note, which expressed that A.'s brokers had bought for account of A. of B. S. & Co. the cargo of new crop Rangoon rice, per the *Sunbeam*, at 9s. 1½d. per hundredweight cost and freight, payment by seller's draft on purchasers at six months' sight, with documents attached. A. afterwards effected an insurance with M., at and from Rangoon, to any port or place of discharge in the United Kingdom or Continent by the *Sunbeam* on rice as interest may appear. The *Sunbeam*, an American barque, proceeded to Rangoon, and commenced loading the cargo of rice in the river, but when 8,878 bags of rice had been put on board, and the cargo was still incomplete, she suddenly began to leak, and in the course of the night sank at her anchors without any apparent cause, the weather being fine, and the ship, as observed by witnesses immediately before the accident, appearing to be in good condition and order. After the loss of the ship with all the rice which was on board, the captain signed bills of lading in respect of the rice which had been shipped, and B. S. & Co. drew bills of exchange for the price of such rice, and such bills were accepted and paid by A. after he had notice of the loss. A. brought an action on the policy against M.:—Held (on appeal from the Court



of Exchequer Chamber, 44 Law J. Rep. C.P. 341; Law Rep. 10 C.P. 609), by Lords Chelmsford and Hatherley (in accordance with the decision of the Exchequer Chamber), that A. had not, and by Lords O'Hagan and Selborne, that A. had an insurable interest in the rice which was shipped. Held also, that there was evidence of the seaworthiness of the ship, and that the jury were entitled to find that the loss took place from perils insured against. *Anderson v. Morice*; and *Morice v. Anderson* (H.L.), 46 Law J. Rep. C.P. 11; Law Rep. 1 App. Cas. 718.

(d) *Ratification of authority of agent.*

5.—A policy of marine insurance made by A. on behalf of B. without authority, may be ratified by B. after the loss of the thing insured, although at the time of the ratification he was aware of the loss. *Williams v. The North China Insurance Company* (App.), Law Rep. 1 C.P. D. 787.

(e) *Under 30 & 31 Vict. c. 123. s. 7.*

6.—Section 7 of 30 & 31 Vict. c. 123, does not forbid companies or underwriters, by reference or otherwise, importing into a policy of marine insurance terms which are not expressed therein; and where, by reference to documents, terms are so imported, parol evidence is admissible to shew what documents were intended to constitute the contract. Section 7 requires no particular form of policy, provided the risk and other matters specified by that section are comprised in a stamped policy. *Edwards v. The Aberayon Mutual Ship Insurance Society* (Exch. Ch.), Law Rep. 1 Q.B. D. 563.

(B) CONSTRUCTION AND EFFECT OF POLICY.

(a) *Localised policy with power of transit : delay.*

7.—A steamship was insured for a given time against loss by fire. The policy was worded thus :—"On the hull of the steamship *Indian Empire*, with her tackle, furniture and stores on board belonging, lying in the Victoria Docks, London, with liberty to go into dry dock." At the date of the policy the ship was lying in the Victoria Docks. In order to repair her it was necessary to take her from the Victoria Docks to a dry dock higher up the river. She could not enter the dry dock without having the lower halves of her paddle-wheels removed. They were accordingly removed in the Victoria Docks, and the ship was towed to the dry dock. After her repairs were complete she was taken out of the dry dock and moored in the river, and kept there ten days while her paddle-wheels were being refitted. At the end of that time she was totally destroyed by fire.—Held (affirming the decision of the Court of Exchequer Chamber), that the detention of the ship in the river, while her paddle-wheels were being refitted, was no part of the transit covered by

the contract of insurance, but a mere collateral act done on the part of the insured, and that consequently he could not recover on the policy. *Pearson v. The Commercial Union Assurance Company* (H.L.), 45 Law J. Rep. Exch. 761; Law Rep. 1 App. Cas. 498.

(b) *Deviation.*

8.—In an action on a policy of insurance on four steam pumps insured for a voyage on a salvage steamer, "at and from A. to the *Alexandra* steamer ashore near D., whilst then engaged at the wreck, and until again returned to A." it was proved that during the return voyage the steamer *Alexandra* was obliged by stress of weather to run to D. for refuge, and was lost with the pumps on board before she could arrive there :—Held, that there had been a deviation from the risk insured, and that no action would lie on the policy. *Wingate, Birrell & Company v. Foster* (App.), 47 Law J. Rep. Q.B. 525; Law Rep. 3 Q.B. D. 582.

(c) *Duration of risk : voyage varied by memorandum.*

9.—A policy of insurance on a vessel from Liverpool to Baltimore was indorsed with a memorandum, by which it was agreed, in consideration of an additional premium, "to allow the vessel to go to Antwerp." The vessel loaded a cargo for Antwerp at Baltimore, but, when she reached Antwerp, was ordered to proceed to Leith without discharging, and was lost between Antwerp and Leith :—Held, that the voyage between Antwerp and Leith was not covered by the policy. *Stone v. The Ocean Marine Insurance Company (Lim.), of Gothenburg*, 45 Law J. Rep. Ex. 361; Law Rep. 1 Ex. D. 81.

At the time of making the indorsement the vessel had arrived at Antwerp, but had not reached the inner dock, where she intended to unload :—Held, that the risk had not terminated, and the additional premium was not recoverable. *Ibid.*

(d) *Voyage or time policy : further period after arrival.*

10.—The plaintiff's ship was insured by the defendants in a policy at and from Pomaron to Newcastle-on-Tyne, and for fifteen days whilst there after arrival. The vessel arrived at Newcastle and discharged her cargo. Having been chartered to carry coals to Gibraltar, she took in two keels of the coals as stiffening, and then moved to a berth within the port of Newcastle to complete her loading. Whilst there, and within fifteen days after her arrival, she was damaged by a storm. In an action on the policy,—Held (reversing the decision of the Court below, 45 Law J. Rep. Exch. 115; Law Rep. 1 Ex. D. 8), that the defendants were liable. *Gamble v. The Ocean Marine Insurance Company of Bombay* (App.), 45 Law J. Rep. Ex. 366; Law Rep. 1 Ex. D. 141.

In such a policy the provision as to the further period after arrival is not a mere expansion of the period covered by the voyage policy so as to require that the ship up to the time of the loss should not be engaged in a matter unconnected with purposes of the voyage insured. That provision, though appended to a voyage policy, is to be administered upon the principles applicable to a time policy. *Ibid.*

(e) "*Stranding.*"

11.—The cargo was insured by a policy containing a warranty of freedom from average "unless the ship was stranded." The voyage was to a tidal harbour, where the ship must necessarily take the ground at every tide, and could only reach the quay at high spring tides. She grounded before reaching the quay on a small bank, and on the tide falling she settled down by the head into a hole, and the cargo was damaged. The bank and hole were caused by steamers going out at low tide, and their existence was previously unknown:—Held (affirming the judgment of Field, J.), that the ship, having grounded from an unusual cause, not necessarily incident to the navigation, had been stranded within the meaning of the policy, and that the underwriters were liable for an average loss. *Letchford v. Oldham* (App.), 49 Law J. Rep. Q.B. 458; Law Rep. 5 Q.B. D. 538.

(f) *Insurance to cover loss of freight: mode of calculating underwriter's liability.*

12.—The plaintiffs, shipowners, entered into a charter-party by which they were to receive freight for their ship at a named rate. There was also a provision, that if any of the cargo was sea-damaged, the freight on such portion should be only two-thirds of the named rate. The plaintiffs insured with the defendants for a sum "to cover only one-third loss of freight in consequence of sea-damage as per charter-party." Part of the cargo was sea-damaged, and the plaintiffs having only received two-thirds freight on that portion sued the defendants for the difference between the sum received and the full freight on that part of the cargo:—Held, that the insurance was made to cover the difference between the full freight which might be earned, and the amount actually received; and therefore that the plaintiffs were entitled to recover the full amount claimed, and not merely such a portion of the loss as the sum for which the defendants subscribed the policy, bore to the whole value of the freight which might have been earned. *Griffiths v. Bramley-Moore* (App.), 48 Law J. Rep. Q.B. 201; Law Rep. 4 Q.B. D. 70.

(g) *Loss by perils of the sea: French law: English policy.*

13.—By a marine policy effected in England on goods in a French ship, it was provided that general average was to be payable as per judi-

cial foreign statement. On the voyage the master was obliged to take up a loan secured by bond on ship, freight and cargo, in order to effect repairs to the ship occasioned by a collision, which did not damage the cargo. The ship and freight proving insufficient to satisfy the bond, the cargo was seized, and the owner obliged to pay the deficiency to obtain his goods. On action by the owner of the cargo to recover the amount so paid from the underwriters,—Held, that the defendants were entitled to judgment, on the ground that according to English law there was no loss by perils of the sea, and as the policy stipulated for the application of foreign law only as regarded general average, the plaintiff was not at liberty to construe by French law any other portions of the policy so as to constitute the loss a loss by perils of the sea. *Greer v. Poole*, 49 Law J. Rep. Q.B. 463; Law Rep. 5 Q.B. D. 272.

(h) *Valued policy: freight.*

14.—In the case of a valued policy on "freight:—"—Held, that notwithstanding the rule that the valuation in a valued policy is conclusive, the Court may look into the constituent elements of the valuation in order to ascertain whether the freight intended to be so valued was the full freight, or the freight after deducting certain advances made against freight by the charterer's agents to the captain, such question becoming material for the purpose of ascertaining whether the shipowner was interested in the whole of the subject-matter of insurance, and whether to any extent the loss had been satisfied under another policy effected by the charterers on the advances against the freight. *Williams v. The North China Insurance Company* (App.), Law Rep. 1 C.P. D. 767.

(i) *Suing and labouring clause.*

15.—Upon a policy of marine insurance, warranted free from particular average, the underwriter is liable, under the suing and labouring clause, only for expenses necessary to avert a total loss. *Meyer v. Ralli*, 45 Law J. Rep. C.P. 741; Law Rep. 1 C.P. D. 358.

[And see No. 17 infra.]

(C) RESTRAINT OF PRINCES.

16.—A cargo belonging to the defendants which had been insured by the plaintiffs against war risk was captured and destroyed by the *Alabama* cruiser during the war between the United States and the Confederate States of America. Under an arbitration held pursuant to a treaty between Great Britain and the United States, a sum of money was awarded, which was afterwards paid by Great Britain to the United States in satisfaction of the claims made by the United States on Great Britain for losses arising in part from the acts of the *Alabama*. An Act of Congress of the United States was afterwards passed for the

constitution of a Court to distribute money out of the sum so paid by Great Britain to the parties who might be adjudged entitled to compensation. The defendants (who were paid by the plaintiffs, as for a total loss, the whole of the sum insured, such sum being stated in the policy to be the value of the cargo) claimed in the Court so constituted under the Act of Congress a sum of money, which was the difference between the sum so received from the plaintiffs and the actual value of the cargo, which exceeded the sum insured. This claim was allowed, and its amount was paid to the defendants after certain deductions for the expense of obtaining it. This Act of Congress contained a clause which would have prevented the plaintiffs from obtaining such money from the said Court either by their applying for it in their own names or in those of the defendants:—Held, first, that the valuation of the cargo stated in the policy was conclusive as between the parties; second, that the defendants were trustees for the plaintiffs in respect of the money so recovered from the United States Court; third, that the plaintiffs were entitled to recover it from the defendants in an English Court, although the American statute intended that they should not receive it. *Burnand v. Rodocanachi, Son & Company*, 49 Law J. Rep. C.P. 732; Law Rep. 5 C.P. D. 424; reversed on appeal, Law Rep. 6 Q.B. D. 633.

#### (D) PARTIAL AND TOTAL LOSS.

##### (a) *Partial loss: measure of damages where shipowner elects to repair.*

17.—The plaintiff, who was the owner of a ship, effected a policy for 1,200*l.* with the defendants on his vessel, valued at 2,600*l.*, against the usual sea risks on an out and home voyage from C. to L. The policy contained the usual suing and labouring clause. During the voyage the ship sustained damage at sea, the cost of which, after the usual deduction of one-third new for old, together with certain particular average charges covered by the policy, amounted to the sum of 3,178*l.* 11*s.* 7*d.* The plaintiff had, in addition to this expenditure, to pay 519*l.* for salvage services and general average expenses. The ship being old, the effect of these repairs was to make her a much stronger and better ship than she was before the damage. In an action on the policy the defendants contended that the loss was to be estimated by the depreciation of the ship as a saleable chattel, and not by the cost of the repairs; and also that in the case of a partial loss the assurer could not be liable for more than a total loss with benefit of salvage:—Held (by the Court of Appeal, *nom. Lohre v. Aitchison*, 47 Law J. Rep. Q.B. 534; Law Rep. 3 Q.B. D. 558, and by the House of Lords, affirming the decision of the Queen's Bench Division, 46 Law J. Rep. Q.B. 715; Law Rep. 2 Q.B. D. 507), that the measure of damages when the shipowner elected to repair, was, as in all cases, to be ascer-

tained by the cost of the repairs less the proper deduction of "one-third new for old," even though the result might be to make the underwriters liable for more than a total loss with benefit of salvage. Held also (by the Court of Appeal, reversing the decision of the Queen's Bench Division), that, though the damage done was so great as to exhaust the policy, and the assured had refused to abandon, he was entitled to recover, under the suing and labouring clause, a proportion of the salvage expenses beyond the 1,200*l.*: but held by the House of Lords (restoring the decision of the Queen's Bench Division), that salvage and general average expenses could not be recovered under the suing and labouring clause. *Aitchison v. Lohre* (H.L.), 49 Law J. Rep. Q.B. 123; Law Rep. 4 App. Cas. 755.

##### (b) *Constructive total loss: notice of abandonment.*

18.—Where the assured has received full information of a disaster having occurred to an insured vessel, of such a nature as to cause imminent danger of her becoming a total loss, he must at once make his election to treat the loss as constructively total, and must give notice of abandonment to the underwriters; and he is not excused from the necessity of giving such notice by the fact that the vessel has been subsequently sold, and that the sale as a matter of fact was the best course in the interests of all concerned, and that no advantage would, in the circumstances of the case, have accrued to the underwriters from such notice.—*Rankin v. Potter* (42 Law J. Rep. C.P. 169) explained. *Kaltenbach v. Mackenzie* (App.), 48 Law J. Rep. C.P. 9; Law Rep. 3 C.P. D. 467.

##### (c) *Sale of ship by master.*

19.—A vessel struck upon a rock outside a harbour, and it was necessary to lighten her in order to get her off at the next high tide, and for that purpose her master entered into a contract with one G., who was the only person at the place who had a sufficient number of men to render effectual assistance, to find the labour required for that purpose. G. supplied only a small number of men, who worked very languidly in discharging the cargo for two or three hours, and at the end of that time G. persuaded the master to cancel this contract and to call a survey of the vessel and sell her. G. and some men he brought accordingly made a survey, and by it found the mainmast raised one inch, the main combings parted, the deck plank opening and the vessel unseaworthy, and advised that the ship and cargo should be sold for the benefit of all concerned. The master then sold her to G. for a very small sum of money. When the vessel struck on the rock there was a strong breeze blowing, but it afterwards got calmer, and at the time of the sale the weather was good, and the vessel lying on her bilge with no more danger than she had been in from the

time she struck, but there was evidence that if the wind veered round to the south or west the sea would have heaved in and the vessel would have broken up in a short time. As a fact, directly after the sale G. brought a number of hands to discharge the cargo, and so got the vessel off and floated her at the next high tide, and he afterwards repaired and made her seaworthy at a trifling expense. In an action against the underwriter on a policy of insurance on the vessel for a constructive total loss, the Judge ruled, on the above facts appearing at the end of the plaintiff's case, that there was no evidence upon which the jury could reasonably find the urgent necessity for the sale of the vessel at the time she was sold, and he accordingly withdrew the case from the jury and directed the verdict to be entered for the defendant:—Held (by Lord Coleridge, C.J.), that such ruling was right. Held (by Grove, J.), that it was wrong, and that the case should not have been withdrawn from the jury. *Hall v. Jope*, 49 Law J. Rep. C.P. 721.

Quære, whether Order XXXIX. rule 3, directing that a new trial shall not be granted on the ground of misdirection, unless some substantial wrong has been thereby occasioned in the trial of the action, applies to such a case. *Ibid.*

(d) *Insurance limited to actual damage: by-law.*

20.—A valued policy of insurance, made with a mutual marine insurance company, incorporated certain by-laws of the company which were indorsed thereon. The policy declared that the acts of the assurer or assured, in recovering, saving or preserving the property insured, should not be considered a waiver or acceptance of abandonment. By one of the by-laws it was provided that, in the event of any ship being stranded or damaged, and not taken to a place of safety, the company might use all possible means to procure her safety; but that no acts of the company, in pursuance of such power, should be deemed to be an acceptance of any abandonment of which the assured might have given notice; and that the company, under any circumstances, should only pay for the absolute damage caused by the perils insured against, which was in no case to exceed the sum insured. In an action brought to recover for a constructive total loss,—Held (affirming the decision of Lush, J., 49 Law J. Rep. Q.B. 243; Law Rep. 5 Q.B. D. 57), that the by-law did not exclude a constructive total loss, and that the plaintiff was entitled to recover. *Ferrwood v. The North Wales Mutual Marine Insurance Company. The Same v. The Provincial A1 Mutual Marine Insurance Company (Lim.)* (App.), 49 Law J. Rep. Q.B. 593.

(e) *Total loss: salvage and costs: refitting.*

21.—By agreement between the plaintiff and W., the plaintiff undertook at his own expense and risk to transport the *Cleopatra* obelisk from

Alexandria to London, and there to erect it uninjured. In the event of success W. was to pay the plaintiff 10,000*l.*, but in the event of failure the plaintiff was to incur no liability to W. It was calculated that the 10,000*l.* would no more than cover the expenses. The obelisk was delivered to the plaintiff by the Khedive of Egypt for the purpose of conveying it to London; the plaintiff expended money and labour in preparing for the transport, and built a vessel called the *Cleopatra*, which was little more than an iron case, in which the obelisk was stowed, and in which it would float, and agreed with the owners of the steamship *Olga* to tow the *Cleopatra*, with the obelisk on board, from Alexandria to London for 900*l.* After payment of this sum the plaintiff had expended in all 4,000*l.* on the transport, &c. The plaintiff next effected two policies of insurance, against total loss only, with the defendants respectively, the first of which, with the defendant Whitworth, was for 1,000*l.* "upon the goods and merchandise in the good ship *Cleopatra*, iron vessel, containing the *Cleopatra* obelisk. The goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at 4,000*l.*" The second policy with the Sea Insurance Company was for 2,000*l.* "upon any kind of goods and merchandises, and also upon the body, &c., of and in the good ship *Cleopatra*, iron vessel, containing the *Cleopatra* obelisk. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and the company in this policy, are and shall be, vessel and obelisk, valued at 4,000*l.*" The suing and labours clause in both policies was as follows:—"And in case of any loss or misfortune it shall be lawful for the assured, their factors, servants and assigns, to sue, labour and travel for, in and about the defence, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance, to the charges whereof the assurers will contribute each one according to the rate and quantity of his sum herein assured." The *Cleopatra* and the obelisk left Alexandria in tow of the *Olga*; a severe storm was encountered in the Bay of Biscay, when the *Olga* was compelled to cast off the *Cleopatra* and take her crew on board. The following day the *Cleopatra* was lost sight of, and after vainly endeavouring to find her, the *Olga* came on to England without her. Subsequently the steamer *Fitzmaurice* fell in with the *Cleopatra* and succeeded in towing her into Ferrol, a neighbouring port. The Court of Admiralty awarded 2,000*l.* salvage to the *Fitzmaurice*; the plaintiff had to pay—first, the salvage; second, the costs; third, certain expenses in refitting the *Cleopatra* at Ferrol, and towing her thence to London. The plaintiff now sought to recover from the defendants the several amounts under these heads of expense:—Held, that both policies were on the ship and obelisk, and that the plaintiff had an insurable interest in each to the extent of 4,000*l.*, which

was sufficiently described in the respective policies. That the defendants were liable to the plaintiff for the 2,000*l.* paid as salvage; for, though the policies were against the risk of total loss only, the *Cleopatra* was only saved from total loss by the services of the salvors, and the defendants, therefore, having had the benefit of their services, were bound to indemnify the plaintiff against his liability in respect of them, and that each of the defendants was bound to contribute in proportion to the amount subscribed by him. That the defendants were not liable to the plaintiff for the costs of the Admiralty proceedings, or the expenses of refitting the *Cleopatra* at Ferrol and towage from thence to England, such costs and expenses being too remote to be covered by the policies. *Dixon v. Whitworth. The Same v. The Sea Insurance Company*, 48 Law J. Rep. C.P. 538; Law Rep. 4 C.P. D. 271, affirmed on appeal, 49 Law J. Rep. C.P. 408.

(f) *Insurance of freight.*

22.—Half freight having been prepaid, the other half to be paid on right delivery, the shipowner effected insurances on freight "valued at" the half of the freight. Only half the goods having reached their destination.—Held, that the shipowner was entitled to recover the full amount of his insurance as for a total loss of the half freight insured. *Allison v. The Bristol Marine Insurance Company* (H.L.), Law Rep. 1 App. Cas. 209.

(E) SEAWORTHINESS.

(a) *Warranty of: time policy.*

23.—In an action upon a policy of insurance for twelve months it appeared that a steamer, the *Frances*, was insured while lying at Millwall undergoing repairs. The policy was effected by a printed voyage policy form with interlineations and additions. The *Frances* took out a cargo to Gothenburg, and on her return encountered a heavy rolling sea, and after beating about for some days became water-logged, went ashore and was lost. The jury could not agree as to whether or not the ship was seaworthy when she started, but they found that if not, the plaintiffs had no knowledge of the unseaworthiness, and they could not agree as to whether or not unseaworthiness was the cause of the loss. Upon these findings a verdict was found for the plaintiffs, and a rule for a new trial having been obtained, the Court of Queen's Bench discharged the rule. On appeal the Court of Exchequer Chamber reversed the judgment of the Court of Queen's Bench, and decided that there must be a rule absolute for a new trial:—Held (by the House of Lords), that there is no warranty of seaworthiness implied in a time policy; that the policy in question in this case was a time policy; that the loss of the *Frances*, having been caused immediately and directly by perils of the sea, was within the terms of the policy, even though her unseawor-

thiness was more remotely a contributing cause, and that a verdict was therefore rightly entered for the plaintiffs at the trial. *Dudgeon v. Pembroke* (H.L.), 46 Law J. Rep. Q.B. 409; Law Rep. 2 App. Cas. 284.

(b) *Burden of proof of unseaworthiness.*

24.—In an action on a policy of insurance it was proved that eleven days after the vessel set sail she put back in a disabled condition, having encountered severe weather. The Judge directed the jury that the time between the sailing of the vessel and her return was so short that the *onus* of proof was shifted from the defendant to the plaintiff, and that it was incumbent upon the plaintiff to prove that the unseaworthiness arose from causes occurring subsequently to her setting sail:—Held (by the Queen's Bench Division and the Court of Appeal) a misdirection. *Watson v. Clarke* (1 Dow, 336) explained. *Pickup v. The Thames and Mersey Marine Insurance Company (Lim.)* (App.), 47 Law J. Rep. Q.B. 749; Law Rep. 3 Q.B. D. 594.

*Evidence of.* [See No. 4 supra.]

(F) GENERAL AVERAGE.

25.—Where a ship is compelled to put into port to repair damage occasioned by a general average sacrifice, the expenses of warehousing and reshipping cargo, necessarily unloaded in order to repair, and the port and pilotage charges and other expenses on leaving the port, are the subject of a general average contribution. Judgment of the Queen's Bench Division affirmed. *Attwood v. Sellar* (App.), 49 Law J. Rep. Q.B. 515; Law Rep. 5 Q.B. D. 286.

*Warranty of freedom from general average unless ship "stranded."* [See No. 11 supra.]

(G) RE-INSURANCE.

*Declarations of risk: usage of underwriters.*

26.—In accordance with an agreement entered into between the plaintiffs, a marine insurance company, and the defendants, a fire insurance company, the defendants subscribed a policy whereby they undertook to re-insure the plaintiffs against loss or damage by fire to the extent of 50,000*l.* by such ships as might be declared at and from certain ports to destination, the policy to be subject to the same conditions (as far as they related to the fire risk only) as the original policy or policies, and would pay as might be paid thereon. The policy provided that the arrangement was to be in force for one year from the 1st of October, 1876, and to include only such vessels as were coal-laden; the policy to be supplemented by further policies on like terms should the amount thereof not prove sufficient for the year's transactions. This policy becoming exhausted by declaration of risk, the defendants, on the 9th of July, subscribed a second policy similar in terms to the former

policy, and this second policy becoming likewise exhausted, a third policy was, on the 25th of October, subscribed by the defendants, similar in terms to the former policies. On the 7th of June the plaintiffs insured a coal-laden ship, the *Hampden*, and there was a loss by fire of the cargo on the 18th of September, which would have been covered by the policy of insurance if the risk had been duly declared, but through the negligence of the plaintiffs' manager the risk had not been declared. At the time the third policy was effected the plaintiffs knew of the loss, and on the 2nd of November they declared the *Hampden* and claimed for a loss. The plaintiffs having brought an action to recover the loss, it was—Held, that the plaintiffs were entitled to recover, for that the defendants were insurers in respect of a marine risk, and as such subject to the usage of underwriters, stated in *Stephens v. The Australasian Insurance Company*, 42 Law J. Rep. C.P. 12; Law Rep. 8 C.P. 18, by which, in the case of open policies on ships to be declared, the policy attaches to the goods as soon as, and in the order in which they are shipped, in which order the assured is bound to declare them, and in case of mistake as to the order of shipment, the assured is bound to rectify the declaration which may, in the absence of fraud, be received even after the loss is known. *The Imperial Marine Insurance Company v. The Fire Insurance Corporation (Lim.)*, 48 Law J. Rep. C.P. 424; Law Rep. 4 C.P. D. 166.

[And see No. 3 supra.]

#### (H) BROKER'S LIEN ON POLICIES.

27.—The plaintiff employed S. & Co. to insure a cargo. S. & Co. employed the defendant for the same purpose, who effected the policies required. According to the course of trade monthly credits were given for the premiums by the defendant to S. & Co., and by S. & Co. to the plaintiff, the defendant retaining the policies in his hands. The plaintiff paid S. & Co. in due course, but S. & Co. became insolvent before paying the defendant:—Held, that there was nothing in the contract or course of business inconsistent with the common law right of an insurance broker to a lien upon policies for premiums due thereon. *Fisher v. Smith* (H.L.), 48 Law J. Rep. Exch. 411; Law Rep. 4 App. Cas. 1. Held also, that the lien was the lien of the defendant, and was, therefore, not discharged by the payment to S. & Co. *Ibid.*

#### (I) ACTIONS AND PROCEEDINGS.

*Action by assignee: defence: set-off: counter-claim.*

28.—To an action on a policy of insurance on a ship's cargo brought by the assignee of such policy in his own name, by virtue of the 31 & 32 Vict. c. 86, the defendant may set off any debt which he might have set off if the action had been brought in the name of the person who had effected the policy; "any defence" in the 1st section of that Act not being

confined to a defence arising on the policy itself. *Pellas & Company v. The Neptune Marine Insurance Company*, 48 Law J. Rep. C.P. 370; reversed on appeal, Law Rep. 5 C.P. D. 34.

Semble, a counter-claim is within the meaning of the words "any defence" in that section. *Ibid.*

*Collision: ships belonging to same owner.*

29.—Collision between two vessels, the property of one owner. The underwriters having paid the insurance on the lost ship, claimed to recover against the owner of the other ship, on the same footing as the owners of cargo in the lost ship:—Held, that they could only claim in the name of the person insured by them, and he, being the owner of both vessels, could not claim against himself. *Simpson v. Thomson* (H.L. Sc.), Law Rep. 3 App. Cas. 279.

*Action on marine policy: right to production and discovery of ship's papers.* [See PRODUCTION, 29.]

*Question for jury: missing ship.* [See No. 2 supra.]

*Return of premium.* [See No. 1 supra.]

#### (K) MUTUAL MARINE INSURANCE ASSOCIATION.

##### (a) Winding up: outside debts.

30.—An unregistered mutual marine insurance association was ordered to be wound up. Eighty persons were settled on the list of contributories, and a certificate was made shewing that 500*l.* was due to outside creditors of the association, and upwards of 17,000*l.* to policy-holders. Two years afterwards the debts to policy-holders were expunged, on the ground that the policies were void in law. The official liquidator proposed to make a call of 135*l.* per contributory for the purpose of paying the outside debts and costs of the winding up, which amounted to upwards of 7,000*l.*, and had been incurred principally in calculating what was due on the policies which had been declared void:—Held, that the Court was precluded by the certificate that the outside debts were debts of the association from entering into the question whether such debts were debts of the association or of the persons individually who ordered the particular goods or services; but semble, they were debts of the association. Held also, that the liability to contribute was equal. *The London Marine Insurance Association* (38 Law J. Rep. Chanc. 681) considered. *In re The Arthur Average Association*, 45 Law J. Rep. Chanc. 346; Law Rep. 3 Ch. D. 522.

##### (b) Action by manager for contributions.

*Action not maintainable by manager of mutual insurance association for contributions due under the rules from a member.* [See ACTION, 3.]

## MARKET.

## (A) LIMITS OF: "DWELLING-PLACE OR SHOP."

## (B) DISTURBANCE OF RIGHT TO.

[Regulations as to weights and measures, and as to their inspection, &c., by clerks of markets. 41 & 42 Vict. c. 49. s. 86. sub-s. 6. pt. 2.]

## (A) LIMITS OF: "DWELLING-PLACE OR SHOP."

1.—A local Act regulating a market prohibited under a penalty, in terms identical with those in section 13 of the Markets and Fairs Clauses Act, 1847, any person from selling or exposing for sale within the limits of the market, "except in his own dwelling-place or shop," any articles in respect of which tolls were by that Act authorised to be taken. The appellant resided within the limits, and occupied a large yard adjoining his residence, in which were sheds for the sale of cattle and sheep. The yard extended back about 160 feet, and the only entrance to it was through double doors from the street, and by passing underneath the small house, which consisted only of upper rooms supported on pillars over the entrance. Stairs led up from this covered entrance, which was thirty feet by twenty, to the house. The appellant was summoned for exposing for sale 200 sheep in this yard, and convicted in a penalty:—Held, that the conviction was right, as the yard did not come within the exception, so as to be either the appellant's dwelling-place or his shop. *M'Hole v. Davies*, 45 Law J. Rep. M.C. 30; Law Rep. 1 Q.B. D. 59.

2.—By a local Act (30 Vict. c. xix.), which incorporated the provisions of the Markets and Fairs Clauses Act, any person not licensed was prohibited under a penalty from selling or exposing for sale manufactured goods "in any open place within the limits of the market, except in his own dwelling-place or shop." The respondent, who had no licence, sold and exposed for sale manufactured goods in the skittle alley of an inn, rented for that purpose from the landlord, and within the prescribed limits. The alley was under cover and connected with the house; the goods were ranged on a table near to which the respondent stood:—Held, that such place was an "open place" and not a "shop," within the meaning of the local Act. *Hooper v. Kenshole*, 46 Law J. Rep. M.C. 160; Law Rep. 2 Q.B. D. 127.

## (B) DISTURBANCE OF RIGHT TO.

3.—The owner of an ancient market for the sale of cattle, which was held on every Thursday at B., brought an action to restrain auctioneers, who advertised that they would on a certain Monday, and on every succeeding Monday, hold a market for the sale of cattle at B., from holding their intended market. The auctioneers had expended moneys in advertising and in erecting pens and stallage for cattle. On motion for an interlocutory injunction pending the trial

of the action,—Held (reversing the decision of the Master of the Rolls), that, on the balance of convenience and inconvenience, it was not a case for an interlocutory injunction pending the trial of the action. *Elves v. Payne* (App.), 48 Law J. Rep. Chanc. 331; Law Rep. 12 Ch. D. 468.

4.—The right of the owner of a market to prevent tradesmen from selling marketable articles in their shops within the limits of the franchise, without paying the market dues in respect of such sales, is not unreasonable, and may be gained by immemorial custom or prescription. The grant of a market, "with all liberties and free customs to such a market belonging," does not imply such a right. *The Mayor, Aldermen and Burgesses of Penryn v. Best* (App.), 48 Law J. Rep. Exch. 103; Law Rep. 3 Ex. D. 292.

In an action for the infringement of such a right in respect of a meat market within a borough, it was proved that, from the time of living memory up to 1862, butchers having shops within the borough were in the habit of closing their shops on market days and going into the market to sell their goods, paying stallage. That in 1862 two butchers refused so to close their shops, but submitted on actions being brought, and afterwards paid the market dues for what they sold in their shops on market days; and that the defendant had paid dues in like manner for some time before the year 1875, when he declined to continue the payment:—Held (reversing the judgment of the Exchequer Division), that there was evidence from which the jury might find that the plaintiffs had established their right to prevent the owners of butchers' shops from selling in them on market days without paying market dues. *Ibid*.

5.—The plaintiffs were, down to 1855, seised in fee of an ancient market for the sale of cattle, known as Smithfield Market, and were entitled to certain tolls in respect of cattle exposed for sale in the market. In 1855 the Smithfield Market was, under the authority of an Act of Parliament, removed to Islington; but all privileges were expressly preserved to the plaintiffs, and it was enacted that no new market for the sale of cattle should be opened within a distance of seven miles from St. Paul's Cathedral, in the City of London. One of the defendants became in 1854 lessee of certain premises about six hundred yards distant from the Islington Market, and within the distance of seven miles from St. Paul's Cathedral, and converted them into lairs and receptacles for cattle, containing accommodation for about four hundred head. Some of the cattle were from time to time sold by the defendants upon the premises between the market days, which were held on Mondays and Thursdays. Beyond a uniform charge for lairage, there was nothing in the nature of a toll upon sales effected by other persons than the defendants; but where the defendants themselves acted as salesmen,

they charged the same commission as if the cattle had been sold in the plaintiffs' market. The cattle thus sold in the interval between the two markets would, if there had been no opportunity for sale between the two markets, have found their way to and have been sold in the market of the plaintiffs:—Held, on the above facts, that an action was maintainable against the defendants for a disturbance of the plaintiffs' market. *The Mayor, &c., of London v. Low*, 49 Law J. Rep. Q.B. 144.

*Duty of owner: dangerous erection in market-place.* [See NEGLIGENCE, 3.]

*Loss of: damages for.* [See DAMAGES, 6.]

*Offence: selling fish within town.* [See PUBLIC HEALTH, 39.]

*Sale of animals in: contagious diseases.* [See CONTAGIOUS DISEASES ACT, 1.]

*Sale of goods in market overt.* [See SALE, 15.]

*Stall: rating.* [See RATES, 11.]

### MARRIAGE.

[See DIVORCE; HUSBAND AND WIFE.]

(A) FORMALITIES ATTENDING CEREMONY OF: MARRIAGE BEFORE REGISTRAR: NOTICE.

(B) EVIDENCE OF: MARRIAGE BY REPUTE.

(C) EFFECT OF, TO CONFER NAME ON WOMAN.

[Confirmation of certain marriages on board Her Majesty's ships. 42 & 43 Vict. c. 29.]

(A) FORMALITIES ATTENDING CEREMONY OF: MARRIAGE BEFORE REGISTRAR: NOTICE.

1.—In the case of marriages under 19 & 20 Vict. c. 119, the due notice required by the statute is a notice conforming to the formalities prescribed by the statute. The notice will be sufficient, even although the contents thereof in respect of the Christian names or ages of the parties and other details are not strictly true or accurate, and evidence cannot be given in any suit or legal proceedings touching the validity of the marriage, to prove the falsity of the statements in the notice. *Prosser v. Spurway*, 46 Law J. Rep. P. D. & A. 49.

(B) EVIDENCE OF MARRIAGE BY REPUTE.

2.—A. and B. cohabited together as man and wife for thirty years, and until B.'s death in 1835. There was no evidence of any marriage having been solemnised, nor was there any affidavit in support of the marriage made by any member of the family; but there was general reputation that they were married, and proof of the registry of the baptism of several of their children as of A. and B. his wife. C., the brother of B., by his will made in 1871, gave a legacy to one of these children, describing her as "his niece:—Held, that these children were entitled, as legitimate children

of A. and B., to share, as next-of-kin, in a fund as to which C. had died intestate. *Collins v. Bishop*, 48 Law J. Rep. Chanc. 31.

Semble, a marriage may be established by repute, even though there be no positive evidence in support of the marriage from any member of the family. *Ibid.*

[And see SMOOTH LAW, 15.]

(C) EFFECT OF, TO CONFER NAME ON WOMAN.

3.—Marriage confers a name upon a woman. The name so conferred becomes her actual name, and continues to be so even after a decree of divorce, until she has acquired by repute some other name which, so to speak, obliterates it. *Fendall v. Goldsmid*, 46 Law J. Rep. P. D. & A. 70; Law Rep. 2 P. D. 263.

*Contract of: ratification by infant.* [See INFANT, 18-20.]

*Illegal consideration: marriage with deceased wife's sister.* [See SETTLEMENT, 5.]

*Law of domicile: when applicable.* [See DIVORCE, 13; DOMICIL, 5.]

*Marriage solemnised out of parish church: presumption in favour of place being licensed.* [See BIGAMY.]

### MARRIAGE SETTLEMENT.

[See SETTLEMENT.]

### MARRIED WOMAN.

[See HUSBAND AND WIFE.]

*Affiliation order.* [See BASTARDY.]

### MASTER AND SERVANT.

(A) CONTRACT OF SERVICE.

(a) *Employer's and Workman's Act.*

(1) *Contract by infant.*

(2) *Procedure under.*

(b) *Wrongful dismissal: right to notice.*

(B) LIABILITY OF MASTER FOR INJURY TO SERVANT.

(a) *Doctrine of common employment.*

(b) *Defective state of premises, injury owing to.*

(C) RIGHT OF ACTION OF MASTER FOR LOSS OF SERVICES.

(D) LIABILITY OF MASTER FOR ACTS OF SERVANT.

(a) *Negligence by contractor.*

(b) *Scope of employment: carman.*

(c) *Cab driver and cab owner.*

(d) *Opening coal shoot in highway.*

(e) *Privacy of contract between master and injured person.*

(f) *Injury to person coming on master's premises.*

(g) *Res judicata: money paid by servant under magistrate's order before action brought.*



**(E) TRUCK ACT: WAGES: DEDUCTION FOR DAMAGE.**

[Extension and regulation of the liability of employers to make compensation for personal injuries suffered by workmen in their service. The doctrine of common employment abolished. 43 & 44 Vict. c. 42.]

**(A) CONTRACT OF SERVICE.****(a) Employer's and Workman's Act.****(1) Contract by infant.**

1.—By 38 & 39 Vict. c. 90. s. 4, disputes between an employer and a workman may be heard and determined by a Court of summary jurisdiction, who may order payment of any sum not exceeding 10*l.* which it may find to be due as wages or damages. The appellants under the above section sought to recover from the respondent, an infant, a sum of money as damages for breach of contract in absenting himself from their service. By the contract in question the infant undertook to serve the appellants for five years, at a certain scale of wages therein specified, power being reserved to the appellants, in case they should cease to carry on business, or find it necessary to reduce the operation of their works from want of materials, strikes, &c., to terminate the contract on giving fourteen days' notice of their intention so to do. The justices held that the contract was invalid as against the respondent, and accordingly dismissed the summons:—Held, that if the provisions contained in the agreement were common to labour contracts, or were such as the appellants were reasonably justified in imposing, and if the wages were a fair compensation for the respondent's services, the contract was beneficial and therefore binding, and the case was accordingly remitted to the justices for further consideration. *Leslie v. Fitzpatrick*, 47 Law J. Rep. M.C. 22; Law Rep. 3 Q.B. D. 229.

**(2) Procedure under.**

2.—The appellant having been dismissed without notice for neglecting his work by his employers, the respondents, recovered 3*l.* 10*s.* against them in the County Court. The respondents preferred a claim against him before justices, under 38 & 39 Vict. c. 90. s. 4, for damages for injury caused by his neglect:—Held, that they were not precluded from so doing by section 3 of the Act, inasmuch as the only matter decided by the County Court was whether there was such negligence on his part as would justify dismissal without notice. *Hindley v. Haslam*, Law Rep. 3 Q.B. D. 481.

3.—The absenting himself from a weekly employment, without notice and without assigning cause, by a workman, and a complaint thereon to justices shews a dispute arising out of, or incidental to, their relation as employer and workman, so as to give justices jurisdiction under 38 & 39 Vict. c. 96. s. 4, notwithstanding

that the workman had not expressly had notice that a week's notice was necessary before leaving the service, and that he said nothing to dispute that fact. *Clemson v. Hubbard* (App. Div.), 45 Law J. Rep. M.C. 69; Law Rep. 1 Ex. D. 179.

**(b) Wrongful dismissal: right to notice.**

4.—The master of a ship was engaged under a contract providing that, "should owners require captain to leave the ship abroad, his wages to cease on the day he is required to give up the command," &c. In an action by the captain for wrongful dismissal without notice, but not for misconduct,—Held, that he was entitled to reasonable notice. *Green v. Wright*, Law Rep. 1 C.P. D. 591.

**(B) LIABILITY OF MASTER FOR INJURY TO SERVANT.****(a) Doctrine of common employment.**

5.—At Leeds there are two railway stations adjoining one another, one belonging to the Great Northern Railway Company and the other to the North Eastern Railway Company. Part of the lines running into the two stations are used in common by the two companies for the interchange of traffic between the two lines. This part is under the management of a "joint station staff" in the employment of the Great Northern Railway Company. Half of the wages of the joint station staff is paid by the North Eastern to the Great Northern Railway Company. While S., a signalman on that staff, was employed in his ordinary duties he was struck and killed by a passing engine of the North Eastern Railway Company, which at the time he was not engaged in signalling, through the negligence of the driver. In an action against the North Eastern Railway Company by the widow of S., under Lord Campbell's Act,—Held (reversing the decision of the Exchequer Division), that the deceased was not, at the time of his death, engaged in a common employment or service with the engine driver so as to take away the liability of the defendants for the negligence of their servant; and that the plaintiff was entitled to recover. *Swainson v. The North Eastern Railway Company* (App.), 47 Law J. Rep. Exch. 372; Law Rep. 3 Ex. D. 341.

6.—The defendant had a wharf or warehouse by the river side, where he carried on the business of a corn merchant, miller, wharfinger and warehouseman; and he employed the plaintiff, a licensed waterman, at a weekly salary, to superintend the barges, and to see that they were properly placed for loading or unloading at the wharf, and these duties required only the attendance of the plaintiff for about three hours at every high tide. The plaintiff never did any work in the warehouse, but he was in the habit of going to the defendant's office for orders, and for that purpose, of going through the warehouse, which was the usual though

not the only way to the office from the river side of the warehouse, where the barges were. One evening the plaintiff happening to be at the barges, though before the time when his services would usually be required there, the defendant's foreman sent for him, at the office, to give him orders. He accordingly went through the warehouse, when on coming out of the door, at the street side of it, a sack of peas which was being hoisted from the street into one of the floors over such door fell upon and injured him, through the negligence of the defendant's servants, who were engaged in such hoisting:—Held, that the plaintiff and the servants who were engaged in hoisting the sack were fellow-servants, and that the negligence which caused the injury was one of those risks which he undertook to incur when he entered the defendant's service, and consequently that the defendant was not liable for the same. *Lavell v. Howell*, 45 Law J. Rep. C.P. 387; Law Rep. 1 C.P. D. 161.

7.—The defendants, being colliery owners, employed W. to sink a shaft for them. W. was to find labourers and to pay them, and the defendants were to provide steam power and engineers, who were to be paid by the defendants, but to work under the orders and control of W. In an action by one of W.'s workmen against the defendants for injuries caused by the negligence of one of the engineers,—Held (by the Common Pleas Division and by the Court of Appeal), that the defendants were not liable; as the engineer was not acting as servant to the defendants at the time of the accident, but in a common employment with the plaintiff as servant of W. *Rourke v. The White Moss Colliery Company* (App.), 46 Law J. Rep. C.P. 283; Law Rep. 1 C.P. D. 556; *ibid.* 2 C.P. D. 205.

8.—The plaintiff was hired by a contractor to assist in unloading the defendant's barge, but was paid by the defendant, who alone had the power of discharging him. In an action by the plaintiff for injuries sustained owing to the negligence of the defendant's servants the jury found that the plaintiff was a fellow-servant:—Held, that there was evidence to justify this finding. *Charles v. Taylor* (App.), Law Rep. 3 C.P. D. 492.

(b) *Defective state of premises, injury owing to.*

9.—The plaintiff was employed by the defendant company as a stoker at their gas works. On the premises, and near the place where he worked, were two gates which had been for some time out of repair. If closed or partially closed they were unsafe, but if left open and wedged up they were safe. The attention of the defendant's manager had been called to the condition of the gates, and he had promised to have them seen to. Some directions had been given by the foreman blacksmith of the works to one of his men to make a bar to go across the gates; that, however, had not been done because there was not the right size of iron on

the premises to make the bar. One morning the plaintiff with another workman passed through the gates, which were still unrepaired and open and wedged up as aforesaid. Soon afterwards he found one of them shut, but by whom or how closed was unknown. While setting about his work, this gate fell and hurt him. He sued the company for damages:—Held, there was no evidence of negligence on the part of the defendants to render them liable. *Allen v. The New Gas Company*, 45 Law J. Rep. Exch. 668; Law Rep. 1 Ex. D. 251.

(C) RIGHT OF ACTION OF MASTER FOR LOSS OF SERVICES.

10.—A master cannot maintain an action *per quod servitium amisit* against a railway company for an injury to his servant whilst a passenger on the company's railway, caused by neglect of their duty to carry safely the servant according to their contract with him as such passenger, unless the master was a party to the contract. But where the servant is injured by the negligence of another railway company, not party to the contract, in running their train against the train in which the servant is such passenger, the master can maintain an action *quod servitium amisit* against such other company. *Berringer v. The Great Eastern Railway Company*, 48 Law J. Rep. C.P. 400; Law Rep. 4 C.P. D. 163.

(D) LIABILITY OF MASTER FOR ACTS OF SERVANT.

(a) *Negligence by contractor.*

11.—A man who orders work to be executed from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief. *Bower v. Peate*, 45 Law J. Rep. Q.B. 446; Law Rep. 1 Q.B. D. 321.

The defendant employed a contractor to pull down his house and rebuild it, undertaking to do no injury to the support of the adjoining house of the plaintiff. The contractor, however, did not take sufficient means to support the plaintiff's house, which was consequently injured:—Held, that the defendant was liable. *Ibid.*

(b) *Scope of employment: carman.*

12.—Where the carman of the defendant (a brewer), without permission, and for his own purposes, took out the defendant's cart, and on his return home (as he usually did when returning home after delivering beer for his master) picked up some empty casks of his master, and afterwards negligently ran into the plaintiff's cab,—Held, that the defendant was not liable. *Rayner v. Mitchell*, Law Rep. 2 C.P. D. 357.

(c) *Cab driver and cab owner.*

13.—The defendant, as proprietor, let a cab with two horses to G. for the day, on the terms that he should pay a fixed sum for their use, and have the earnings for himself. There was no specified time for starting from or returning to the stables. G. having finished his work for the day, was on his way home, but when near to the defendant's stables drove his cab away a distance of a quarter of a mile to a shop for the purpose of making a purchase; he afterwards proceeded to the defendant's stables, and whilst on his way negligently ran over and injured the plaintiff.—Held, that the driver was, *quoad* the plaintiff, the servant of the defendant, and was acting within the scope of his employment at the time the accident occurred, so as to make the defendant liable for the consequences thereof. *Vonables v. Smith*, 46 Law J. Rep. Q.B. 470; Law Rep. 2 Q.B. 279.

(d) *Opening coal shoot in highway.*

14.—The plaintiff was injured by falling into a hole in the foot pavement of a street formed by the raising of the plate of a coal shoot belonging to a house. This had been negligently left open by the carter of the defendant, a coal merchant, who was delivering coal at the house, and did not warn the plaintiff of the danger.—Held (dissenting from a dictum of Williams, J., in *Pickard v. Smith*, 10 Com. B. Rep. N.S. 470), that the defendant was properly sued, and was liable for injuries resulting from the negligence of the carman, who was acting as his servant in the delivery of the coals. *Whiteley v. Pepper*, 46 Law J. Rep. Q.B. 436; Law Rep. 2 Q.B. D. 277.

(e) *Privity of contract between master and injured person.*

15.—The defendants, who were proprietors of the Agricultural Hall, agreed with the Smithfield Club to pay the club 1,000*l.* a year for having the Cattle Show annually held at the hall, and at their own expense the defendants agreed to provide for the club servants required for the management of the show. The defendants accordingly for this purpose contracted with one S., who acted as the gatekeeper at the show yard of the hall, to receive and deliver the animals exhibited. S., however, took his instructions from the secretary and stewards of the club, and acted entirely under their direction, and the defendants had no control over S. or his men with reference to the show. Both the admission and delivery orders for the animals had to be obtained by the exhibitors from the club, and were signed by its secretary and addressed to the gatekeeper of the show yard; and by one of the rules issued by the club, and under which the animals were received for exhibition, "the delivery order furnished by the secretary must be signed by the exhibitor or his agent, and must be given up at the yard by

the person coming to take the stock away after the close of the show :"—Held (Lord Coleridge, C.J., *dubitante*), that there was no privity between the defendants and the plaintiff, who had bought sheep exhibited at the show, and that the defendants were therefore not liable for default of S. in not delivering such sheep to the plaintiff according to the delivery order of the exhibitor, of whom the plaintiff had bought them. *Goslin v. The Agricultural Hall Company*, 45 Law J. Rep. C.P. 348; Law Rep. 1 C.P. D. 482.

(f) *Injury to person coming on master's premises.*

16.—The plaintiff, a licensed bargeman, went to the defendant's barge to complain that, contrary to a rule of the Thames Conservancy Board, the barge was navigated by one man only. Being referred by the man in charge to R., the defendant's foreman, the plaintiff proceeded along the defendant's wharf to see R., and while walking towards R. along the wharf he was, without warning, struck and injured by a bale of goods which fell upon him, owing to the negligence of the defendant's servants. In an action founded on the above facts, the jury having found for the plaintiff.—Held, the verdict was warranted by *Corby v. Hill* (27 Law J. Rep. C.P. 318) and *Indermaur v. Dames* (36 Law J. Rep. C.P. 181). *White v. France*, 46 Law J. Rep. C.P. 823; Law Rep. 2 C.P. D. 808.

(g) *Res judicata: money paid by servant under magistrate's order before action brought.*

17.—In an action for damages against the defendants, as proprietors of an omnibus, in respect of injuries caused by negligence of their driver, the defendants pleaded that the plaintiff was awarded and had accepted a sum of money as compensation, by a magistrate having jurisdiction to award the same.—Held, a good defence to the action, notwithstanding such order was not made on the defendants, but on the driver. *Wright v. The London General Omnibus Company (Lim.)*, 46 Law J. Rep. Q.B. 429; Law Rep. 2 Q.B. D. 271.

## (E) TRUCK ACT: WAGES: DEDUCTION FOR DAMAGE.

18.—The appellant, who was an artificer in the employment of the respondent within the meaning of the Truck Act (1 & 2 Will. 4. c. 37), delivered at the respondent's warehouse a piece of cloth he had woven for the respondent which was damaged in the weaving, and as he had on the previous week delivered a piece similarly damaged he was told by the respondent's foreman that something would be deducted from his wages for this, and that he would have to take the piece of cloth home. On a subsequent day when he had earned as his week's wages 18*s.* 8½*d.*, he was told there were no wages for him, and that he would have to take the piece of cloth which was valued at 1*l.* 1*s.* 3½*d.*

He said if there were no wages he would leave the piece, but on the following day, under the advice of the trades' union, he asked for the piece and took it away. When his next week's wages became due he had earned 1*l.* 2*s.* 6½*d.*, but he was only paid 1*l.*, as the 2*s.* 6½*d.* was retained to make up the difference between 1*l.* 1*s.* 3*d.*, the estimated value of the piece of cloth, and 18*s.* 8½*d.*, the previous week's wages:—Held, that there had been a payment of wages otherwise than in the current coin, so as to constitute an offence under section 9 of 1 & 2 Will. 4. c. 37. *Smith v. Walton*, 47 Law J. Rep. M.O. 45; Law Rep. 3 C.P. D. 109.

*Contract of service: deposit: tramway company.* [See CONTRACT, 16.]

#### MASTER OF SHIP.

[See SHIPPING LAW, N.]

#### MATRIMONIAL CAUSES.

[The Matrimonial Causes Act amended. 41 Vict. c. 19.]

#### MAYOR'S COURT.

[See LORD MAYOR'S COURT.]

#### MEASURE OF DAMAGES.

[See DAMAGES, 3-16.]

#### MEAT.

[Inspection of meat exposed for sale. 38 & 39 Vict. 55. ss. 116-119.]

*Unsound, destruction of.* [See PUBLIC HEALTH ACT, 39.]

*Unwholesome, sale of; by-law.* [See MUNICIPAL CORPORATION, 14.]

#### MEDICAL PRACTITIONER.

[The Medical Act Amended. Qualified medical practitioners enabled to hold certain public medical appointments. 39 & 40 Vict. c. 40.]

[Removal of restrictions on the granting of qualifications for registration under the Medical Act on the ground of sex. 39 & 40 Vict. c. 41.]

[Superintendence over examination and registration of dentists. 41 & 42 Vict. c. 33. ss. 15, 17, 22.]

#### MEETING.

*Creditors, of.* [See BANKRUPTCY, L 9, 16.]

*Shareholders, of.* [See COMPANY, D 44-47.]

#### MEMBER OF PARLIAMENT.

*Privilege of.* [See PARLIAMENT, 1.]

#### MEMORANDUM OF ASSOCIATION.

[See COMPANY, D 1.]

#### MERCHANT SHIPPING ACTS.

[Investigation of shipping casualty by naval court, &c. 39 & 40 Vict. c. 80. ss. 29-33; 42 & 43 Vict. c. 72.]

[The law relating to the payment of wages and rating of merchant seamen. 43 & 44 Vict. c. 16.]

[The Merchant Shipping Act, 1854, amended. 43 & 44 Vict. c. 18, and 43 & 44 Vict. c. 22.]

[Provisions for the safe carriage of grain cargoes by merchant ships. 43 & 44 Vict. c. 43.]

*Powers of Board of Trade: detention of unseaworthy vessel.*

1.—In order to justify the Board of Trade in taking proceedings under the Merchant Shipping Act, 1873, s. 12, it is unnecessary that either the complaint as to a vessel or the report from surveyors should state in express terms that she is unable to proceed to sea "without serious danger to human life;" it is sufficient if it appears from the facts therein respectively mentioned that she is in that condition. *Lewis v. Gray*, 45 Law J. Rep. C.P. 720; Law Rep. 1 C.P. D. 452.

Semble, that, under the foregoing statute, the Board of Trade can order a vessel to be detained only for the purpose of being surveyed, repaired, or otherwise dealt with according to its provisions, and they cannot order her detention for an indefinite period of time after its objects have been fulfilled. *Ibid.*

Semble (per Denman, J., and Lindley, J., *dubitante* Lord Coleridge, C.J.), that if the Board of Trade order a ship to be detained in excess of the powers conferred by the above-mentioned statute, her owner is not bound to appeal under s. 14 to a Court having Admiralty jurisdiction, but he may obtain redress by either an action or a petition of right. *Ibid.*

Semble (per Lord Coleridge, C.J.), that if a survey ordered by the Board prove ineffective, they may order the vessel to be surveyed a second time. *Ibid.*

*Registered owner: purchaser for value without notice of fraud.*

2.—The Court cannot look behind a ship's register for the purpose of dispossessing an innocent purchaser for value, whose name is on the register. *The Horlock*, 47 Law J. Rep. P. D. & A. 5; Law Rep. 2 P. D. 243.

*Forfeiture of ship.*

3.—The forfeiture incurred under section 103 of the Merchant Shipping Act, 1854, accrues at the time of the illegal and fraudulent act, and a subsequent seizure relates back to the date of the act constituting the cause of forfeiture, and this is so even as against a *bona fide* purchaser, without notice of such act. *The Annandale* (App.), 47 Law J. Rep. P. D. & A. 3; Law Rep. 2 P. D. 218, affirming the decision of the Court below, 46 Law J. Rep. P. D. & A. 68.

*Suspension of master's certificate.*

4.—The jurisdiction to suspend the certificate of the master of a ship has not been extended by the Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), sections 29 and 32, to cases not within sections 242 and 432 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), and therefore where an enquiry into the stranding of a ship where no damage has been done is held by a wreck commissioner under section 32 of the later Act, he has no jurisdiction upon such enquiry to suspend the certificate of the master of the stranded ship. *Ex parte Story*, 47 Law J. Rep. Q.B. 266; Law Rep. 3 Q.B. D. 166.

5.—A shipping casualty must be actually caused or contributed to by the master to enable the Court of Enquiry to suspend his certificate. The Court of Appeal, if it reverses the decision of the Wreck Commissioner, will give the appellant his costs unless there has been such misconduct on the part of an officer as to render an enquiry reasonable, and if unsuccessful the appellant must pay the costs of the Board of Trade. *The Arizona*, 48 Law J. Rep. P. D. & A. 54; Law Rep. 5 P. D. 123.

*Seaman's allotment note: "owner."*

6.—The Merchant Shipping Act, 1854, s. 169, enacts that the wife or father of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may sue for and recover the sums allotted from the owner or any agent who has authorised the drawing of the note. M. was the registered owner of a ship which he demised by a time charter-party to H., who appointed the master and crew, paid their wages, and had the whole control of the ship. The master gave an allotment note in favour of W., wife of one of the seamen. Several instalments were paid by H. upon this note, but he afterwards got into difficulties. W. thereupon took proceedings against M. under the above section as being the owner:—Held, that having parted with all control over the ship, and not having been any party to the making of the allotment note, he was not "owner" within the meaning of the section. *Meikloroid v. West*, 45 Law J. Rep. M.C. 91; Law Rep. 1 Q.B. D. 428.

*Ship about to arrive: "actual arrival in dock."*

7.—The Merchant Shipping Act imposes a penalty on unauthorised persons coming "on board any ship about to arrive at the place of destination before her actual arrival in dock or at the place of her discharge." A ship whose port of destination was B. arrived within the limits of the port, and passed about 7 P.M. through the dock gates into a basin, from which she purposed to pass through other gates and so into inner docks, to discharge her cargo at a quay in one of the inner docks. On her arrival in the basin, while she was being moored there

for the night, the respondent, an unauthorised person, came on board of her:—Held, that although the ship was still about to arrive at the place of her destination, and had not actually arrived at the place of her discharge, yet that she had actually arrived in dock within the meaning of the Act, and that the respondent was therefore not liable to the penalties imposed by the section. "Actual arrival in dock," in section 237 of the Merchant Shipping Act, 1854, is not to be limited by reading the words as if equivalent to final arrival in the dock where the ship is to discharge her cargo. *Attwood v. Case*, 45 Law J. Rep. M.C. 20; Law Rep. 1 Q.B. D. 134.

*Assignment of ship: British ship.* [See SHIPPING LAW, A 1.]

*Certificate of registry: order to deliver up.* [See ADMIRALTY, 52.]

*Collision: both ships in fault: limited liability: set-off.* [See SHIPPING LAW, E 21.]

*Compulsory pilotage.* [See SHIPPING LAW, B 2, 7.]

*Deposition before receiver of wreck.* [See ADMIRALTY, 29.]

*Forfeiture under.* [See SHIPPING LAW, I 1.]

*Jurisdiction: limits of, under 17 & 18 Vict. c. 104. s. 527.* [See CENTRAL CRIMINAL COURT.]

*Limitation of liability under.* [See SHIPPING LAW, E 21-25.]

*Marine insurance: collision: claims of underwriters and others.* [See MARINE INSURANCE, 29.]

*Prohibition of dealing in shares in ship.* [See PROBATE, 3.]

*Recognised British ship.* [See SHIPPING LAW, E 7, 23.]

*Salvage: assignment of shares.* [See SHIPPING LAW, T 6.]

*Salvage: remuneration: jurisdiction.* [See SHIPPING LAW, T 2, 8, 12.]

MERGER.

An administrator granted a lease of some of his intestate's property, and took an assignment of the term in his own capacity:—Held, that the term did not merge in the reversion. *Chambers v. Kingham*, 48 Law J. Rep. Chanc. 169; Law Rep. 10 Ch. D. 743.

*Grant by lessor to sub-lessee.* [See SPECIFIC PERFORMANCE, 19.]

*Merger of debt in judgment.* [See DEBTOR AND CREDITOR, 2.]

MESSAGE.

*By telegram, failure to transmit.* [See DAMAGES, 17.]

## MESNE PROFITS.

*Estoppel, judgment in ejectment: duration of title.* [See EJECTMENT, 2.]

*Infant lessee, action of ejectment against.* [See INFANT, 15.]

## METROPOLIS.

## (A) BUILDINGS.

(a) *Party wall.*

(b) *Alteration of.*

(c) *Dangerous structure: "owner:" incumbent of district church.*

## (B) PAVING STREETS.

(a) *Who are liable for expenses.*

(b) *Raising and apportionment of expenses.*

(c) *Investment of purchase-money: costs.*

## (C) STREET VESTING IN BOARD OR VESTRY.

## (D) SEWERS.

## (E) MAIN DRAINAGE: JURISDICTION OF METROPOLITAN BOARD OF WORKS.

## (F) DISTRICT RATE: INEQUALITY: EXEMPTION.

## (G) MANAGEMENT: REMOVAL OF RUBBISH.

## (H) METROPOLITAN COMMONS.

[Further amendment of the Acts relating to raising of money by the Metropolitan Board of Works. 39 & 40 Vict. c. 55.]

[Facilities afforded for enjoyment by the public of open spaces in the metropolis. 40 & 41 Vict. c. 35.]

[Powers conferred upon the Metropolitan Board of Works with respect to Cleopatra's Needle and other monuments. 41 & 42 Vict. c. 29.]

[Amendment of the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively. 41 & 42 Vict. c. 32.]

[Further provisions made relating to the borrowing of money by the Metropolitan Board of Works. 41 & 42 Vict. c. 37.]

[The Acts amended relating to the raising of money by the Metropolitan Board of Works. 43 & 44 Vict. c. 25.]

## (A) BUILDINGS.

(a) *Party wall.*

1.—In the absence of evidence as to the ownership of a party wall, a jury is entitled to find that it is owned by the adjoining proprietors as tenants in common. *The Standard Bank of British South Africa v. Stokes*, 47 Law J. Rep. Chanc. 554; Law Rep. 9 Ch. D. 68.

At common law there was no action against a tenant in common for pulling down a party wall for the purpose of building a new one, or for repairing a party wall, or for replacing an old foundation by a new one, even without notice to the adjoining owner. In such a case there is no destruction or destructive waste. *Ibid.*

But the rights and duties of adjoining owners, as defined by the Metropolitan Buildings Act,

1855, are in substitution of those which existed at common law, and are not merely an addition thereto. *Ibid.*

The plaintiffs and defendant were adjoining owners, and there was a party wall between their respective premises. The defendant gave notice, under the 85th section of the Metropolitan Buildings Act, of his intention to raise the party wall and do other works. By that section the plaintiffs were to express assent to the work within fourteen days, or dissent was to be inferred. Each party appointed a surveyor; but the plaintiffs never expressed assent to the work, although correspondence passed between them and the defendant. By the 7th section, in case of difference between the parties, unless they agree to appoint one surveyor, they are each to appoint one, and those two to appoint a third, and such one or two or three surveyors are to make an award:—Held, that in the absence of consent by the plaintiffs, a difference had arisen, and the defendant was committing a breach of the Act in proceeding with the work without such appointment of surveyors and award. *Ibid.*

The term "raise" in sub-section 6, section 82, is not confined to raising above ground, but includes raising a wall by something added to the foundation. *Ibid.*

2.—The Court has power under the 12th section of the Common Law Procedure Act, 1854, to appoint an umpire or third surveyor to act with the surveyors appointed by "the building owner" and "the adjoining owner" respectively under the 85th section of the Metropolitan Building Act, 1855, where a difference has arisen between the parties with respect to a party wall, when such surveyors refuse to appoint a third surveyor to act with them; and the fact of there being a pending action between such building and adjoining owners with respect to ancient lights on the party wall does not preclude the Court from exercising the power. *In re The Metropolitan Building Act; ex parte M'Bryde*, 46 Law J. Rep. Chanc. 153; Law Rep. 4 Ch. D. 200.

3.—A wall having a shed on one side, and water-closets on the other, was held to be a party wall under the Building Acts to the extent in height and width that the water-closets and sheds were coterminous. *Knight v. Purcell*, 48 Law J. Rep. Chanc. 395; Law Rep. 11 Ch. D. 412.

(b) *Alteration of.*

4.—The alteration of an old building by an addition is not a uniting of two buildings, within rule 2 of section 28 of 18 & 19 Vict. c. 122, unless the addition was at some time a separate building in itself. Section 9 confines the operation of rule 4 of section 27 to cases where an addition to an old building, taken by itself, contains more than the statutory number of cubic feet. Decision below (46 Law J. Rep. M.C. 117) reversed. *Scott v. Legg* (App.), 46 Law J. Rep. M.C. 267; Law Rep. 2 Ex. D. 39.

(c) *Dangerous structure: "owner:" incumbent of district church.*

5.—The incumbent of a district church in the metropolis, built under the Church Building Act, which provides that the repairs shall be made by the district, is not the owner of the church within the meaning of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), so as to be liable to pay the expenses incurred by the Metropolitan Board of Works, in respect of their dealing with it as a dangerous structure under sections 69 to 74 of that Act. *Reg. v. Leo*, 48 Law J. Rep. M.C. 22; Law Rep. 4 Q.B. D. 75.

(B) PAVING STREETS.

(a) *Who are liable for.*

6.—A railway company over whose railway a road is carried by a bridge supported on piers, which rest on the slopes of the cutting in which the railway runs, are not owners of land bounding or abutting on a street of which such road is a continuation. *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell*, 48 Law J. Rep. M.C. 184; Law Rep. 4 Ex. D. 239.

7.—The land of a School Board (purchased under statutory powers), with the exception of a narrow strip, twenty feet wide, at one end of it, was situated behind a row of houses which fronted a street (which had been laid out by the vestry of the parish under the Metropolitan Management Acts), and hid the school buildings from it. The narrow strip, however, extended forward along the end of the row up to the street itself, and formed an open passage eighty feet long from it to the main part of the land lying behind the houses, on which part were the school buildings:—Held, that the School Board were owners within the meaning of the Acts, and that, in respect of the school buildings, they were liable to be rated for the expenses of paving the new street, as being owners of houses "forming such street." *The School Board for London v. The Vestry of St. Mary, Islington*, 45 Law J. Rep. M.C. 1; Law Rep. 1 Q.B. D. 65.

8.—The district board have no option to pay for paving a "new street" for the first time out of the general rate under 18 & 19 Vict. c. 120. s. 98, but they are bound to charge the costs of the work upon the owners of the adjoining houses and lands under section 105 as varied by 25 & 26 Vict. c. 102. s. 77. *Dryden v. The Overseers of Putney* (Div. App.), Law Rep. 1 Ex. D. 225.

(b) *Raising and apportionment of paving expenses.*

9.—Where a vestry resolve under the Metropolitan Local Management Acts to pave a new street on one side only, the cost of such paving must be apportioned among the owners of the land and houses adjoining the street on both sides. The vestry has no power to throw the

whole expense on the owners of land adjoining the side so paved. Judgment of the Court below (45 Law J. Rep. M.C. 75) affirmed. *The Vestry of Mile End Old Town v. The Guardians of Whitechapel Union* (App.), 46 Law J. Rep. M.C. 138; Law Rep. 1 Q.B. D. 680.

10.—Where within the metropolis, as defined by the Metropolitan Management Act, 1855, a District Board had paved the footpath by the side of a road which had become a "new street" within section 105 of the Act, and had mistakenly paid the cost of paving the footpath out of the general rate levied upon the inhabitants of the parish, instead of obtaining payment thereof from the owners of the adjoining houses and land under that section, as varied by section 77 of the Metropolitan Management Amendment Act, 1862,—Held, that the Court had jurisdiction to rectify the mistake by making an order on the District Board to levy the amount expended upon the owners of the adjoining houses and land, and apply the sum received in recouping the general rate. *The Attorney-General v. The Wandsworth District Board of Works*, 46 Law J. Rep. Chanc. 771; Law Rep. 6 Ch. D. 539.

(c) *Investment of purchase-money: costs.*

11.—Semble, the Court has jurisdiction under the 84th and 89th sections of the General Metropolitan Paving Act to order payment by a District Board of Works of the expenses of the investment, in consols, of the purchase-money of lands by agreement taken by the Board in pursuance of the Act, and of the costs of the petition for investment. *In re Mercer's Trusts*, 47 Law J. Rep. Chanc. 114; Law Rep. 7 Ch. D. 184.

(C) STREET VESTING IN BOARD OR VESTRY.

12.—The 96th section of the Metropolitan Local Management Act, 1855, provides that "all streets being highways, and the pavements, stones and other materials thereof . . . shall vest in and be under the management and control of the vestry or district board of the parish or district in which such highways are situate:"

—Held, that what "vests" in the board or vestry is a "street being a highway," that is, the street if and so long as it is a highway; and accordingly when a street ceases to be a highway by being stopped up, or diverted or turned, and another substituted in lieu thereof, the original limit for which the street vested having arrived, the street ceases to be vested in the board or vestry, and no words of defeasance or divesting are necessary. Although there is an estate or interest in the material thing—some portion, including the surface of the soil over which the street extends—that estate or interest is limited by reference to the period for which it is used in a particular way. The duration or period of the estate is that during which the street is used as a highway; and as future streets when they become highways will

be vested in the board or vestry, so existing streets when they cease to be highways cease to be vested, the period of the estate vested in the public body having ceased when the purpose for which the streets were so vested had ceased. The 96th section gives to these public bodies, over and above the easement of passage which the public possess and the powers of control and management of the roads which the surveyor of highways possessed under the Highways Act, such right of property and such possessory right in the streets as to enable these bodies to maintain actions in respect of that property or possessory right. The case of *Coverdale v. Charlton* (48 Law J. Rep. Q.B. 128; Law Rep. 4 Q.B. D. 104; see HIGHWAY, 15) explained. *Rolls v. The Vestry of St. George, Southwark* (App.), 49 Law J. Rep. Chanc. 691; Law Rep. 14 Ch. D. 785.

#### (D) SEWERS.

13.—The word "street" in 25 & 26 Vict. c. 102, s. 53, includes new streets as well as old streets. The apportionment of the whole cost of laying down sewers in streets, formed after August 7th, 1862, on the owner of the land and his occupiers and tenants alone held bad, as section 53 applied and not section 52; and semble, even if section 52 had applied the apportionment would have been bad, because it did not charge any portion of the cost of the sewers upon the owners of certain building land bounding and abutting upon the ends of the streets. *Sheffield v. The Board of Works for the Fulham District* (Div. App.), Law Rep. 1 Ex. D. 395.

14.—The respondent who owned certain houses in a "new street" laid down a sewer. The appellants took the sewer up and laid down another for the drainage of the neighbourhood:—Held, that the respondent was not liable for any portion of the cost of the new sewer. *The Board of Works for the Fulham District v. Goodwin* (Div. App.), Law Rep. 1 Ex. D. 400.

15.—By the Metropolitan Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 53, where any sewer shall be constructed by a district board for the drainage of a street, in which previously to such construction there had been no sewer, but where sewers rates have been levied previously to such construction, the expense of constructing such sewer and the works appertaining thereto, shall be defrayed in part only by the owners of the houses situate in and abutting on such street respectively; and the amount to be borne by such owners shall be determined by the district board in each particular case, and the residue of such expenses shall be defrayed by the district board out of the sewers rates, and the amount so charged upon and payable in respect of such house or premises shall be payable before the works shall be constructed, during their progress or after their completion, as the district board may determine, either in one sum or by instalments

within such period, not exceeding twenty years, as the district board shall direct, and any such sum or instalments may be recovered by summary proceedings. A sewer was constructed under the provisions of the Act by a district board in 1868, but no apportionment in respect of the expense thereof was made amongst the owners of the houses in the street till 1876. The appellant, who was at the time of the construction of the said sewer in question, and of making the said apportionment, the owner of a house in the street, refused to pay the amount of his contribution, on the ground that the apportionment was not made within a reasonable time after the sewer had been constructed:—Held, that inasmuch as there was no express time limited by the Act for the making of the apportionment, the district board were entitled to recover from the appellant the amount of his contribution. *Bradley v. The Board of Works for Greenwich District*, 47 Law J. Rep. M.C. 111; Law Rep. 3 Q.B. D. 384.

#### (E) MAIN DRAINAGE: JURISDICTION OF METROPOLITAN BOARD OF WORKS.

16.—By the Metropolitan Management Act, 1862, s. 61, it is enacted that "no person shall make or branch any sewer or drain, or make any opening into any sewer vested in the Metropolitan Board of Works . . . without the consent of such Board, provided that it shall be lawful for any person with such consent, at his own expense, to make or branch any drain into any sewer vested in such Board, . . ." in such manner as the Board shall direct. The defendants were the owners of land situated immediately outside the metropolitan drainage area. There were four cottages on the land which drained into a certain brook. This brook was, by the Metropolitan Management Act, 1855, vested in the Metropolitan Board of Works, as part of the metropolitan drainage system. Under their powers the board covered in the brook and converted it into a sewer, but allowed a communication to remain, through which the drainage from the four cottages passed into the sewer. The defendants had erected additional buildings on their land, and proceeded to drain such new buildings through the communication last mentioned. In an action by the Board to restrain them from so doing,—Held, that the words "any person" in the above section must be read as referring only to persons entitled to participate in the benefit of the Metropolitan Management Acts, that is, to owners or occupiers within the metropolitan area, and that the drainage from each one of the additional buildings was a separate making or branching of the drain within the meaning of the section. Held also, that the board had no power to authorise persons outside the metropolitan area to drain buildings erected by them into the metropolitan drainage system. The position of the Metropolitan Board of Works with reference to persons outside the metropolitan drainage area



considered. *The Metropolitan Board of Works v. The London and North Western Railway Company*, 49 Law J. Rep. Chanc. 355; Law Rep. 14 Ch. D. 521; affirmed on appeal, 50 Law J. Rep. Chanc. 409.

#### (F) DISTRICT RATE: INEQUALITY.

17.—By the Metropolitan Management Act, 1855, s. 158, district boards may require the overseers of parishes within their district to levy the sums which such boards may require for the execution of the Act. By section 159, district boards can exempt or rate on a lower scale parts of parishes not benefited or benefited to a less degree than other parts by such expenditure. The overseers of L. were required, by a precept of the district board, to levy a sum for the expenditure incurred in the execution of the above Act. The precept directed that, as regards such parts of "the parish as consist of lands used as arable, meadow or pasture lands only, or as woodland, orchard, market, hop, herb, flowers, fruit or nursery market garden," the rate should be levied on a lower scale. There was a considerable quantity of such land in the parish, the whole of which was assessed at the lower scale, though it did not lie altogether, but was scattered about:—Held (affirming the decision of the Queen's Bench Division, 48 Law J. Rep. M.C. 116; Law Rep. 4 Q.B. D. 389), that the rate was good, and that the precept sufficiently described the nature of the property to be rated at the lower rate. *Reg. v. The London, Brighton and South Coast Railway Company* (App.), 49 Law J. Rep. M.C. 32; Law Rep. 5 Q.B. D. 89.

#### (G) MANAGEMENT: REMOVAL OF RUBBISH.

18.—By the Metropolis Management Act, 1855, s. 127, a duty is imposed on a vestry of collecting and removing all dirt, ashes, rubbish and filth in or under houses and places within their parish. The plaintiff contracted with the defendants for the purchase of the dust, filth and refuse which should be collected by their servants from the houses, &c., in the parish of P. In each house there was a receptacle called a dust-bin, the contents of which were put into baskets by the scavengers, and thence into carts by the vestry, and conducted to the brick-fields of the plaintiff. The dust-bins contained, in addition to dust, a number of articles known as "tots," of more or less value, thrown away by the occupiers of the houses or their tenants, for the purpose of being taken away by the dust carts and got rid of:—Held, that the plaintiff was not entitled to these "tots" under the terms of his contract with the vestry, inasmuch as there was no obligation on the part of the latter under 18 & 19 Vict. c. 120, s. 125, to remove them, and the contract must be construed to include only such things as the vestry were compelled by the statute to take away. *Collins v. The Paddington Vestry*, 48 Law J. Rep. Q.B. 345.

DIGEST, 1875-1880.

19.—By 18 & 19 Vict. c. 120, s. 125, vestries are required to employ a sufficient number of persons for collecting and removing all dirt and rubbish in or under houses and places within their parish. The plaintiffs have a workhouse situated in the defendants' parish, which, under an old Act of Parliament (22 Geo. 3. c. 56), is rated on a lower scale than other houses within the parish. The defendants, who are a corporation, refused to remove the dirt from the workhouse in question (alleging that the premises were extra-parochial, by virtue of 22 Geo. 3. c. 56), and the plaintiffs were consequently compelled to have it removed at their own expense:—Held, that the exemption conferred by 22 Geo. 3. c. 56, did not relieve the vestry from their liability to remove the dirt from the workhouse, and that an action was maintainable at the suit of the plaintiffs, to recover from the defendants the costs occasioned by their neglect. *The Guardians of the Holborn Union v. The Vestry of St. Leonard's, Shoreditch*, 46 Law J. Rep. M.C. 36; Law Rep. 2 Q.B. D. 145.

20.—Ashes from coals burnt in the furnace of a steam engine which is used for the purpose of the business of a pianoforte manufacturer are the refuse of such business within the meaning of section 128 of the Metropolis Local Management Act (18 & 19 Vict. c. 120), which enacts that if any scavenger be required by the occupier of any house to remove the refuse of any business, such occupier is to pay the scavenger a reasonable sum for such removal. *Gay v. Cadby*, 46 Law J. Rep. M.C. 260; Law Rep. 2 C.P. D. 391.

#### (H) METROPOLITAN COMMONS.

21.—A common was by Act of Parliament dedicated to the use and recreation of the public, and directed to be regulated and managed by the Metropolitan Board of Works, who were empowered to frame by-laws and regulations for, among other things, the preservation of order on the common. A by-law made under this power prohibited the delivery of any public speech, lecture, sermon or address of any kind, except with the written permission of the Board first obtained, and upon such portions of the common and at such times as might by such written permission be directed and sanctioned by the Board:—Held, that the by-law was valid, not being *ultra vires* as repugnant to the laws of England or the intention of the particular Act, and that it was a reasonable mode of regulating the user of the common to require previous information of the object and character of any meeting proposed to be held thereon. *De Morgan v. The Metropolitan Board of Works*, 49 Law J. Rep. M.C. 51; Law Rep. 5 Q.B. D. 155.

#### METROPOLITAN BOARD OF WORKS.

*Consolidated stock: gift of, to charity.* [See CHARITY, 10.]

## METROPOLITAN POLICE.

[See CONSTABLE.]

*Valuation (Metropolis) Act.* [See RATES, 19, 22.]

## MILITARY OFFICERS.

*Compulsory retirement of.* [See CROWN, 8.]

## MILITARY PURPOSES.

*Land held for, under Defence Act: user of.* [See INJUNCTION, 20.]

## MINES.

## (A) EXCEPTION OF MINES OR MINERALS.

## (B) WORKING OF.

(a) *Right to work: waste.*(b) *Right of surface owner to support.*(c) *Wrongful or negligent working.*(1) *Abstraction of minerals of adjoining owner.*(2) *Suffering water to escape.*(3) *Damages for.*(4) *Account: allowances: costs of severance.*

## (C) MINING LEASE.

(a) *Covenant to pay rates: deduction for rent.*(b) *Agreement for lease: implied warranty.*(c) *Setting aside: concealment.*(d) *"Winning" coal.*

## (D) STATUTORY REGULATIONS.

## (E) RATING OF.

## (A) EXCEPTION OF MINES OR MINERALS.

1.—In an ordinary estate of copyhold the property in the trees and minerals is in the lord, the possession in the copyholder. If a stranger or the copyholder cut trees or take minerals, the lord can bring trover; if a stranger or the lord cut trees or take minerals, the copyholder can maintain trespass. *Eardley v. Granville*, 45 Law J. Rep. Chanc. 669; Law Rep. 3 Ch. D. 826.

When the trees are cut or the minerals taken, the copyholder becomes entitled to the possession of the space where the trees or minerals were, and is entitled to use it at his will and pleasure. *Ibid.*

On the other hand, if a freeholder grants lands excepting mines, he severs his estate vertically, that is, he grants out his estate in parallel vertical layers, and the grantee only gets the parallel layer granted to him. The freeholder retains the reserved stratum as part of his ownership, and whether or not he takes the minerals out of the stratum, such stratum still belongs to him as part of the vertical section of the land. *Ibid.*

G. was lessee of manorial mines, with right to work them and enter on the surface of the

copyhold; these mines were worked from deep pits. Between the deep pits and the North Staffordshire Railway lay first, copyhold of A.; next, freehold of S.; next, freehold of A. G. took a lease of the S. mines and, ten days after, a lease of part of A.'s freehold, for the purpose of completing a railway then in course of construction over A.'s copyhold from the deep pits to the North Staffordshire Railway. This lease provided for the carriage over A.'s freehold by G. of the produce of mines belonging to or occupied by G. or belonging to S. Shortly afterwards, G. drove a crut from the S. mines under A.'s copyhold to the deep pits, and so carried the S. minerals to the deep pits, and thence by the railway over A.'s copyhold to the North Staffordshire Railway:—Held, that A.'s successors in title were entitled to an injunction to restrain G. from carrying the S. minerals under or over A.'s copyhold, and that there had been no acquiescence on A.'s part to disentitle them. *Ibid.*

2.—A covenant by a grantee in fee simple subject to a small chief rent not to get coals except to burn on the premises, is not equivalent to an exception of the coals by the grantor; and persons claiming through him were restrained from getting such coals. *Ashton v. Stook*, Law Rep. 6 Ch. D. 719.

*Minerals, what are.* [See ISLE OF MAN.]

*Sale of lands of lunatic.* [See LUNATIC, 12.]

*Sale of lands of ecclesiastical corporation for redemption of land tax.* [See LAND TAX, 1.]

## (B) WORKING OF.

(a) *Right to work: waste.*

3.—The opening of a quarry by a mortgagor in possession enures to the benefit of the mortgagee of a term, so as to render him dispensable for waste if he work the quarry during the term. Where it is proved that a quarry was worked, and that there was a lease which would authorise the workings, it will be presumed after a great lapse of time that the workings took place under the lease, and the burden of proof will lie on a party who seeks to shew that they were unauthorised. Per Lord Selborne—Sale of the produce is not a necessary criterion of the difference between a mine or quarry which is, and one which is not to be considered open in a legal sense. *Elias v. The Snowdon State Quarries Company (Lim.)* (H.L.), 48 Law J. Rep. Chanc. 811; Law Rep. 4 App. Cas. 454, on appeal from the Court of Appeal (*nom. Elias v. Griffith*), 48 Law J. Rep. Chanc. 203; Law Rep. 8 Ch. D. 521).

Where there is an open mine or quarry, the sinking of a new pit or the same vein, or breaking ground in a fresh place on the same rock, is not necessarily the opening of a new mine or quarry. *Ibid.*

*Mines under railway.* [See LANDS CLAUSES ACT, 3, 43.]

(b) *Right of surface owner to support.*

4.—The right of an adjoining owner is to have his land supported in its natural state, and that without any reference to the width of the strip of land required for its support in that state. *The Mayor of Birmingham v. Allen*, (App.), 46 Law J. Rep. Chanc. 673; Law Rep. 6 Ch. D. 284.

The plaintiffs were owners of land on which they had extensive gas works. The defendants were working mines near the plaintiffs' land. The minerals in the intervening land had been worked out many years ago. The plaintiffs brought their action against the defendants to restrain them from continuing to work their minerals, on the ground that their so doing would seriously injure the plaintiffs' buildings. The evidence shewed that the plaintiffs' buildings would be damaged, but it also shewed that if the minerals in the intervening land had not been worked out the defendants might safely have continued their workings up to the edge of their own boundary:—Held (affirming the decision of the Master of the Rolls), that the lands of the defendants, not being required for the support of the plaintiffs' land in its natural state, were not adjacent lands so as to give the plaintiffs a right to support for their lands from the defendants; and that the defendants could not by the action of the intervening owner be deprived of their right to take all the minerals under their own land. *Ibid.*

5.—An Act for inclosing the waste lands of a manor directed that the commissioners under the Act should set out highways over the lands, and extinguished all former roads which should not be set out. The Act reserved to the lord his right to the minerals, with power to work them as freely as if the Act had not been made:—Held, that the lord was not entitled to work the minerals so as to damage highways set out under the Act. *The Benfieldside Local Board v. The Consett Iron Company (Lim.)*, 47 Law J. Rep. Exch. 491; Law Rep. 3 Ex. D. 54.

6.—S., being the owner in fee of certain lands, by deed, dated the 31st of December, 1861, granted the surface of a portion of such land to the predecessor in title of the plaintiff A., reserving to himself, his appointees, heirs and assigns, the minerals lying under the portion so granted, with liberty to get and win the said minerals, "so that compensation be made by him or them for all damage that shall be done to the erections on such" portion, by the exercise of such liberty. S. subsequently granted to the predecessors in title of the defendants the adjacent portion of the said lands, and also the minerals lying under the portion so granted to the predecessors of the plaintiff A. by the deed of the 31st of December, 1861. The defendants, on becoming the grantees of such adjacent portion, and of the minerals lying under the plaintiff A.'s portion, proceeded to work mines under such adjacent portion, and to get and win the minerals so lying under the plaintiff A.'s portion. In consequence of these

operations, a mill upon the plaintiff A.'s portion (of which mill the plaintiff P. was mortgagee) was let down:—Held, that whether the subsiding of the mill was due to the removal of minerals under the plaintiff A.'s portion, or to the removal of minerals under the adjacent portion, or to both these causes combined, and whether such operations were skilfully or unskilfully conducted, the plaintiffs were entitled to compensation for the letting down of the mill. For the causing of the subsidence was either a trespass, or justifiable only under the deed of the 31st of December, 1861, and the stipulation "so that compensation be made" was not an independent agreement personal to the original grantor, but a condition annexed to the reservation, and binding upon any person exercising the right reserved. *Aspden v. Seddon*, and *Preston v. Seddon* (App.), 46 Law J. Rep. Exch. 353; Law Rep. 1 Ex. D. 496 (*nom. Aspden v. Seddon*).

7.—By an Inclosure Act the waste lands of a manor were divided among several allottees, who were to be bound to contribute *inter se* to compensate any of their number whose allotments might be injured by the lord working the minerals. The minerals were reserved to the lord; and it was enacted that he should at all times thereafter hold and enjoy all mines, &c., together with the liberty of searching for and working the said mines as fully and freely as he could have had or enjoyed the same if the Act had not been passed, and that without making any satisfaction for so doing:—Held, overruling *Blackett v. Bradley* (31 Law J. Rep. Q.B. 65), on demurrer to a statement of defence which, in answer to a claim by one of the allottees against the lord for working the mines without leaving a sufficient support for the surface, set up the statute, and alleged that the lord had been used as of right to search for minerals and disturb the surface without making any compensation, that the Act having expressly authorised the lord to disturb the surface without making any satisfaction for so doing, the defence was good; and that it was not competent to the plaintiff to enquire into the question whether before the Act the lord could, consistently with the principle laid down in *Hilton v. Lord Granville* (13 Law J. Rep. Q.B. 193), have had such a right as it was averred that he had exercised. *Gill v. Dickinson*, 49 Law J. Rep. Q.B. 262; Law Rep. 5 Q.B. D. 159.

(c) *Wrongful or negligent working.*(1) *Abstraction of minerals of adjoining mines.*

8.—Questions having arisen in 1862 between the lessees of two adjoining collieries, one of such lessees being the West Hartlepool Railway Company, as to the boundaries of their respective collieries, new boundary maps were prepared, and in 1864 it was by an agreement mutually agreed between the parties that all claims on account of damage of every kind, whether by trespass or otherwise, should be

condoned. Pending that agreement, an Act of Parliament was passed, in 1863, under which the West Hartlepool Company were to sell their collieries within a period of five years, and in 1865 another Act was passed whereby the West Hartlepool Company became amalgamated with, and all their assets, debts, liabilities and engagements were transferred to the defendant company. In 1870 the plaintiffs for the first time discovered, and the evidence distinctly shewed, that in 1863, after the boundaries had been settled, the West Hartlepool Company had broken through the barrier between the collieries and worked out the plaintiffs' coal. Upon a bill filed for an account of the coal worked by the West Hartlepool Company and for damages in respect of the injury sustained by the breaking down of the barrier,—Held, that the working of the colliery by the West Hartlepool Company was not *ultra vires*, as the power to work for a period of five years must be implied from the authority to sell, and that whatever liability they were under at the time of their amalgamation with the defendant company, was transferred to the defendant company by the Act of 1865. Also, that the agreement of 1864 did not operate as a release of the injury then done, as the plaintiffs did not then know and had no means of knowing that the injury had been committed. And further, that there being no *laches* on the part of the plaintiffs in not discovering the injury at an earlier period, the statute commenced to run only from the time of such discovery. *Boolestistical Commissioners for England v. North Eastern Railway Company*, 47 Law J. Rep. Chanc. 20; Law Rep. 4 Ch. D. 845.

### (2) *Suffering water to escape.*

9.—The appellants were owners of mines adjoining and communicating with, but on a higher level than, mines belonging to the respondent. The appellants' mining operations had caused part of the surface of their land to give way, whereby hollows and openings were formed communicating, by means of the underground workings of the appellants' mines, with the mines of the respondent. Across the surface of the appellants' land ran a stream, which in 1865 had been diverted by them into another channel. In November, 1871, owing to a heavy rainfall, the stream burst its banks and overflowed into the hollows on the appellants' land; the water thus accumulated percolated by the openings through the appellants' mines into the respondent's mines. The respondent brought an action for the damage thereby caused, and the jury at the trial found that the rainfall was excessive, but that the flooding was caused chiefly by the improper execution and insufficient condition of the new channel, and that the stream in its diverted course was more likely to overflow and do more damage than if it had been allowed to flow in its former channel:—Held (affirming the decision of the Court

of Appeal, 43 Law J. Rep. Exch. 70), that the appellants were liable for the damage suffered by the respondent. *Smith v. Muegrave* (H.L.), 47 Law J. Rep. Exch. 4; Law Rep. 2 App. Cas. 781 (*nom. Fletcher v. Smith*).

10.—Whether water flows on the surface or underground, the right of user is the same; and a man by intercepting such water, whatever the purpose may be to which he applies it, does not thereby appropriate it so as to lose his right to discharge it on to the adjoining land at the same time and place and to the same extent as before such interception; but if the owner of the adjoining land can shew that the result of such user is to increase the burden on his land he will be entitled to an injunction and to damages for the injury caused by such user. *The West Cumberland Iron and Steel Company v. Kenyon* (App.), 48 Law J. Rep. Chanc. 793; Law Rep. 11 Ch. D. 782, on appeal from the Chancery Division, 46 Law J. Rep. Chanc. 850; Law Rep. 6 Ch. D. 773.

11.—The right to work mines is a right of property, and the owner duly exercising such right is free from responsibility. Where mineral workings have caused subsidence and a consequent flow of water into an adjacent lower coal-field, the injuries, being entirely from gravitation and percolation, are not a valid claim for any damages. *Wilson v. Waddell* (H.L.), Law Rep. 2 App. Cas. 95.

Per Lord Blackburn.—The owner of minerals has a right to take away the whole of them in his land according to the natural course of user. The breach of an agreement to restore the surface gives no claim to any one but the owner and tenant who are parties to it. *Ibid.*

### (3) *Damages for.*

12.—Where an owner in fee brought an action for compensation against the appellant, who, under a grant from the Crown, was authorised to enter on his land to conduct mining operations, paying compensation to the owner, and the jury found that a sum was due in order to make a reservoir safe in future by building a wall round it:—Held, that the plaintiff's action was not only to recover damage already suffered by him, but included all future damage. *The Great Laxey Mine Company v. Clague* (P.C.), Law Rep. 4 App. Cas. 115.

13.—A. purchased a small feu of about an acre and a half in extent, the surface of which was occupied by miners' cottages, and underneath was coal. A. purchased under the impression that all the minerals under the feu, as under all the ground surrounding it, had been reserved to the superior; but, in fact, the deed granting the feu contained no reservation of coal. The superior granted the whole property in the coals in all the surrounding land to R. and C., who, under the impression that they had the whole of the coal, including the coal under the acre and a half, worked out and disposed of the coal under A.'s acre and a half;

and in doing so damaged the surface. It appeared that A. could not have worked the coal to a profit himself; that there was no person to whom he could dispose of it but to R. and C.; and that there was no wilful trespass, or special and exceptional need of support to the surface. A. having claimed the value of the coal, a sum for "way-leave" and the advantage obtained by working through instead of round the feu, and for damages done to the houses on the surface,—Held (affirming the decision of the Court below), that the value of the coal taken must be the value to the person from whom it is taken, at the time it is taken, and that the best evidence in the peculiar circumstances of this case of that value was the royalty paid by R. and C. for the surrounding coal-field; therefore A. was entitled to the lordship on the coal excavated, calculated at that rate; together with the payment of a sum for damage done to the houses on the surface. Held also, that as the question of "way-leave" was not argued before the First Division of the Court of Session, it could not be entertained in this House. The principle of *Jegon v. Vivian* (40 Law J. Rep. Chanc. 389; Law Rep. 6 Chanc. 742) sustained. *Livingstone v. The Ramyards Coal Company* (H.L. Sc.), Law Rep. 5 App. Cas. 25.

*Measure of damages: remoteness.* [See DAMAGES, 20.]

(4) *Account: allowances: costs of severance.*

14.—Where coal had been worked under the expectation of a lease, with knowledge by the owner that it was going to be worked, an account was limited to six years before action commenced, and costs of severance were allowed, but only till a time when the trespasser was made aware that no lease would be granted. A letter was presumed to have been posted, which a witness remembered to have copied and said he would have posted. *Trotter v. Maclean*. *Trotter v. Vaughan*. *Trotter v. Fletcher*, 49 Law J. Rep. Chanc. 256; Law Rep. 13 Ch. D. 574.

(C) MINING LEASE.

(a) *Covenant to pay rates: deduction for rent.*

15.—A mining lease contained a covenant by the lessee to pay rent "free from all deductions whatsoever," and that the lessee "also shall and will pay or cause to be paid all manner of taxes, rates, assessments, charges and impositions whatsoever, parliamentary or parochial, which now are or which shall at any time or times hereafter during the continuance of this demise be taxed, rated, charged, assessed or imposed upon the said demised mines and premises, the landlord's property tax only excepted." The lessee having been assessed, and having paid the general district rate and poor rate in respect of the demised mines, claimed under section 8 of the Rating Act, 1874, to deduct one moiety of the amount so paid from his rent:—Held, that the lessee had not "speci-

fically contracted" to pay the rates in question within the meaning of the 8th section, and was therefore entitled to deduct the amount claimed from the rent. *Chaloner v. Bolckow* (H.L.), 47 Law J. Rep. C.P. 562; Law Rep. 3 App. Cas. 933.

(b) *Agreement for lease: implied warranty.*

16.—The plaintiff agreed to let to the defendants the vein of coal called the Shenkin vein, and being about two feet thick, with the beds of clay on and under the farm called Llwyndu, such veins and beds being contiguous or in juxtaposition, for sixty years, at the yearly rental of 100*l.*, as certain or dead-rent, with certain royalties, the lessees to have the surface land therein specified at 10*l.* per acre for the same term, to expend not less than 500*l.* in the erection of buildings for the purpose of working the coal and clay, and to have the option of determining the lease at the end of the first three years:—Held, in an action for specific performance, that the contract did not import any warranty by the lessor that the Shenkin vein existed under the land, and that the defendants, having liberty to search for and get minerals within the terms of the contract, were bound by it. *Jeffreys v. Fairs*, 46 Law J. Rep. Chanc. 113; Law Rep. 4 Ch. D. 448.

(c) *Setting aside: concealment.*

17.—Where in an action for rent due under a lease of coal mines it was shewn in the defence that the plaintiff had no title to part of the mines, and that he knew this when he granted the lease, but that the defendant did not know and had not the means of knowing it, and that the defendant had not entered into possession or done anything to prevent his repudiating the lease, it was held that as equity under such circumstances would set aside the lease, although there had been no actual fraud on the part of the plaintiff, the defendant was entitled to repudiate, and the defence so shewn was a good answer to the action. *Mostyn v. The West Mostyn Coal and Iron Company (Lim.)*, 45 Law J. Rep. C.P. 401; Law Rep. 1 C.P. D. 145.

There being a breach of the covenant for title, and the defendant being entitled to some damages for such breach, it was held that he might claim such damages by way of counterclaim to the action for rent, though there had been no eviction, and the want of title related to only a portion of the demised property. *Ibid.*

*Rent: setting apart: Settled Estates Act.* [See SETTLED ESTATES ACT, 3.]

(d) *"Winning" coal.*

18.—A coal-field is correctly said to be "won" when full practicable available access is given to the coal hewers so that they may enter on the practical work of getting coal:—Held (affirming the decision of Fry, J., 47 Law J.

Rep. Chanc. 764 ; Law Rep. 9 Ch. D. 685), upon the construction of the deed before the Court, that the "winning" must be held to have been a single thing which was completed on the 15th of July, 1864, and that no expenses incurred after that date could be held to be winning expenses:—Held, that in ascertaining "the profits to arise by sale of the coals," the working expenses (not included in the winning expenses), interest at five per cent. on previous outlay, deterioration of machinery and bad debts, are to be charged against the produce of the coals. *Lord Roxbury v. Elliot* (App.), 49 Law J. Rep. Chanc. 163; Law Rep. 13 Ch. D. 277.

*Copyholds: mining without consent of tenant.*  
[See COPYHOLD, 2.]

*Quia timet: apprehended injury by working of minerals under adjoining ground.* [See INFUNCTION, 21.]

#### (D) STATUTORY REGULATIONS.

19.—By section 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), "the owner" and "every other person interested in the minerals" of an abandoned mine, are required to fence the shaft, for the prevention of accidents; and section 41 enacts that the term "owner means any person or body corporate, who is the immediate proprietor or lessee, or occupier of the mine," and "does not include a person or body corporate, who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals." The owners in fee of a mine granted a lease for a term of years, reserving to themselves a royalty on the minerals produced, with a power to distrain for the rent, and to detain the minerals gotten until the royalty was paid:—Held, that such lessors were, during the existence of the lease, persons interested in the minerals, within the meaning of the said 13th section, and were therefore liable, in the event of the mine becoming an abandoned mine, to cause its shaft to be fenced for the prevention of accidents. *Evans v. Montyn*, 47 Law J. Rep. M.C. 25; Law Rep. 2 C.P. D. 547.

20.—Upon an information under the Coal Mines Regulation Act, 1872, s. 51 (enacting, by its last paragraph, that in the event of a breach of any of the general rules in that section by any person whomsoever the owner shall be guilty of an offence, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the general rules, to prevent such breach), it appeared that there had been a breach of one of the general rules in that section (rule 22, requiring a machine used for lowering or raising persons to have certain appliances for preventing the rope from slipping), and that the defendant was a joint owner of the mine in question.

The defendant proved that the general rules were duly published, and that he had appointed as certificated manager the person who was joint owner and partner with him in the mine, and that he entrusted the entire management of the mine to his partner; he himself resided at a distance from the mine. He had not personally done any act towards enforcing the rules. The Justices having found as a fact that the defendant had taken all reasonable means, by publishing and to the best of his power enforcing the rules to prevent the breach,—Held, that there was evidence upon which the Justices might so find. *Baker v. Carter*, 47 Law J. Rep. M.C. 87; Law Rep. 3 Ex. D. 132.

21.—The Coal Mines Regulation Act, 1872 (35 & 36 Vict. c. 76. s. 61), enacts certain general rules which are to be observed in every mine to which that Act applies, and that every person who contravenes or does not comply with such rules shall be guilty of an offence against the Act, and that in the event of any contravention of or non-compliance with any of the rules "by any person whomsoever being proved, the owner, agent and manager shall each be guilty of an offence against the Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules," to prevent such contravention or non-compliance. The manager of a coal mine in Staffordshire and the respondent, the agent of the same mine, were summoned for non-compliance with the first general rule for procuring adequate ventilation in the mine. The magistrate convicted the manager, under whose directions the mine was being worked, but declined to convict the agent also of the same offence:—Held, that the agent as well as the manager of a mine to which the said Act applies was liable to be convicted of an offence against the Act, in not complying with the said rules as to ventilation in the mine, unless he gives evidence to shew that he had to the best of his power enforced the said rules. *Wynne v. Forrester*, 48 Law J. Rep. M.C. 140; Law Rep. 5 C.P. D. 361.

22.—By section 52 of the Mines Regulation Act, 1872, there are to be established in every mine to which the Act applies special rules for the conduct of persons acting in the management of such mine, or employed in or about the same, as may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, &c. One of the special rules of a mine, passed by virtue of the above section, provided that "Persons employed on or about the works shall not go down, or up, or into the pit, contrary to the direction of the banksman or hooker on." The respondents, being workmen employed in the mine, went down into the pit as usual to do their work. They shortly afterwards discharged themselves, and, contrary to the directions of the hooker on, caused themselves to be drawn up out of the pit. On a summons preferred

against the respondents for breach of the above rule, the magistrates having held that the respondents by discharging themselves had ceased to come within the definition of "persons employed in or about the mine," and therefore were not subject to the special rule,—Held, on appeal, that the decision was wrong. Per Grove, J.—That the respondents must be taken to have accepted their employment subject to the regulations of the mine, and were still, therefore, subject to the special rule. Per Lindley, J.—That the respondents' character as workmen continued until they were out of the pit, or until a reasonable time elapsed before they were let out. *Higham v. Wright*, 46 Law J. Rep. M.C. 223; Law Rep. 2 C.P. D. 397.

23.—The appellant was lessee of a lead mine and of all the duties arising therefrom, under a lease from the Duchy of Lancaster, by which he had to pay to the duchy, by way of rent, all he might annually receive in respect of the mine, with an additional yearly rent of five shillings. The mine was demised to him subject to a custom by which all the subjects of the realm have a right to search there for veins of lead ore, upon paying certain duties, and the appellant had no pecuniary interest in the mine or in the minerals thereof. Section 13 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), requires the owner of an abandoned mine to which the Act applies, and every other person interested in the minerals of the mine, to cause the top of the shaft to be fenced, and section 41 states that the term "owner" means any person "who is the immediate proprietor, or lessee or occupier of a mine," and "does not include a person who merely receives a royalty, rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine":—Held, that the appellant was neither owner of the mine nor a person interested in its minerals within the meaning of section 13, and, therefore, upon the mine being abandoned, he was not liable to cause the top of its shaft to be fenced as required by that section. *Arkwright v. Evans*, 49 Law J. Rep. M.C. 82.

Quære, whether the statute applies to a mine which belongs to the Duchy of Lancaster. *Ibid.* [And see COAL MINES REGULATION ACT.]

#### (E) RATING OF.

24.—A lead mine was held under three leases, two of which granted the minerals to the lessees for the purpose of being worked. Within the land comprised in one of them, the shafts were sunk, which communicated with the surface and the underground workings, and ore was gotten from underneath such land, and the royalty or dues were reserved in kind or, at the option of the lessors, in lieu thereof the full value in money. No ore was got from under the land comprised in the other lease, of

which the reservation was a dead rent, in addition to a like reservation to the one above mentioned. The lessors were different persons. The minerals comprised in the two leases adjoined one another. The lessees were rated in respect of the engines, machinery, workshops and buildings, and surface of land connected with the mine, and the lessor of the land whereon the shaft was opened and whereunder the minerals were worked was rated for a lead mine whereof the royalty or dues were reserved wholly in kind:—Held, that section 13 of the Rating Act, 1874, which provided that nothing in that Act should apply to a mine of which the royalty or dues were for the time being wholly reserved in kind, applied to this case and rendered the old law applicable; that the mine as rated was a mine distinct from the holding under the latter lease, and upon the authority of *Reg. v. St. Austell* (5 B. & Ald. 693), that the reservation of the royalty or dues was wholly in kind, notwithstanding the lessor's option; that the rate therefore was correct. *The Van Mining Company v. The Churchwardens and Overseers of Llanidloes* (App. Div.), 45 Law J. Rep. M.C. 138; Law Rep. 1 Ex. D. 310.

*Power to purchase: Railways Clauses Act.*  
[See PREEMPTION.]

*Cost book mining company: fraudulent transfer: acceptance of, by company.* [See COMPANY, D 96.]

#### MINERALS.

*Right of claim to.* [See ISLE OF MAN.]

#### MISJOINDER.

[See PRACTICE, U.]

#### MISDESCRIPTION.

*Of legatees.* [See WILL CONSTRUCTION, G 3-7.]

*Of property.* [See MORTGAGE, 35; SPECIFIC PERFORMANCE, 13; VENDOR AND PURCHASER, 8, 9; WILL CONSTRUCTION, G 8, 9.]

#### MISDIRECTION.

*Duty of judge.* [See PRESUMPTION, 1; COLONIAL LAW, 6.]

#### MISREPRESENTATION.

[See FRAUD; VENDOR AND PURCHASER, 8, 9.]

#### MISTAKE.

1.—Where an executor acting on the opinion of two counsel as to the construction of a will divided a fund, the Court refused to set aside the transaction on a bill filed two years afterwards. *Rogers v. Ingham* (App.), Law Rep. 3 Ch. D. 351.

The Court will not in all cases grant relief against a payment of money under a mistake of law. *Ibid.*

*Davis v. Morris* (2 Coll. 303) distinguished. *Ibid.*

2.—A consent judgment was taken under a mistake of fact. After the order had been drawn up and passed, one party moved to vary the order. The Court refused the application. *The Attorney-General v. Tomlins*, 47 Law J. Rep. Chanc. 473; Law Rep. 7 Ch. D. 388.

*Bankruptcy: proof: rectification.* [See BANKRUPTCY, D 34.]

*Common mistake: notice to solicitors.* [See MORTGAGE, 26.]

*Executors, by, in administration of estate: re-funding.* [See ADMINISTRATION, 42.]

*Fact, of, by person having means of knowledge.* [See SPECIFIC PERFORMANCE, 18.]

*Goods sent by mistake: property in.* [See BANKRUPTCY, H 11.]

*Lessor and lessee: caveat emptor.* [See LEASE, 9.]

*Mutual mistake: caveat emptor.* [See SPECIFIC PERFORMANCE, 15; VENDOR AND PURCHASER, 18.]

*Mutual mistake of law.* [See COMPANY, D 20.]

*Rectification of deed on ground of.* [See SETTLEMENT, 28-32.]

*Release: unexpected accession of property.* [See RELEASE.]

*Setting aside judgment.* [See MORTGAGE, 55; PRACTICE, R 3.]

*Undertaking by mistake not enforced.* [See PRACTICE, O 3.]

*Will: construction: falsa demonstratio.* [See LEGACY, 7; WILL CONSTRUCTION, D 1, 2; G 7-9.]

*Winding up: mistake in law.* [See COMPANY, H 63.]

## MONEY HAD AND RECEIVED.

*Cheque stolen in transmission: conversion by innocent party.* [See NEGLIGENCE, 23.]

## MONOPOLY.

*Persons claiming, bound to show compliance with conditions of monopoly.* [See WATER COMPANY.]

## MONITION.

[See CHURCH and CLERGY, 30, 34.]

## MONTH, CALENDAR.

*Meaning of term.* [See IMPRISONMENT.]

## MOORINGS.

*Rateability of.* [See RATES, 6.]

## MORTGAGE.

### (A) VALIDITY AND EFFECT OF.

- (a) *Attornment clause.*
- (b) *Restriction of equity of redemption: compound interest.*
- (c) *Penalty: instalments: provision making whole sum enforceable on default.*
- (d) *Mortgage in form of conveyance on trust.*

### (B) RIGHTS OF MORTGAGEE IN RESPECT OF HIS SECURITY.

- (a) *Right to interest.*
- (b) *Loan to trader: Partnership Act.*
- (c) *Mortgage of reversionary interest: costs incurred in taking out administration.*

### (C) MORTGAGEE IN POSSESSION.

- (a) *Rights of.*
- (b) *Account of rents and profits against.*

### (D) POWER OF SALE, EXERCISE OF.

### (E) TRANSFER OF MORTGAGE: STATUTORY POWERS OF PERSONAL REPRESENTATIVE.

### (F) PRIMARY AND SECONDARY SECURITIES.

- (a) *Appropriation of debt: mortgage to secure current account.*
- (b) *"Collateral security."*

### (G) PRIORITIES.

- (a) *Effect of fraud or suppression.*
- (b) *Purchase of equity of redemption by first mortgages.*
- (c) *Equitable assignee: notice.*
- (d) *Priority by registration.*

### (H) CONSOLIDATION OF SEVERAL MORTGAGES.

### (I) EQUITABLE MORTGAGE.

- (a) *Agreement to mortgage: rectification of deed: misdescription of parcels.*
- (b) *Of stock or shares: pre-existing equitable interest.*
- (c) *Bankruptcy: disclaimer: legal estate.*
- (d) *Remedy of equitable mortgages.*
- (e) *Pledgee of chattels: remedy of.*

### (K) FORECLOSURE AND REDEMPTION ACTIONS: PRACTICE IN.

- (a) *Foreclosure actions.*
  - (1) *Action to recover land.*
  - (2) *Parties.*
  - (3) *Default in appearance.*
  - (4) *Disclaiming defendant.*
  - (5) *Interlocutory order for sale.*
  - (6) *Motion by defendant under 9 Geo. 2. c. 20: discontinuance.*
  - (7) *Staying proceedings.*
  - (8) *Preliminary accounts: subsequent issues.*
  - (9) *Form of order: mortgage of leaseholds by sub-demise.*
  - (10) *Foreclosure absolute.*
  - (11) *Accounts: extra costs.*
  - (12) *Redemption by purchaser: debt payable by instalments.*



(13) *Judgment set aside for mistake.*

(14) *Trustee Acts: vesting order.*

(b) *Redemption actions.*

[Amendment of Locke King's Acts, 40 & 41 Vict. c. 34.]

## (A) VALIDITY AND EFFECT OF

### (a) *Attornment clause.*

1.—A company being indebted to their bankers on their current account, on the 23rd of February, 1875, gave a mortgage of that date, whereby they covenanted to surrender the copyhold premises on which the company's works were carried on, and the company by the same mortgage deed attorned and became tenant to the mortgagees from year to year of the said premises at the yearly rent of 5,000*l.*, to be paid by equal half-yearly payments in August and February. No surrender of the premises was made. On Saturday, the 14th of July, 1877, a creditor of the company for a large amount served a writ on the company. On the 16th of July the bankers instructed a broker to distrain on the company's premises for 10,000*l.*, being two years' rent. The broker saw the managing director on that day, and arranged with him to put two of the company's men in possession on behalf of the bankers. The bankers on the 18th of July, at the request of the directors, consented not to sell immediately, and the men remained in possession. On the 19th of July a petition was presented for winding up the company, and on the 28th of July a compulsory order was made. By arrangement with the liquidator the men who had remained in possession went out on the 6th of November, and part of the chattels were sold, and the proceeds, namely, the sum of 4,533*l.* 17*s.* 1*d.*, were paid into one of the bankers' branch establishments to a separate account. Upon a summons taken out by the liquidator to shew cause why the proceeds should not be paid to him on behalf of the creditors of the company:—Held, on appeal (reversing the decision of Bacon, V.C.), that this attornment clause created the relation of landlord and tenant; that the rent of 5,000*l.* was not proved to be of so exorbitant a character as to shew that it was a sham rent, and that the case therefore did not fall within *Ex parte Williams* (47 Law J. Rep. Bankr. 26; Law Rep. 7 Ch. D. 138; BANKRUPTCY, D 39); and that the 4,533*l.* 17*s.* 1*d.*, being less than one year's rent, must be paid to the mortgagees. *In re The Stockton Iron Furnace Company* (App.), 48 Law J. Rep. Chanc. 417; Law Rep. 10 Ch. D. 335.

2.—An attornment clause in a mortgage deed which constitutes a real relation of landlord and tenant between the mortgagees and the mortgagor is valid, and a distress levied for the rent thereby fixed is good as against the trustee in the bankruptcy of the mortgagor, and will enable the mortgagee to obtain a security upon chattels of the mortgagor, the proceeds of which

would otherwise have been distributed among his creditors; but if the rent fixed by the clause be so excessive as to shew that it was not intended to create a real rent or a real tenancy, but that the clause was a mere device to enable the mortgagee, in the event of the bankruptcy of the mortgagor, to obtain an additional security upon chattels which would otherwise have been distributed among his creditors, the clause and any distress levied under it (even though before the commencement of the bankruptcy) will be invalid as against the trustee in the bankruptcy of the mortgagor, as being a fraud upon the bankruptcy laws. *Ex parte Jackson; in re Bomes* (App.), Law Rep. 14 Ch. D. 725.

*Morton v. Woods* (38 Law J. Rep. Q.B. 81; Law Rep. 4 Q.B. 293) explained. *Ibid.*

*Ex parte Williams* (47 Law J. Rep. Bankr. 26; Law Rep. 7 Ch. D. 138) and *In re The Stockton Iron Furnace Company* (see last case) discussed. *Ibid.*

Decision of Bacon, C.J., reversed. *Ibid.*

### (b) *Restriction of equity of redemption: compound interest.*

3.—A provision in a mortgage deed for capitalisation of interest to become in arrear is not contrary to any rule of equity, and will be given effect to. *Clarkson v. Henderson*, 49 Law J. Rep. Chanc. 289; Law Rep. 14 Ch. D. 348.

### (c) *Penalty: instalments: proviso making whole sum enforceable on default.*

4.—A proviso in a mortgage, making the whole debt due on failure to pay one instalment is not in the nature of a penalty, and may be enforced. *Wallingford v. The Mutual Society* (H.L.), 50 Law J. Rep. C.P. 49; Law Rep. 5 App. Cas. 685.

### (d) *Mortgage in form of conveyance on trust.*

5.—Where a security for money lent was made in the form of a conveyance to the lender on trust to sell, and the lender having entered into possession, and remained in possession for more than twenty years, his devisees in trust agreed to sell the mortgaged estate for a sum exceeding the amount then due for principal, interest and costs, and conveyed it to the purchaser by a deed, which recited the trust for sale:—Held (by Malins, V.C., and by the Court of Appeal), that such a security is simply a mortgage, and that a mortgagee who has been in possession for more than twenty years may make a title and convey under his power of sale. Held (by the Court of Appeal, reversing the decision of Malins, V.C.), that the devisees in trust could only convey as owners in fee, and that the mortgagors had no right to the surplus of the purchase-money. *Looking v. Parker* (42 Law J. Rep. Chanc. 257; Law Rep. 8 Chanc. 80) explained. *In re Alison. Johnson v. Mounsey*, Law Rep. 11 Ch. D. 284.

*Charge of debts: power of devisee and executor.*  
[See TRUST, A 9.]

*Deed securing advances: recital acknowledging debt: specialty.* [See DEED, 2.]

*Mortgage or bond: charge on property in foreign country.* [See FOREIGN LAW, 2.]

*Mortgage of fixtures.* [See BILL OF SALE, 7-11.]

*Mortgagor in possession, action by.* [See COVENANT, 14.]

*Registration of; company.* [See COMPANY, D 14-17, 49.]

*Reversionary interest: expectant heir.* [See UNCONSCIONABLE BARGAIN, 2.]

*Stamp on.* [See STAMP, 2, 3.]

## (B) RIGHTS OF MORTGAGEE IN RESPECT OF HIS SECURITY.

### (a) *Right to interest.*

6.—A mortgage provided that if interest were paid punctually, the mortgage should continue for two years:—Held, that the receipt of interest after default in punctual payment and notice to pay off, did not amount to a waiver by the mortgagee of his right to call in the debt at once. *Langridge v. Payne* (2 Jo. & H. 423) observed upon. *Keene v. Biscoe*, 47 Law J. Rep. Chanc. 644; Law Rep. 8 Ch. D. 201.

*Rate of.* [See INTEREST.]

### (b) *Loan to trader: Partnership Act.*

7.—The lender of money to a trader at a rate of interest varying with profits, who also takes a mortgage to secure his loan, is not, in the event of the bankruptcy of the borrower, deprived by the Act, 28 & 29 Vict. c. 86, of any of his ordinary rights as a mortgagee. *Ex parte McArthur* (40 Law J. Rep. Bankr. 86) not followed. *Ex parte Sheil; in re Lonergan* (App.), 46 Law J. Rep. Bankr. 62; Law Rep. 4 Ch. D. 789.

[And see PARTNERSHIP, 6.]

### (c) *Mortgage of reversionary interest: costs incurred in taking out administration.*

8.—A husband mortgaged his interest in his wife's reversionary personal estate. The wife died in the husband's life, and before the fund fell into possession. Expenses were incurred in taking out administration by persons entitled to the equity of redemption without any express request by the mortgagee:—Held, that the mortgagee was entitled to priority over such costs. *Saunders v. Dunman*, 47 Law J. Rep. Chanc. 338; Law Rep. 7 Ch. D. 825.

## (C) MORTGAGEE IN POSSESSION.

### (a) *Rights of.*

9.—If a mortgagee in possession of the mortgaged property sells it under his power of sale, he must account to the mortgagor not only for the proceeds of sale which he has received, but also for those which he might, but for his wilful default, have received; and this rule applies even if the mortgagor does not allege or

prove at the hearing any wilful default by the mortgagee. *Mayer v. Murray*, 47 Law J. Rep. Chanc. 605; Law Rep. 8 Ch. D. 424.

10.—Notice to the tenant to pay the rents of a farm in lease, held not to be a taking possession of things reserved from the lease; namely, shooting, timber and copses. *Simmins v. Shirley*, and *Shirley v. Simmins*, 46 Law J. Rep. Chanc. 875; Law Rep. 6 Ch. D. 173.

Mortgagees, by applying for an injunction to restrain mortgagors from cutting timber, were held not to have taken possession of the timber.

11.—Under a mortgage of wharves and warehouses occupied by the mortgagors for their business of wharfingers and warehousemen:—Held, that the mortgagees going into possession were not entitled to receive debts due to the mortgagors for warehousing goods, though the charges out of which the debts arose were termed rents, and were by Act of Parliament recoverable (amongst other charges) by distress and sale of the goods in respect of which they were incurred. *Anderson v. Butler's Wharf Company (Lim.)*, 48 Law J. Rep. Chanc. 824.

Semble, a mortgagee going into possession is entitled to receive all unpaid rents properly so called. *Ibid.*

The Apportionment Act does not disentitle a mortgagee entering into possession to back rents unrecovered. *Ibid.*

Under a power to charge the whole or any part of its property a corporation can effectually charge its future property. *Ibid.*

12.—A mortgagor remaining in concurrent occupation after the mortgagee had put a man in possession was held not to be entitled to cut and remove the crops. Semble, a demand of possession by the mortgagee is sufficient to disentitle the mortgagor to growing crops. Statement in *Ex parte Temple* (1 Glyn & J. 216) disapproved. *Bagnall v. Villar*, 48 Law J. Rep. Chanc. 695; Law Rep. 12 Ch. D. 813.

13.—A railway company having given notice of their intention to take a portion of premises upon which a business was being carried on, and of which mortgagees were in possession, the amount of compensation to be paid for the lands taken, and for the damage which might be sustained by reason of severance or by reason of the execution of the works, or of the exercise of the parliamentary powers of the company, was submitted to arbitration, and the amount awarded was 11,950*l.*, of which the arbitrator certified that 2,800*l.* was given in respect of trade profits. The mortgagees, whose debt exceeded the entire amount of compensation, were held entitled to the whole sum. Decision of Hall, V.C., affirmed. *Pile v. Pile; Ex parte Lambton* (App.), 45 Law J. Rep. Chanc. 841; Law Rep. 3 Ch. D. 36.

### (b) *Account of rents and profits against.*

14.—A mortgagee of an equitable life interest in leaseholds was put in receipt of the rents during the mortgagor's lifetime, by order of the

Court in an administration suit. The mortgagor disappeared, and was absent more than seven years, the mortgagee remaining in possession. The Court having assumed (affirming the decision of Hall, V.C.), that the mortgagor must be presumed to be dead, and, that on the facts her death must be taken to have happened shortly after her disappearance:—Held (overruling the decision of Hall, V.C.), that the mortgagee occupied no fiduciary position towards the persons entitled in remainder; but that the remaindermen had been guilty of no laches in not disturbing the mortgagee's possession before the end of the seven years, and that, therefore (in analogy to the legal remedy), an account of the rents received should be directed for the period of six years from the presentation of the remaindermen's petition claiming an account, and not merely from the presentation of the petition. *Hickman v. Upsall* (App.), 46 Law J. Rep. Chanc. 245; Law Rep. 4 Ch. D. 144.

The rule that where an account in equity is directed against a person in receipt of rents without any title to the same, the account will be taken only from the time the proceedings were commenced, does not apply where there has been no laches on the part of the person really entitled. *Ibid.*

#### (D) POWER OF SALE: EXERCISE OF.

15.—A mortgage deed contained a power of sale, and it was thereby provided that upon any sale, purporting to be made in pursuance of the power, the purchaser should not be bound to see or enquire whether any default had been made in payment of any principal or interest intended to be thereby secured at the time theretofore appointed for payment thereof, or as to the necessity or expediency of the stipulations subject to which such sale should have been made, or otherwise as to the propriety or regularity of such sale; and that, notwithstanding any impropriety or irregularity whatever in any such sale, the same should, as far as regarded the purchaser, be deemed to be within the power, and be valid accordingly; and the remedy of the mortgagor, in respect of any irregularity or impropriety in any sale, should be in damages:—Held, that the language of the proviso enabled the mortgagee to confer a good title on a *bona fide* purchaser after the security was satisfied, and that the purchaser was not bound to enquire whether anything was owing on the security at the date of the sale. *Dicker v. Angerstein*, 45 Law J. Rep. Chanc. 754; Law Rep. 3 Ch. D. 600.

16.—Mortgage of the equity of redemption of premises as security for payment of a sum of money, with the condition that, if default should be made for seven days after notice requiring payment, the mortgagee might sell. The mortgagee subsequently gave due notice, and on the sixth day after took a bill at three months for the amount from the mortgagor, who died the following day. The bill was dishonoured,

and thereupon the mortgagee, without giving any further notice, sold the premises to the plaintiff, who brought ejectment against the defendant, the mortgagor's widow:—Held, that the power of sale having been well exercised, the defendant was not entitled to redeem, but must give up possession to the plaintiff. That the giving of the bill operated as a suspension of the remedy by sale, and of the running of the notice, and that both revived when the bill was dishonoured; no further notice was therefore necessary. *Wood v. Murton*, 47 Law J. Rep. Q.B. 191.

*Purchase of mortgaged property by mortgagee.* [See No. 62 *infra*.]

*Resulting trust: conversion.* [See TRUST A 14.]

*Sale of leasehold property by mortgagee.* [See VENDOR AND PURCHASER, 24.]

#### (E) TRANSFER OF MORTGAGE: STATUTORY POWERS OF LEGAL PERSONAL REPRESENTATIVE.

17.—The 4th section of 37 & 38 Vict. c. 78, does not enable the legal personal representative of a mortgagee to convey the legal estate of the mortgaged property to a transferee of the mortgage. *In re Brooks' Mortgage*, 46 Law J. Rep. Chanc. 865.

[And see VENDOR AND PURCHASER, 36.]

#### (F) PRIMARY AND SECONDARY SECURITIES.

##### (a) Appropriation of debt: mortgage to secure current account.

18.—The testator had for several years previous to his death borrowed money from his bankers and deposited securities with them to secure the advances. On the 27th of March, 1876, he owed his bankers a sum of 62,000*l.*, for which they held various stocks and shares as security. On the 30th of March, the bankers agreed to advance him a sum of 15,000*l.*, on having the title deeds of certain freehold property deposited as security. The testator accordingly deposited the deeds with the bankers and executed in their favour a memorandum charging that sum and any moneys from time to time due from him upon the freehold property. The 15,000*l.* was subsequently advanced, and further advances were also from time to time made, on which occasions the title deeds of other freehold and leasehold properties and various stocks and shares were deposited with the bankers, but no subsequent memorandum was executed by the testator. During these loan transactions many of the stocks and shares had from time to time been sold, and the proceeds applied in reduction of the debt which at the time of his death amounted to 28,625*l.* In a memorandum book kept by the testator the whole of the transactions were treated as matters of one running account. The testator by his will specifically devised the above-mentioned freehold estates, and directed his debts to be paid out of a fund to be produced by the sale

and conversion of his residuary real and personal estate. On a question raised by special case as to how the debt to the bankers was to be borne:—Held, that the debt due at the testator's death and interest thereon from that time must be borne rateably by the various properties then held by the bankers according to their respective values at the testator's death. *Lipscomb v. Lipscomb* (38 Law J. Rep. Chanc. 90; Law Rep. 7 Eq. 501), and *De Rochefort v. Dawes* (40 Law J. Rep. Chanc. 625; Law Rep. 12 Eq. 540) considered and questioned. *Leonino v. Leonino*, 48 Law J. Rep. Chanc. 217; Law Rep. 10 Ch. D. 460.

(b) "*Collateral Security.*"

19.—A., an intestate, applied to certain trustees to advance to him 4,900*l.* on the security of freeholds belonging to A. The trustees (who were only empowered to lend on freehold securities), considering the value of the freeholds not quite sufficient, desired additional security, and A. thereupon agreed to include certain leaseholds belonging to him in the proposed security. Accordingly two several mortgages of the freeholds and leaseholds were executed. The mortgage of the freeholds recited that the mortgagees had "agreed to advance out of moneys belonging to them on a joint account the sum of 4,900*l.* on having the repayment of the same with interest secured as thereafter mentioned, and by a collateral security or indenture intended to bear even date with these presents, whereby it is intended that the mortgagor shall demise certain leasehold hereditaments to the mortgagees, and covenant with them for payment and other purposes as therein mentioned;" but was in other respects in the ordinary form of a mortgage of freeholds in fee-simple to secure 4,900*l.* The mortgage of the leaseholds reciting the mortgage of even date of the freeholds, and that "upon the treaty for the said advance it was agreed that the principal and interest should be further secured by these presents," was expressed to be "in consideration of the said sum of 4,900*l.* to the mortgagor advanced by the mortgagees out of moneys belonging to them on a joint account, and which sum is so secured by indenture of even date herewith as aforesaid," and was in other respects in the ordinary form of a mortgage of leaseholds by demise to secure 4,900*l.* Each mortgage contained an independent covenant for payment of the 4,900*l.* The intestate had no children, but left a widow and father him surviving. In an action by the father of the intestate against the widow (who had taken out letters of administration to the intestate) for the administration of the intestate's estate:—Held, that the mortgage debt of 4,900*l.* must be borne rateably by the freehold and leasehold properties according to their values. *Athill v. Athill*, 49 Law J. Rep. Chanc. 821 (affirmed on appeal, 50 Law J. Rep. Chanc. 123; Law Rep. 16 Ch. D. 211), and *Early v. Early*, 49 Law J. Rep. Chanc. 826*n.*; Law Rep. 16 Ch. D. 214 *n.*

(G) PRIORITIES.

(a) *Effect of fraud or suppression.*

20.—A husband being about to go abroad executed a deed, whereby he purported to grant, assign, transfer and set over to his wife a leasehold house and furniture, to hold the same unto his said wife as her separate estate:—Held, that it was the intention of the husband to settle the property on the wife, and that he thereby became trustee of the property for the separate use of the wife. The wife handed the title-deeds of the house to an agent, in order to raise 200*l.* The agent, falsely representing himself as the agent of the husband, by forged documents purported to mortgage the property to H. & S. (to whom the deeds were delivered) for 1,200*l.*, which he appropriated. The wife repeatedly, but in vain, pressed the agent to return her the title-deeds. The fraud being discovered:—Held, that the wife had not been guilty of such negligence as to deprive her of her right to relief against H. & S., and that the forged documents must be delivered up to be cancelled, and the title-deeds handed over to her. *Fbz v. Hawks*, 49 Law J. Rep. Chanc. 579; Law Rep. 13 Ch. D. 822.

(b) *Purchase of equity of redemption by first mortgagee.*

21.—A mortgagee having instituted an action for foreclosure of a mortgage against the mortgagor making a second mortgagee party, during the pendency of the action purchased the equity of redemption:—Held, that the intention being apparent upon the deeds not to let in the second mortgagee as first mortgagee, such second mortgagee could only foreclose on terms of paying off the amount secured by the first mortgage. *Tbulmin v. Steere* (3 Mer. 210), discussed. *Adams v. Angell*, 46 Law J. Rep. Chanc. 54; affirmed on appeal, 46 Law J. Rep. Chanc. 352; Law Rep. 5 Ch. D. 635.

(c) *Equitable assignee: notice.*

22.—A written agreement by the owner of a policy of life assurance to execute a legal assignment of such policy when requested so to do, is not an assignment within the meaning of the Policies of Assurance Act, 1867, and notice of such agreement duly given to the insurance office and acknowledged by them pursuant to section 6 of that Act, does not give priority, under section 5 of the Act, over the prior equitable title of a person who has not given notice. *Spencer v. Clarke*, 47 Law J. Rep. Chanc. 692; Law Rep. 9 Ch. D. 137.

23.—Where the owner of shares had deposited the certificates and a signed transfer by way of security, and not to be dealt with in the events that happened, the transferee, who had not been put upon the register, nor executed an acceptance of the shares (which was a

requisite for registration), fraudulently purported to transfer the shares, and handed over the previous transfer and certificates, to mortgagees for value:—Held, that the mortgagees could not, after becoming aware of the true ownership, get their title perfected against the owner through further acts on the part of their mortgagor which would be a continuation of his fraud.—*Dodds v. Hills* (2 Hem. & M. 424) distinguished. And it was held, in this case, upon all the circumstances, that the mortgagees had not an equity prevailing against the owner. *Ortigosa v. Brown*, 47 Law J. Rep. Chanc. 168.

Where a transfer of shares under seal was executed with the name of the transferee in blank, the shares being transferable by a parol instrument:—Held, that the transfer could be effectual like a parol instrument, notwithstanding that it purported to be a deed. Whether as a deed it would have operated by estoppel,—*quare*. *Ibid*.

It is competent to the directors of a company registered under the Joint Stock Companies Act, 1856, to require a transferee of shares to execute an acceptance before being registered as proprietor. *Ibid*.

*Quare*, if the power of the Court to order delivery up of deeds is not extended by the Judicature Act. *Ibid*.

[This case was afterwards varied on appeal upon further evidence.]

24.—A solicitor was party to the investment of funds held by him on trust in real estate, which afterwards was mortgaged under circumstances which shewed a fraudulent design to which he was party, embracing the whole transactions:—Held, that though he acted as solicitor to the mortgagee, the latter was not affected with notice of the breach of trust, and, having the legal estate, had priority over the lien of the beneficiaries; but subsequent equitable mortgages were postponed to that lien. *Chaplin v. Caves*; *Caves v. Caves*, 49 Law J. Rep. Chanc. 505; Law Rep. 15 Ch. D. 639.

25.—A second assignee for value, without notice of a prior assignment, of an equitable interest or fund, having given notice to the trustees, was held to have priority over the first assignee who had not given notice. *In re Freshfield's Trusts*, Law Rep. 11 Ch. D. 198.

26.—Notice by an incumbrancer upon a fund to the solicitor for the trustee of that fund is not notice to the trustee unless the solicitor is expressly authorised to receive such notice. A notice to be binding on the conscience of a trustee must be communicated in such a manner as that he acquires an intelligent apprehension of its effect, and understands that it must regulate his conduct in the future. The first incumbrancer on a trust fund gave a written notice of his charge to solicitors, as the solicitors for the trustees of the fund, and the solicitors accepted the notice as such solicitors. Puisse incumbrancers gave notice of their charges to the trustees direct. The trustees having declined to admit the first incumbrancer

to priority over the puisse incumbrancers on the ground that notice to the solicitors was not notice to them, he brought an action against all parties claiming, as against the mortgagor and puisse incumbrancers, priority and foreclosure; and (in the event of his being postponed), as against the solicitors, damages for the loss caused by their misrepresentation of authority: Held (reversing the decision of Bacon, V.C., 48 Law J. Rep. Chanc. 402; Law Rep. 10 Ch. D. 696), that the notice to the solicitors, they not being expressly authorised to receive such notice, was not notice to the trustees. Held also, upon the evidence, that as the notice was not communicated by the solicitors to the trustees, in such a manner as to give them an intelligent apprehension of its nature and effect, it was not binding upon them. *Lloyd v. Banks* (37 Law J. Rep. Chanc. 881; Law Rep. 3 Chanc. 488) followed on this point. Held further, that as the notice had been given by the plaintiff to the solicitors and accepted by them under the common mistake that notice to them, as the solicitors of the trustees, was notice to the trustees, no action for damages would lie. *The Saffron Walden Building Society v. Rayner* (App.) 49 Law J. Rep. Chanc. 466; Law Rep. 14 Ch. D. 406.

[And see No. 30 infra.]

#### (d) Priority by registration.

27.—The Court cannot look behind a ship's register for the purpose of dispossessing an innocent purchaser for value, whose name is on the register. *The Horlock*, 47 Law J. Rep. P.D. & A. 5; Law Rep. 2 P.D. 243.

28.—A landowner, by deed, in February, 1872, charged his land with two life annuities; he subsequently made several mortgages of the property by deeds, some of which recited the annuity deed. The annuity deed had not been registered as required by 18 & 19 Vict. c. 15. s. 12:—Held (by the Master of the Rolls), that the annuity deed, not being registered, was void as against all the subsequent incumbrancers, whether they had notice of it or not. Held (by the Court of Appeal), that as the 18 & 19 Vict. c. 15. s. 12 was in similar terms to the Registry Acts, which had been decided not to make an unregistered conveyance void as against a subsequent purchaser who had notice of it, the Legislature must be taken to have used the words in the later Act in the sense given to them by those decisions, and that the annuities therefore were valid as against all the subsequent incumbrancers who took with notice of them and against the trustee in bankruptcy of the grantor. *Greaves v. Tofield*, 60 Law J. Rep. Chanc. 118; Law Rep. 14 Ch. D. 563.

#### (H) CONSOLIDATION OF SEVERAL MORTGAGES.

29.—The right of a first mortgagee of two separately mortgaged estates belonging to one mortgagor to consolidate his mortgages as

against a second mortgage of one of the estates, does not extend to a case in which the mortgage of the other estate is subsequent in date to such second mortgage. *Baker v. Gray*, 45 Law J. Rep. Chanc. 165; Law Rep. 1 Ch. D. 491.

G., the owner of two estates, mortgaged one of them to O., and afterwards to second and third mortgagees, who gave due notice of their mortgages to O. Subsequently to these second and third mortgages, G. mortgaged the other estate to B., who then took a transfer of O.'s mortgage:—Held, that B. was not entitled to consolidate his two mortgages as against the second and third mortgagees. *Ibid.*

30.—B. paid 500*l.* to R. to be advanced to K. on mortgage of certain property; R. undertook on behalf of K. and himself to repay the 500*l.* and interest at six per cent., and to hold the deeds to the order of B. R. subsequently took in his own name a mortgage of the property for 800*l.* and interest at the rate of five per cent., and deposited the deeds with a bank to secure an advance of 500*l.* and interest:—Held, that B. was entitled to a first charge on the mortgage in respect of 500*l.* and interest at six per cent. *Bradley v. Riches*, 47 Law J. Rep. Chanc. 811; Law Rep. 9 Ch. D. 189.

A solicitor mortgaged hereditaments in Middlesex to one client, and did not register the charge; he subsequently mortgaged the same hereditaments to another client who did register:—Held, that the second mortgagee was affected with notice of the earlier incumbrance, and did not gain priority by registration. *Ibid.*

The plaintiff held mortgages of two properties of the same mortgagor which he consolidated in a foreclosure action. The equities of redemption were separately mortgaged:—Held, that the holder of the earlier second mortgage had a right over the holder of the latter to redeem and hold both properties as a security for the plaintiff's debt and his own. *Ibid.*

31.—The rule that a mortgagor cannot by any dealing with the equity of redemption prejudice the rights of his mortgagee, only applies to rights already given or arising from acts already done by the mortgagor. The purchaser of an equity of redemption, therefore, takes subject only to existing equities, and, as against him, there can be no consolidation of a mortgage subsequently created by his vendor on another estate. *Tassell v. Smith* (2 De Gex & J. 713; 27 Law J. Rep. Chanc. 694) overruled on this point. *Mills v. Jennings*, (App.), 49 Law J. Rep. Chanc. 209; Law Rep. 13 Ch. D. 639.

32.—A mortgagee of two estates from the same mortgagor has no right to consolidate his securities unless there has been default as to both. Semble, that there is no right to consolidate a mortgage granted by A. and B. jointly with one granted by A. or B. alone. In 1871 V. executed a mortgage of certain property to a building society, for a sum to be repaid by monthly instalments, extending over a period of twelve years. In 1874 V. with N. (with whom

he was then in partnership) executed a similar mortgage to the same society of property belonging to the partnership. In 1875 the partners executed a mortgage to a bank to secure their current account. This mortgage included the property mortgaged to the building society in 1871. Afterwards V. and N. having gone into liquidation, the bank entered into possession of the property comprised in their security, and punctually continued the monthly payment to the building society under the mortgage of 1871. Default was made as to the mortgage of 1874:—Held, that as there had been no default as to the mortgage of 1871, the building society had no right to consolidate it with the mortgage of 1874. *Selby v. Pomfret* (3 De Gex, F. & J. 595; 30 Law J. Rep. Chanc. 770) explained. *Beever v. Luch* (36 Law J. Rep. Chanc. 865; Law Rep. 4 Eq. 537) questioned. The principles of consolidation considered and explained. Decision of Hall, V.C., 49 Law J. Rep. Chanc. 117, reversed. *Cummins v. Fletcher* (App.), 49 Law J. Rep. Chanc. 563; Law Rep. 14 Ch. D. 699.

33.—The rule that the mortgagee of two estates belonging to the same mortgagor may consolidate them, so that one cannot be redeemed without the other, will not be extended so as to enable the grantee of a bill of sale who has realised his security to appropriate any remaining surplus of the goods assigned, and so defeat the right of an execution creditor thereto, on the ground that the grantee is also mortgagee of land of the grantor, and has a right to consolidate the two securities. *Chesworth v. Hunt. Harrison (claimant)*, 49 Law J. Rep. C.P. 507; Law Rep. 5 C.P. D. 266.

34.—Second mortgagees sold part of the property comprised in their security under a power. The purchase-money was applied in paying the first mortgagee what was due on his mortgage, and also what was due on an equitable security held of the same mortgagor; the deeds relating to the equitable security were delivered to the second mortgagee. A claim by the latter to the benefit of the equitable security and to consolidate it with his own mortgage was disallowed. *Cracknall v. Janson*, 48 Law J. Rep. Chanc. 168; Law Rep. 11 Ch. D. 1.

*Solicitor: mortgagee: commission: opening signed accounts.* [See SOLICITOR, 22, 23.]

#### (I) EQUITABLE MORTGAGE.

(a) *Agreement to mortgage: rectification of deed: misdescription of parcels.*

35.—B. applied to a bank for a loan upon the security of three houses in the parish of C., which he specified and pointed out to the bank manager, stating that he held them under a lease from H. L., dated the 25th of September, 1874, and that they were mortgaged to the M. Building Society by an indenture dated the 3rd of October, 1874. The bank made the advance, and a memorandum of equitable mortgage, expressed to be subject to a mortgage to the

M. Society, of the 3rd of October, 1874, was prepared by the bank manager and executed by B. In this instrument the parcels were described as three leasehold houses in the parish of C., held by a lease from H. L. to B., dated the 26th of September, 1874. Two of the houses agreed to be mortgaged were in fact held under a lease from H. L., dated the 31st of December, 1874, and were mortgaged to the M. Society by an indenture dated the 14th of January, 1875. The third house was held by a lease from H. L., dated the 13th of May, 1875, and was mortgaged to the M. Society by an indenture dated the 18th of May, 1875. At the date of the mortgage to the bank, B. possessed no houses comprised in any lease or mortgage of the dates therein referred to, but he had formerly owned a house exactly answering the whole description, which he had sold some months previously. B. having become a liquidating debtor, the trustee sold the first two houses, and applied to the Court for a direction to complete the sale and deal with the proceeds without regard to a claim by the bank to include these houses in their security:—Held, that the bank having advanced their money upon an agreement for the mortgage of these houses, would be entitled in equity to have the memorandum rectified so as to carry out that agreement, and that they must be treated by the Court of Bankruptcy as possessing a valid security upon the two houses. *In re Boulter; ex parte The National Provincial Bank of England*, 46 Law J. Rep. Bankr. 11; Law Rep. 4 Ch. D. 241.

(b) *Of stock or shares: pre-existing equitable interest.*

36.—As the registered owner of shares or stock in any company may be only entitled as trustee, any one who advances money upon an equitable deposit of share or stock certificates, or upon an assignment in equity of shares or stock, without obtaining a transfer of the legal estate, does so, subject to the risk of having his equitable title overridden by a pre-existing, though undisclosed, equitable title. *The Shropshire Union Railway and Canal Company v. The Queen* (H.L.), 45 Law J. Rep. Chanc. 31; Law Rep. 7 E. & I. App. 497.

If anyone absolutely entitled to shares, or stock, places them for his own purposes in the name of a sole trustee, and allows such trustee to hold the certificates of the shares or stock, he does so at the risk of having his equitable title defeated by the execution of a legal transfer of the shares or stock by his trustee to a purchaser, or mortgagee, without notice. His right may also be forfeited in favour of an equitable mortgagee, by his own misconduct or misrepresentation, but such misconduct must be very distinct, and the burden of proving it rests with him who relies on it as the ground for displacing the *cestui que trust's* equitable interest. These principles are as applicable to corporations as to individuals. *Ibid.*

(c) *Bankruptcy: disclaimer: legal estate.*

37.—A mortgage of freehold lands, which was subject to a perpetual rent-charge and to building covenants, was made by deposit of title-deeds. The mortgagor became bankrupt, and his trustee in bankruptcy disclaimed the property. Afterwards, the trustee and the mortgagor conveyed to the mortgagee, "each according only to his estate and interest in the premises," the legal estate therein. The mortgagee sold the property as absolute owner, and it was subsequently contracted to be sold by persons deriving title through him:—Held, on an objection taken by the purchaser, that the legal estate in the premises had never passed to the mortgagee, and, consequently, that the present vendors had not shewn a good title. *In re Mercer and Moore's Contract*, 49 Law J. Rep. Chanc. 201.

Semble, the legal estate was in the Crown. *Ibid.*

*Equitable mortgagees of leaseholds: disclaimer by trustee in bankruptcy: right of trustee to indemnity.* [See BANKRUPTCY, F 51.]

(d) *Remedy of equitable mortgagee.*

38.—An equitable mortgagee by deposit of deeds without a written memorandum of deposit is entitled to either sale or foreclosure. *Backhouse v. Charlton*, Law Rep. 8 Ch. D. 444, and *The York Union Banking Company v. Artley*, Law Rep. 11 Ch. D. 205.

(e) *Pledgee of chattels: remedy of.*

39.—A deposited railway bonds with B. as security for a debt, without any written memorandum. B. filed a bill praying for foreclosure or sale:—Held, that as a mere pledgee of chattels B. was not entitled to foreclosure, but only to a sale. *Carter v. Wake*, 46 Law J. Rep. Chanc. 841; Law Rep. 4 Ch. D. 605.

(K) FORECLOSURE AND REDEMPTION ACTIONS: PRACTICE IN.

(a) *Foreclosure actions.*

(1) *Action to recover land.*

40.—An action for foreclosure is not an action to recover land within Rules of Court, 1875, Order XVII. rule 2. *Tancell v. The Slate Company*, Law Rep 3 Ch. D. 629.

(2) *Parties.*

41.—One of the several mortgagees can bring an action to foreclose the mortgage, making his co-mortgagees defendants, if they are unwilling to be joined as co-plaintiffs, and, semble, even if they are opposed to the foreclosure. A majority of trustees cannot bind the trust estate. To bind the trust estate the act must be the act of all the trustees. *Luke v. The South Kensington Hotel Company* (App.), 48 Law J. Rep. Chanc. 361; Law Rep. 11 Ch. D. 204.

42.—In a foreclosure action all parties beneficially interested in the equity of redemption of

all the mortgaged properties must be before the Court, but a trustee, either as plaintiff or defendant, sufficiently represents his *cestuis que trust* for the purposes of a redemption action. *Goldsmid v. Stonehewer* (9 Hare, App. xxxviii.) explained. *Mills v. Jennings* (App.), 49 Law J. Rep. Chanc. 209; Law Rep. 13 Ch. D. 639.

(3) *Default in appearance.*

43.—Immediate foreclosure, in case the mortgagor did not appear, was claimed by the pleading. The mortgagor made default in appearance, and the Court made only an ordinary foreclosure decree. *Patey v. Flint*, 48 Law J. Rep. Chanc. 696.

(4) *Disclaiming defendants.*

44.—A second mortgagee, who had been paid off, but had not executed any re-conveyance, was made defendant to a foreclosure suit without having been previously required to disclaim or re-convey. After being served with the bill, the defendant offered to execute a disclaimer, provided he was not required to pay the costs of it. The plaintiff declined the offer, and served interrogatories on the defendant, who put in an answer and disclaimer, and applied at the hearing for his costs:—Held, that the plaintiff's title was not to be perfected at the defendant's expense, and that the defendant was entitled to his costs. *Day v. Gudgeon*, 45 Law J. Rep. Chanc. 263; Law Rep. 2 Ch. D. 209.

(5) *Interlocutory order for sale.*

45.—In an ordinary foreclosure action the 55th section of the Chancery Procedure Act, 1852, does not authorise the Court to direct a sale on an interlocutory application. *Davis v. Ashwin* (47 Law J. Rep. Chanc. 70) questioned. *The London and County Banking Company v. Dover*, 48 Law J. Rep. Chanc. 336; Law Rep. 11 Ch. D. 204.

(6) *Motion by defendant under 9 Geo. 2. c. 20: discontinuance.*

46.—A motion by the defendant in a foreclosure suit for the ordinary decree under 9 Geo. 2. c. 20. s. 2, cannot be resisted by the plaintiff on the ground that he has, pending the action, parted with the legal estate; nor (if the action has been entered for trial), on the ground that he desires to stay proceedings, in order to take advantage of a transfer and right of consolidation arising since the entry for the trial. Rule of Court, Order XXIII. rule 1, does not entitle a plaintiff to dismiss his action after it has been entered for trial. *Matthews v. Antrobus*, 49 Law J. Rep. Chanc. 80.

(7) *Staying proceedings.*

47.—An executor mortgaged certain of his testator's hereditaments to C. to pay off incumbrances. C. leased these hereditaments, with the consent of the equitable tenant for life, to R.

Default having been made in the interest due on the mortgage debt, C. directed R., pursuant to a proviso contained in the lease, to pay the rent to him. This not having been done, C. brought an action against R. on the covenant to pay rent and to enforce a reserved right of re-entry, and the executor was admitted to defend this action. Shortly before this the executor had instituted an action to administer his testator's estate, and enquiries had been directed in the Chancery Division as to the incumbrances on the estate. An order having been made at chambers and affirmed by a Divisional Court that the action for rent and re-entry should be stayed until the administration action was concluded, C. appealed:—Held (reversing the decision of the Divisional Court), that the order could not be sustained, that although the executor was the plaintiff in the administration action, and the defendant in the action by C., still that C. not being a party to the administration action, ought not to be restrained from pursuing all the remedies reserved to him under the mortgage, and that he was entitled to proceed with his action. *Cromie v. Russell* (App.), 48 Law J. Rep. C.P. 76; Law Rep. 4 C.P. D. 186.

48.—Where there was, first, an action by an equitable mortgagee to establish a charge, and secondly, a creditor's action for the administration of the estate in which the ordinary decree had been made, the Court stayed further proceedings under the first action, but gave the conduct of the decree in the second action to the plaintiff in the first action. *Matthews v. Matthews*; *Willyams v. Matthews*, 45 Law J. Rep. Chanc. 711.

*Foreclosure action by equitable mortgagee of bankrupt: Bankruptcy Act, 1869, s. 72.* [See BANKRUPTCY, A 11, 15.]

(8) *Preliminary account: subsequent issues.*

49.—A preliminary order for an account under Order XV. rule 1, was made in a foreclosure action after appearance but before any pleadings were delivered. The order, after stating that the Judge did not require "any trial of this action other than the hearing of this application," reserved further consideration. Pleadings were subsequently delivered by which the defendants raised the issues that the plaintiffs were mortgagees in possession or liable for occupation rent:—Held, that the form of order did not preclude the defendants from proceeding to trial on the issues, and that the action should be set down for trial accordingly. *Gatti v. Webster*, 48 Law J. Rep. Chanc. 763; Law Rep. 13 Ch. D. 771.

Orders under Order XV. rule 1, should be drawn so as not to prejudice the trial of any issues raised by subsequent pleadings. *Ibid.*

(9) *Form of order: mortgage of leaseholds by sub-demise.*

50.—A mortgage by sub-demise of leasehold property contained an absolute declaration of



trust by the mortgagor of his reversion. The mortgagor having refused to convey, the Court decreed judgment for foreclosure of the equity of redemption of the premises, and of the reversionary term; but the Court refused to make a vesting order as to the reversion until the decree absolute. *The British Empire Mutual Life Assurance Company v. Sugden*, 47 Law J. Rep. Chanc. 691.

(10) *Foreclosure absolute.*

51.—In a foreclosure suit the money was to be paid between twelve and one. The agent of the mortgagee attended during the whole of the appointed time, but without any power of attorney to receive the money. The mortgagee himself did not attend. No one appeared on behalf of the mortgagor:—Held, that the foreclosure ought to be made absolute. *Cox v. Watson*, 47 Law J. Rep. Chanc. 263; Law Rep. 7 Ch. D. 196.

52.—Every person taking property by virtue of an order for foreclosure absolute is presumed to have actual knowledge that the Court has a judicial discretion to allow the mortgagor to redeem. *Campbell v. Holyland*, 47 Law J. Rep. Chanc. 145; Law Rep. 7 Ch. D. 166.

The terms on which that judicial discretion will be exercised must depend on the circumstances of each case. *Ibid.*

The general nature of those circumstances considered. *Ibid.*

Even after an order for foreclosure absolute, an assignee of the interest of one of the parties to the action, may be brought before the Court, so that the litigation may be carried on between the persons who are really interested. Thus, where after the order for foreclosure A. bought the mortgagor's and B. the mortgagee's interest, and an order was made for foreclosure absolute upon an *ex parte* application of the mortgagee at the instance of his purchaser, the Court allowed a motion by A., to bring himself and B. before the Court as co-defendants with the original defendant in the foreclosure action, and upon a subsequent motion by A. the foreclosure was opened, notwithstanding that the mortgagee had, after the order for foreclosure, assigned all his interest to a purchaser. *Ibid.*

(11) *Accounts: extra costs.*

53.—Property subject to mortgage was taken under a statutory power. In directing mortgage accounts, the Court refused to insert special words providing for mortgagee's extra costs incurred in assessing the price of the property. *Rees v. The Metropolitan Board of Works*, 49 Law J. Rep. Chanc. 620; Law Rep. 14 Ch. D. 372.

(12) *Redemption by purchaser: debt payable by instalments.*

54.—Where in a foreclosure action personal judgment for the mortgage debt was given against the mortgagor, and a foreclosure judgment

against the mortgagor and a purchaser from him,—Held, that the purchaser, in the event of his redeeming the mortgage, would be entitled to have the personal judgment against the mortgagor, as being one of the securities held by the mortgagee, transferred to him. Leave was given to the purchaser to apply in Chambers for a sale of the property. Form of foreclosure judgment when the mortgage debt is payable by instalments. *Greenough v. Littler*, Law Rep. 15 Ch. D. 93.

(13) *Judgment set aside for mistake.*

55.—Judgment in a foreclosure action was obtained against the alleged eldest son and heir at law of the mortgagor who had died intestate, and a contract for sale had been entered into subject to the sanction of the Judge in Chambers. It appearing that there was no evidence of the heirship the judgment on motion by the plaintiffs was set aside, and the action dismissed without costs. *The Lancaster Banking Company v. Cooper*, Law Rep. 9 Ch. D. 594.

(14) *Trustee Acts: resting order.*

56.—Where one of three trustee mortgagees declined on a transfer of a mortgage to execute the deed of transfer, and a new trustee was subsequently appointed in his stead, the Court made an order vesting his estate in the transferee. *In re Walker's Mortgage Trusts*, Law Rep. 3 Ch. D. 209.

57.—Where the estate of a deceased mortgagor was vested in an infant heir at law upon trust for sale and division among a class, of whom the infant was one,—Held, that the infant would be a trustee for the mortgages unless they were redeemed within six months. *Foster v. Parker*, Law Rep. 8 Ch. D. 147.

*Action by mortgagee for mortgage debt: writ specially indorsed: leave to defend.* [See PRACTICE, II 13.]

*Administration: incidence of mortgage debt.* [See ADMINISTRATION, 13-16.]

*Application in bankruptcy: time for payment.* [See BANKRUPTCY, A 10.]

*Benefit building society: reference of disputes to arbitration.* [See FRIENDLY SOCIETY, 9.]

*Benefit building society: statutory receipt.* [See FRIENDLY SOCIETY, 5.]

*Covenants for title: estoppel.* [See ESTOPPEL, 4.]

*Working quarries after foreclosure: waste: burden of proof.* [See WASTE, 1.]

(b) *Redemption actions.*

58.—Under an order made in a redemption action directing an account of what was due on a mortgage for principal and interest, the mortgagees were held entitled to be allowed, under the head of "just allowances," expenses incurred by them in taking and holding possession of the

mortgaged property (a ship), advertising for sale and effecting insurances. *Wilkes v. Saunton*, 47 Law J. Rep. Chanc. 150; Law Rep. 7 Ch. D. 188.

59.—The Court will allow as against mortgagees in possession under "just allowances" all necessary repairs, and there is no need for them to be inserted in the order; but permanent repairs or substantial improvements will not be allowed under that term, but must be asked for, and not only alleged, but also proved. *The Tipton Green Colliery Company v. The Tipton Moat Colliery Company*, 47 Law J. Rep. Chanc. 152; Law Rep. 7 Ch. D. 192.

60.—Notice to redeem a mortgage having been given, a title-deed was missing; and the mortgagor brought his action for redemption and for an indemnity:—Held, that the action was rightly brought in order that the loss of the deed might be established and the plaintiff's title justified, although the defendants had before the action offered an indemnity, the terms of which were in controversy. *James v. Ramsey*, 48 Law J. Rep. Chanc. 345; Law Rep. 11 Ch. D. 398.

Held also, that interest ceased to run on the day fixed for redemption under the notice. *Ibid.*

It having been found in the suit that the deed was in the hands of a third party to whom the defendants' former solicitor had fraudulently pledged it,—Leave was given to the plaintiff to take proceedings for its recovery. *Ibid.*

61.—A first mortgagee, the defendant in a redemption suit by a second mortgagee, must state in answer to interrogatories not only the amount due on his security but also what securities for the debt he holds. *The West of England and South Wales Bank v. Nickolls*, Law Rep. 6 Ch. D. 613.

62.—A mining company in consideration of advances executed a mortgage of their mine and plant to a bank, with power of sale in default of payment after notice. The bank by a collusive sale became the purchaser of the whole, and afterwards re-sold the mine. The company by their bill admitted the execution of the mortgage, but alleged that the same was *ultra vires*, and prayed that it and the sale to the bank and the resale by the bank might be declared void and for an account but did not offer to redeem:—Held, that as the company admitted the execution of the mortgage they were entitled to an account without prayer for redemption, that the sale to the bank was void and the re-sale also void under the power of sale, the bank not having complied with the provisions of the 84th section of the Land Transfer Act. *The National Bank of Australia v. The United Hand in Hand and Band of Hope Company and Another*, 48 Law J. Rep. P.C. 50; Law Rep. 4 P.C. 391.

*Mortgagor in possession: right to bring action for injunction.* [See COVENANT, 14.]

*Trustee sufficiently represents cestui quo trust.* [See No. 42 supra.]

## MORTMAIN.

[See CHARITY, 1-21.]

## MORTUARY.

*Erection of, in closed churchyard.* [See CHURCH AND CLERGY, 9, 10.]

## MOTION.

[See PRACTICE, S.]

## MUNICIPAL CORPORATION.

### (A) QUALIFICATION OF MEMBERS OF.

(a) *Action for penalties against disqualified alderman.*

(b) *Nomination: Burgess roll.*

### (B) MUNICIPAL ELECTIONS.

(a) *Nomination paper.*

(1) *Form and subscription of.*

(2) *Delivery of: jurisdiction of mayor.*

(b) *Corrupt practices at.*

(1) *Fraudulent ballot papers: admissibility of evidence.*

(2) *Infringement of secrecy.*

(3) *Refreshment to voters.*

(c) *Petition.*

(1) *Conditions precedent to.*

(2) *Costs of.*

### (C) POWERS OF MUNICIPAL CORPORATIONS.

(a) *By-laws.*

(b) *Erection of buildings on public walks or pleasure grounds.*

(c) *Costs of opposing Bill in Parliament.*

(d) *Liability of borough to county rate.*

(e) *Borough fund: fines "payable to Her Majesty."*

(f) *Borough rate: appeal: application to assessment committee.*

[Penalty for misappropriation of corporate moneys. 39 & 40 Vict. c. 20. s. 3.]

[Liability of corporation to be rated in respect of corporate land. 39 & 40 Vict. c. 61. s. 30.]

[Amendment of law with respect to annual returns of local taxation. 40 & 41 Vict. c. 66.]

[Amendment of the law regulating municipal elections in Ireland. 42 & 43 Vict. c. 53.]

[Amendment of the law with respect to the grant of municipal charters. 40 & 41 Vict. c. 69.]

[Amendment of law as to enrolment of burgesses. 41 & 42 Vict. c. 26.]

[The property qualification for members of municipal corporations and local governing bodies abolished. 43 Vict. c. 17.]

### (A) QUALIFICATION OF MEMBERS OF.

(a) *Action for penalties against disqualified alderman.*

1.—No action for penalties will lie under section 53 of 5 & 6 Will. 4. c. 76, against an alderman for acting in that capacity after being

interested in a contract within section 28, unless he continued to be interested in such contract at the time of his so acting. *Lewis v. Carr* (App.), 46 Law J. Rep. Exch. 314; Law Rep. 1 Ex. D. 484.

(b) *Nomination: burgess roll.*

2.—It is sufficient to entitle a person to be nominated for the office of councillor for a municipal borough that, if otherwise duly qualified, he be enrolled on the burgess roll in force at the time of the election, although his name may not be on the burgess roll which was in force at the time of the nomination. Therefore, where one of several candidates for the office of councillor was nominated on the 23rd of October, 1877, who was not enrolled on the burgess roll for the year beginning the 1st of November, 1876, but was enrolled on the burgess roll for the year beginning the 1st of November, 1877, when the election was held, and was in all other respects qualified to be elected councillor,—Held, that he was rightly nominated. *Budge v. Andrews*, 47 Law J. Rep. C.P. 586; Law Rep. 3 C.P. D. 510.

The Court of Common Pleas has jurisdiction, on a petition questioning the election, to review the decision of the mayor, who had allowed an objection to such nomination, on the ground that the name of such candidate was not on such previous burgess roll. *Ibid.*

3.—Up to the time of the passing of 38 & 39 Vict. c. 40, a candidate for the office of town councillor or alderman was qualified for election if entitled to be on the burgess list of the borough, even though his name, as a fact, was not on the list. By section 1 of that Act a candidate "shall be enrolled on the burgess roll of the borough :"—Held, that section 1 merely added to the existing law a requirement that the name of the candidate must be on the burgess roll. Therefore, on the trial of a petition to enquire into the election of a town councillor, the burgess roll is not conclusive evidence of qualification. *Middleton v. Simpson*, 49 Law J. Rep. C.P. 312; Law Rep. 5 C.P. D. 183.

(B) MUNICIPAL ELECTIONS.

(a) *Nomination paper.*

(1) *Form and subscription of.*

4.—The name of a candidate for the office of town councillor of a ward in the borough of S. was inserted in the nomination paper as Robert V. Mather instead of Robert Vickers Mather; an objection to this nomination paper, that it did not properly describe the candidate in accordance with the Municipal Elections Act, 1875 (38 & 39 Vict. c. 4. s. 1. sub-s. 2), was duly made to the returning officer and allowed :—Held, that the objection was valid, for that Robert V. was a misnomer and the defect could not be cured by section 142 of 5 & 6 Will. 4. c. 76, as that Act, passed at a time before nomination papers were in existence, and not being

extended by the 38 & 39 Vict. c. 40, could not be held to include or extend to nomination papers. *Mather v. Brown*, 45 Law J. Rep. C.P. 547; Law Rep. 1 C.P. D. 596.

5.—It is not necessary that the description of the place of abode of a subscribing burgess to a nomination paper, under Form 2 of the Municipal Elections Act, should be identical with the burgess roll; it is sufficient if it be the same property, described with sufficient particularity so as not to mislead. *Soper v. The Mayor of Basingstoke*, 46 Law J. Rep. C.P. 422; Law Rep. 2 C.P. D. 440.

The seconder of a candidate for the office of town councillor described his place of abode on the nomination paper as "High Street;" on the burgess roll he was described as of "Winton Street." The name of the street had recently been changed to Winton Street, but it was generally known as High Street :—Held, a sufficient description. *Ibid.*

6.—In the nomination paper of a candidate for the office of town councillor of a borough under the Municipal Elections Act, 1875, the register number of the seconder was inserted as 695 instead of 704 :—Held, an insufficient compliance with the note to schedule 1, form 2, by which "the number on the burgess roll of the burgess subscribing" is to be affixed, and that the nomination paper was therefore invalid. *Gothard v. Clarke*, 49 Law J. Rep. C.P. 474; Law Rep. 5 C.P. D. 253.

Section 13 of the Ballot Act, 1872, by which no election shall be declared invalid by reason of any mistake in the use of the forms, has no application to the decision of the returning officer on the validity of the nomination papers. *Ibid.*

(2) *Delivery of: jurisdiction of mayor.*

7.—A petition was presented, under 35 & 36 Vict. c. 60, by an unsuccessful candidate at an election of councillors for a borough, questioning the election of a councillor but not claiming the seat. It appeared that the nomination paper of the petitioner was delivered to the town clerk by an agent of the petitioner, and was not otherwise delivered by the candidate himself or his proposer or seconder, as required by 38 & 39 Vict. c. 4. s. 1. sub-s. 3; that the nomination paper was objected to on this ground; that the mayor disallowed this ground of objection, but allowed others; and that the petitioner was the only candidate competing with the successful candidates :—Held, first, that the delivery of the nomination paper by an agent invalidated the nomination. Secondly, that notwithstanding the disallowance of this ground of objection by the mayor, the defect was cognisable by the Court, and that the respondent must be declared to have been duly elected. *Monks v. Jackson*, 46 Law J. Rep. C.P. 162; Law Rep. 1 C.P. D. 683.

8.—Prior to a municipal election the town clerk is by section 1, sub-section 1 of 38 & 39

Vict. c. 40 to issue a notice stating (amongst other things) the last day on which nomination papers are to be delivered. By sub-section 3, nomination papers are to be delivered seven days at least before the day of election, and the mayor is to sit at the town hall on a subsequent day to decide on the validity of objections made to nomination papers. In accordance with the above enactments, the town clerk issued a notice for a forthcoming municipal election, stating that the 23rd of October was the last day on which nomination papers were to be delivered. The 23rd of October only allowed six days (exclusive of Sundays and the days of nomination and election) to intervene between the nomination day and the day of election:—Held, that seven days mean seven clear days, exclusive of the nomination day and the day of election as well as of Sundays. *Homes v. Turner*, 45 Law J. Rep. C.P. 550; Law Rep. 1 C.P. D. 670.

T., one of the candidates, delivered his nomination paper on the 23rd of October. W., another candidate, delivered his paper on the 22nd of October, but took it back for the purpose of making an immaterial alteration, and returned it on the 23rd of October. Objections to the nomination papers of T. and W., on the ground that they had been delivered on the wrong day were duly made, but disallowed by the mayor. T. and W. obtained a majority of votes and were returned as elected:—Held, that the mayor had no power to decide such an objection, as his jurisdiction was confined to the form of the nomination papers, but that such question could be raised by petition to the Court of Common Pleas. Also, that T.'s paper was not delivered in time, but that as W.'s was good at the time of delivery and was not taken back with the intention of withdrawal, it was delivered in time; but that as the notice of the town clerk was so defective as to mislead one of the candidates and probably the constituency, and as consequently there could be no free election, such election was void. *Ibid.*

(b) *Corrupt Practices at.*

(1) *Fraudulent ballot papers: admissibility of evidence.*

9.—On the trial of an indictment for fraudulently placing ballot papers in a ballot box at a municipal election contrary to 35 & 36 Vict. c. 33. s. 3, a sealed packet was produced under the order of a County Court Judge, obtained under 35 & 36 Vict. c. 33. sched. 1. rules 40, 41, part II. r. 64, and counterfoils and marked register and voting papers were produced therefrom and given in evidence and the backs of the voting papers were allowed to be inspected:—Held, that the evidence was properly admitted. *Reg. v. Beardsall* (C.C.R.), 45 Law J. Rep. M.C. 157; Law Rep. 1 Q.B. D. 452.

(2) *Infringement of secrecy.*

10.—The 4th section of the Ballot Act, 1872 (35 & 36 Vict. c. 83), makes it an offence punish-

able on summary conviction for an agent at a polling station to communicate before the poll is closed to any person any information as to the name or number on the register of voters of any elector who has applied for a ballot paper or voted at that station:—Held, that in order to justify a conviction of such an offence under that section, it must be shewn that the information reached the mind of the person to whom it is communicated, and it is not enough to shew that such person had the means of knowing it. Therefore, where the evidence was only that the agent had during a municipal election gone from the polling station to the committee room of the candidate for whom he was agent, and had there left his part of the Burgess roll on which he had put a mark against the name of every voter who had obtained a ballot paper, but did not shew that anyone there had looked into such part, or had in fact obtained any information from it, it was held that there was no evidence on which a magistrate ought to convict the agent under the said 4th section. *Stannanought v. Hazeldine*, 48 Law J. Rep. M.C. 89; Law Rep. 4 C.P. D. 191.

(3) *Refreshment to voters.*

11.—The Corrupt Practices (Municipal Elections) Act, 1872, incorporates the provisions of section 23 of 17 & 18 Vict. c. 102, and makes it an offence to give refreshment to voters at a municipal election. *Hargreaves v. Simpson*, 48 Law J. Rep. Q.B. 607; Law Rep. 4 Q.B. D. 403.

(c) *Petition.*

(1) *Conditions precedent to.*

12.—By section 13 of the Corrupt Practices (Municipal Elections) Act, 1872, the following provisions shall have effect with reference to the presentation of a petition: First, a petition may be presented by four or more voters, &c. Second, a petition shall be presented within twenty-one days after the day on which the election was held, &c. Third, at the time of presenting a petition, or within three days afterwards, the petitioner shall give security, &c. Fourth, within five days after the presentation of a petition the petitioner shall serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition:—Held, that these provisions were conditions precedent to the right to try a petition. *Williams v. The Mayor, &c., of Tenby*, 49 Law J. Rep. C.P. 325; Law Rep. 5 C.P. D. 135.

(2) *Costs of.*

13.—On taxation of the costs of an election petition where it was not shewn that the Master had failed to exercise his discretion in a reasonable manner as to allowances for counsel's fees and refreshers, the Court declined to interfere. *Hargreaves v. Scott*, Law Rep. 4 C.P. D. 21.

*Tillett v. Stracey* (37 Law J. Rep. C.P. 93; Law Rep. 5 C.P. D. 185) followed. *Ibid.*

## (C) POWERS OF MUNICIPAL CORPORATIONS.

(a) *Bye-laws.*

14.—The council of a borough under section 90 of the Municipal Corporations Act, empowering them to make bye-laws for the suppression of all such nuisances as are not already punishable in a summary manner, made a bye-law imposing a penalty on any butcher, &c., or other person who should have in his possession, with intent to sell or expose for sale, any unsound, putrid or unwholesome meat, &c., or other victuals or provisions unfit for the food of man, or which would be deleterious to the health of persons who might feed thereon. The appellant was charged under this bye-law with having in his possession, with intent to sell, some cheese unfit for the food of man:—Held, that the bye-law was properly made, was still in force, and that the having in possession with intent to sell, or exposing for sale, cheese which was in fact unfit for human food, was a nuisance at common law, and so within the scope of the 90th section of the Municipal Corporations Act, and that the appellant was within the bye-law. *Skillico v. Thompson*, 45 Law J. Rep. M.C. 18; Law Rep. 1 Q.B. D. 12.

(b) *Erection of buildings on public walks or pleasure grounds.*

15.—Where premises have been provided for the purpose of being used as public walks or pleasure grounds, under the 74th section of the Public Health Act, 1848 (11 & 12 Vict. c. 63), it is allowable to erect thereon such buildings as may be conducive to the purpose for which the premises have been acquired. Of such a nature are a conservatory, a museum and a public library, but not a town hall or a school of art. *The Attorney-General v. The Corporation of Sunderland* (App.), 45 Law J. Rep. Chanc. 839; Law Rep. 2 Ch. D. 634.

(c) *Costs of opposing bill in Parliament.*

16.—A municipal corporation is empowered, either under section 92 of the Municipal Corporations Act (5 & 6 Will. 4. c. 76), or under the general law, to resist an attack, whether upon its property or its rights, and to charge the expenses so incurred upon the borough fund, without having obtained the previous consent of the ratepayers in manner provided by the Municipal Corporations (Borough Funds) Act (35 & 56 Vict. c. 91. s. 4). And it is immaterial whether the attack is in the form of legal proceedings, or of a bill in Parliament. *The Attorney-General v. The Mayor of Brecon*, 48 Law J. Rep. Chanc. 153; Law Rep. 10 Ch. D. 204.

(d) *Liability of borough to county rate.*

17.—A borough which, before the passing of the Boundary Act, 1832 (2 & 3 Will. 4. c. 64), had a separate Court of Quarter Sessions, and a charter containing a non-intromittant clause, and was therefore exempt from the county rate,

had by that Act a portion of the county added to it. By the Municipal Corporations Act, 1835, section 7, the metes and bounds of all boroughs named in the first section of schedule A, of which the said borough was one, shall be the same as the limits settled by the Boundary Act, 1832:—Held, that such borough was chargeable to the county rate in respect of the expenses, other than the costs of the prosecution, &c., of offenders, as a borough which was liable to contribute in respect of the part of the county added by the Boundary Act, 1832, to the county rate, and that a *mandamus* would lie to Justices to order payment, by the treasurer of such borough, of the due proportion, to the treasurer of the county. *Reg. v. Monk*, 45 Law J. Rep. M.C. 50; Law Rep. 1 Q.B. D. 152 (*nom. Reg. v. New Windsor*).

(e) *Borough fund: fines payable to Her Majesty.*

18.—By 5 & 6 Will. 4. c. 76. s. 126, it is provided that "when by any Act any forfeitures are or shall hereafter be made recoverable before Justices, and by such Act the same are or shall be made payable to His Majesty, the same, if recovered before any Justice of any borough having a separate Court of Quarter Sessions shall, notwithstanding anything in such Act contained, be recovered for and adjudged to be paid to the treasurer of such borough, to the credit of the borough fund." By 3 & 4 Vict. c. 97. s. 16, persons convicted of obstructing officers of a railway company before a Justice of the county or place are made liable to "forfeit to Her Majesty a sum not exceeding five pounds:—"Held, that fines recovered under the latter Act, before Justices of a borough having a separate Court of Quarter Sessions, are payable to the treasurer of such borough by virtue of the former Act. *The Attorney-General v. Moore* (App.), 47 Law J. Rep. M.C. 103; Law Rep. 3 Ex. D. 276.

(f) *Borough rate: appeal: application to assessment committee.*

19.—The council of a borough made a borough rate to meet the expenses of a Local Improvement Act, and other sanitary Acts, as well as for the purpose to which the borough fund is applicable under 5 & 6 Will. 4. c. 76, and assessed the same upon the defendant's railway situate in that part of the borough which was in the Commissioner's district. The defendants, who claimed exemption from so much of the rate as was applicable to sanitary purposes, gave due notice of appeal, but did not seek relief from the assessment committee:—Held, first, that the defendants had a right to appeal without going before the assessment committee, as the latter, there being no objection to the valuation list, could not have given any relief. Secondly, that the Local Improvement Act was not repealed *ipso facto* by the later public Acts, and an exemption granted to

the defendants in 1848 still continued in force; such exemption must, therefore, be given effect to by the authority, whosoever that might be (whether the Commissioners or the town council), who exercised the power of that Act within the part of the district included in the borough. *Reg. v. The London and North Western Railway Company*, 46 Law J. Rep. M.C. 102.

#### MURDER.

[See ACCESSORY.]

#### MUSEUM.

*Appropriation for museum of land purchased under Public Health Act.* [See MUNICIPAL CORPORATION, 15.]

#### MUSIC.

[Regulations as to music-halls in Metropolis. 41 & 42 Vict. c. 32. ss. 11–13, 21–23.]

*Copyright.* [See COPYRIGHT.]

*Music and dancing licence.* [See PUBLIC ENTERTAINMENT, 1.]

#### MUTINY ACT.

*Dismissal of officer.* [See PETITION OF RIGHT, 1.]

#### MUTUAL BENEFIT SOCIETY.

[See BOMBAY CIVIL SERVICE FUND.]

#### MUTUAL CREDIT.

[See BANKRUPTCY, E.]

#### MUTUAL WILL.

[See COLONIAL LAW, 20.]

#### NAME.

*Company, of.* [See COMPANY, D 4; F 2, 35.]

*Of property: use of name by owner of adjoining property.* [See INJUNCTION, 15.]

*Right of property in: good will of business.* [See PARTNERSHIP, 13.]

*Trade name.* [See TRADE MARK, 18–21.]

#### NAME AND ARMS CLAUSE.

[See WILL CONSTRUCTION, O 1.]

#### NATIONAL DEBT.

[Telegraphs. 40 & 41 Vict. c. 30.]

[East Indian loan annuities. 42 & 43 Vict. c. 61.]

[Terminable annuities: sinking fund. 43 Vict. c. 15.]

[Savings bank deposits, &c. 43 & 44 Vict. c. 36.]

#### NATURALISATION.

[See DOMICIL, 1, 2.]

#### NAVIGATION.

[See RIVER, SHIPPING LAW, THAMES.]

*Towing path: duty of river conservators.* [See LEE CONSERVANCY BOARD.]

#### NAVY.

[Regulations as to half-pay. 43 Vict. c. 13. s. 5; c. 40. s. 7.]

#### NECESSARIES.

*Infant, for.* [See INFANT, 13.]

*Ship, for.* [See SHIPPING LAW, O.]

*Wife, power of, to pledge husband's credit for necessities.* [See HUSBAND AND WIFE, 2–6.]

#### NECESSITY, WAY OF.

[See WAY, 1, 2.]

#### NE EXEAT REGNO.

1.—An undertaking for damages was given by a person who obtained a writ of *ne exeat regno*. No application having been made to set aside the writ, the Judge refused at the trial of the action to entertain the question of damages for wrongful imprisonment. *Lees v. Patterson*, 47 Law J. Rep. Chanc. 616; Law Rep. 7 Ch. D. 866.

The plaintiff, resident in England, joined with the two defendants, resident in Canada, in an adventure which was to be wound up in England:—Semble, a writ of *ne exeat regno* obtained by one of the defendants to an action for an account of the adventure against the other was valid. *Ibid.*

2.—The mortgagee of a ship, which had foundered, brought an action against the mortgagor to recover the mortgage debt, and applied for a writ of *ne exeat regno* against the defendant, who was about to leave England, on the ground that he would be “materially prejudiced in the prosecution of his action” unless he could obtain discovery from the defendant of the insurances on the ship, which were the only security to which he could look for the repayment of his money:—Held, first, that the application for the writ of *ne exeat*, being made in respect of a legal debt, was wrong; second, that the fact of the defendant being about to leave England and that the plaintiff wanted discovery from him, did not “materially prejudice the plaintiff in the prosecution of his action” so as to entitle him to an order of arrest under section 6 of the Debtors

Act, 1869. *Drover v. Heyor* (App.), 49 Law J. Rep. Chanc. 37; Law Rep. 13 Ch. D. 242.

Semhle, since the Judicature Acts, 1873 and 1875, the practice at common law and in equity in respect of the arrest of a debtor on mesne process is assimilated, and a writ of *ne exeat* in respect of an equitable debt will not be granted unless the applicant brings his case within the terms of the 6th section of the Debtors Act, 1869. *Ibid.*

#### NEGATIVE COVENANT.

[See COVENANT, FORFEITURE, 5.]

#### NEGLIGENCE.

##### (A) IN CUSTODY OF DANGEROUS ANIMALS: SCIENTER.

##### (B) IN KEEPING PROPERTY IN DANGEROUS CONDITION.

- (a) *Lamp projecting over highway.*
- (b) *Dangerous erection in market-place.*
- (c) *Wire fencing: injury to cattle through eating.*
- (d) *Tree poisonous to cattle.*
- (e) *Escape of water.*
  - (1) *Liability for damage by.*
  - (2) *Act of God or vis major.*
- (f) *Obstruction of highway.*

##### (C) IN PERFORMANCE OF DANGEROUS ACTS.

- (a) *Management of dangerous article.*
- (b) *Cattle frightened by shunting of railway trucks.*

##### (D) PERSONS IN PARTICULAR RELATIONS.

- (a) *Injury to licensee, or stranger using premises.*
- (b) *Persons engaged in dangerous work.*
- (c) *Surveyor of highways.*
- (d) *Sub-contractor.*
- (e) *Shipowner and captain.*
- (f) *Master and servant: common employment.*
- (g) *Cheque stolen in transmission: conversion by innocent party.*

##### (E) CONTRIBUTORY NEGLIGENCE.

##### (F) STATUTORY NEGLIGENCE.

##### (G) DAMAGES: LOSS OF SERVICE BY INJURY TO SERVANT.

##### (A) IN CUSTODY OF DANGEROUS ANIMALS: SCIENTER.

1.—A man who receives beasts to agist, on a contract to take reasonable care, which beasts are afterwards injured by an animal *mansuetæ naturæ*, is not exempt from liability merely on the ground that he did not know the animal to be ferocious. All the circumstances taken together may shew a want of reasonable care nevertheless, and if so, he will be liable. *Smith v. Cook*, 45 Law J. Rep. Q.B. 122; Law Rep. 1 Q.B. D. 79.

Per Blackburn, J.—The rule requiring proof of *scienter* in cases of injuries by animals *man-*

*suetæ naturæ*, is an artificial rule which ought not to be extended. *Ibid.*

##### (B) IN KEEPING PROPERTY IN DANGEROUS CONDITION.

###### (a) *Lamp projecting over highway.*

2.—It is the absolute duty of an occupier of premises, having a lamp overhanging the footway, to prevent its becoming dangerous to the public; and if, in fact, it becomes dangerous it is a nuisance, and for any injury caused by such nuisance he is liable; and he cannot shift the liability arising from such a duty from himself by having employed a competent person to repair it. By Blackburn, J.—As the occupier had express knowledge shortly before of the lamp needing repair, he was then bound to put it into reasonable repair; and was liable for the consequences of its dis-repair, arising from the breach of duty in the person, howsoever competent, whom he had employed; it was therefore not necessary to decide, and quere whether, if the danger arose from a latent defect, or from the act of a wrong-doer without the occupier's knowledge, he would be liable for injury so happening. *Tarry v. Ashton*, 45 Law J. Rep. Q.B. 260; Law Rep. 1 Q.B. D. 314.

###### (b) *Dangerous erection in market-place.*

3.—The defendants, owners of a market for the sale of cattle, put up some railings round a statue in the market-place. One of the plaintiffs was in the habit of bringing his cattle to the market, and occupied, and paid toll to the defendants for a site near the statue. A cow of the plaintiff's, in trying to jump the railings, was killed, and the plaintiffs sued the defendants to recover damages in respect of the loss. At the trial the jury found, in answer to the only question left to them, that the railings were kept negligently in not being of a sufficient height, and judgment was entered for the plaintiffs:—Held (by Lush, J., 48 Law J. Rep. Exch. 143; Law Rep. 5 Ex. D. 28), on further consideration, that the plaintiff was entitled to recover; on the ground that the owners of the market were under an obligation to keep the market-place free from danger to those who lawfully frequented it; and that by erecting the railings of insufficient height they had been guilty of a misfeasance, resulting in damage to the plaintiff, who was not a mere licensee of a particular site, but entitled to use the whole of the market-place subject to the regulations and control of the owners. Held, on appeal, that the judgment was rightly entered, because the defendants were *prima facie* bound to provide a reasonably safe place for the receipt and storage of cattle brought into the market at the defendants' invitation and for their profit, and no question had been raised at the trial whether the dangerous character of the railings was obvious to persons using the market. *Law v. The Mayor, &c., of Darlington* (App.), 49 Law J. Rep. Exch. 105; Law Rep. 5 Ex. D. 28.

(c) *Wire fencing: injury to cattle through eating.*

4.—The defendants' land was separated from the plaintiffs by a fence which had been put up by the defendants' predecessors in title, and which was maintained by the defendants. This fence was constructed of old wire rope, the strands of which had by long exposure to the weather decayed and separated into pieces; some of these fell on to the plaintiffs' land, where they lay hidden among the grass. The plaintiffs' cow in grazing picked up and swallowed one of these pieces of wire, and in consequence died.—Held, that the plaintiff was entitled to maintain an action for the loss of the cow. *Wilson v. Newberry* (41 Law J. Rep. Q.B. 31) distinguished. *Firth v. The Bowling Green Company*, 47 Law J. Rep. C.P. 358; Law Rep. 3 C.P. D. 254 (*nom. Firth v. The Bowling Iron Company*).

(d) *Tree poisonous to cattle.*

5.—An occupier of land adjoining a meadow where cattle are pastured, who grows a tree likely to be eaten by cattle, and poisonous if eaten, must keep it within his own boundaries, and if he does not do so is *prima facie* answerable for the death of the cattle caused by their browsing on branches which project beyond his boundaries. *Fletcher v. Rylands* (37 Law J. Rep. Exch. 161) applied. *Cronchurst v. The Burial Board of Amersham*, 48 Law J. Rep. Exch. 109; Law Rep. 4 Ex. D. 5.

(e) *Escape of water.*

(1) *Liability for damage by.*

6.—The defendant occupied a house under which was an old drain, which, after receiving the sewage of such house, ran under and received the sewage of several other houses, then turned back and came again under the defendant's house, and ran from it under the cellar of the plaintiff's house, which adjoined that of the defendant, and from thence it went away to a public sewer. The drain got out of repair by reason of age and wear and tear, and the consequence was that water and sewage escaped, and came into the plaintiff's cellar, and injured his goods there. The defendant did not know that the drain turned back, and ran through his premises under those of the plaintiff, nor was the defective state of the drain attributable to any negligence of the defendant.—Held, that the defendant was, however, liable for the damage the plaintiff had so sustained, as it was the defendant's duty to keep the sewage from passing from his own premises to those of the plaintiff otherwise than along the old drain through which only the plaintiff, as the occupier of the servient tenement, was bound to receive it. *Humphreys v. Cousins* (App.), 46 Law J. Rep. C.P. 438; Law Rep. 2 C.P. D. 239.

7.—The plaintiff's statement of claim alleged that the defendants deposited on their land and against a wall of the defendants, adjoining the

house of the plaintiff, a large quantity of soil, clay, &c., thereby raising the surface of the defendant's land above that of the land on which the plaintiff's house was built; and that the plaintiff's house was consequently injured by the percolation of water through the defendants' wall.—Held, on demurrer, that the statement shewed a good cause of action. *Hurdman v. The North Eastern Railway Company* (App.), 47 Law J. Rep. C.P. 368; Law Rep. 3 C.P. D. 168.

(2) *Act of God or vis major.*

8.—A person who, for his own purposes, brings on his land, and collects and keeps there anything likely, if it escapes, to do mischief, is *prima facie* liable, if it does escape, for all damage which is the natural consequence of its escape, but he can excuse himself by shewing that the escape was the consequence of *vis major* or the act of God, without any default on his own part. *Nichols v. Marsland* (App.), 46 Law J. Rep. Exch. 174; Law Rep. 2 Ex. D. 1.

A heavy fall of rain flooded the defendant's reservoir, and caused the embankments to give way, and the water rushed out and did damage to the plaintiff's property; the jury found that there was no negligence in the construction or maintenance of the reservoirs, and that the flood was so great that it could not reasonably have been anticipated, although if it had been anticipated, the damage might have been prevented.—Held (affirming the judgment of the Court of Exchequer, 44 Law J. Rep. Exch. 134), that the above findings were, in substance, a finding that the damage was caused by the act of God, without the default of the defendant, and that the defendant was therefore not liable. *Ibid.*

9.—The plaintiff sued for the flooding of his premises by the overflowing of a reservoir of the defendants. The reservoir was constructed in a proper manner, such as to prevent its overflowing under any ordinary circumstances, and the overflowing was caused by the forcing into it of an additional quantity of water, through circumstances over which the defendants had no control, and which they could not be expected to anticipate, namely, a large discharge of water from a reservoir of a third party into a public watercourse feeding the defendants' reservoir, and an obstruction in the water-course below the outlet of the reservoir at places over which the defendants had no control.—Held, that the defendants were not liable. *Fletcher v. Rylands* (37 Law J. Rep. Exch. 161) distinguished; *Nichols v. Marsland* (see last case) followed. *Bow v. Jubb*, 48 Law J. Rep. Exch. 417; Law Rep. 4 Ex. D. 76.

10.—The plaintiffs, owners of collieries, sued the defendants, proprietors of a canal constructed under an Act of Parliament, for damages caused to their mines by water which overflowed from the canal into a brook, and thence into the mines. They also in the alternative claimed to be entitled to a *mandamus* for the summoning



of a jury to assess compensation for the same injury, as being one caused by the works which the canal company were authorised to construct and maintain. It was found in the special case stated by an official referee that on the occasion of an extraordinary rainfall the defendants opened a sluice, and discharged from the canal into a brook more water than the latter was able to carry off, the consequence being that the brook overflowed into the plaintiffs' mines. It was found further that if the sluice had not been so opened the canal bank would shortly have burst; that the adjacent country and the plaintiffs' mines would have been inundated; that the course which the defendants adopted to avert such a catastrophe was a prudent one, and the only effectual one which could have been adopted in the emergency; that so far as the plaintiffs' mines were concerned, the opening of the sluice caused them to be flooded some hours sooner than they would otherwise have been, but that no additional damage was caused thereby to the plaintiffs, the inundation being inevitable by reason of the excessive rainfall and consequent accumulation of water:—Held, upon these findings, that even assuming the defendants' act to have been a wrongful one, it was *injuria absque damno*, and therefore not a ground of action. Held, secondly, that the compensation clauses of the Acts of Parliament did not apply to such a case. *Thomas v. The Birmingham Canal Company*, 49 Law J. Rep. Q.B. 851.

11.—An extraordinarily high tide, which could not reasonably have been expected, is an act of God, relieving from liability for negligence, even though such a circumstance may have happened before. *The Nitro-Phosphate and Odam's Chemical Manure Company v. The London and St. Katharine's Dock Company* (App.), Law Rep. 9 Ch. D. 503.

Where the defendant, a riparian owner, was bound to keep up a retaining bank four feet two inches high, but kept it in fact several inches lower, and an extraordinary tide, four feet five inches, overflowed the bank, and damaged the plaintiffs' works:—Held, that the defendant was liable for negligence, but that he ought to have an opportunity of shewing what portion of the damage was attributable to the act of God, and would have happened if his bank had been the proper height, and that his liability would not extend to such damage. *Ibid*.

[And see HARBOURS CLAUSES ACT, 3; MINES, 9-11; INJUNCTION, 18.]

(f) *Obstruction of highway.*

12.—A person placing a dangerous obstruction in a highway or in a private road over which persons have a right of way, is bound to take all necessary precautions to protect persons exercising their right of way; and if he neglects to do so is liable for the consequences. *Clark v. Chambers*, 47 Law J. Rep. Q.B. 427; Law Rep. 3 Q.B. D. 327.

DIGEST, 1875-1880.

The defendant, as occupier of certain premises used by him as a place for athletic sports, erected a barrier across a private road, upon which his premises abutted, and in which he had no interest beyond the right of way, to prevent vehicles from coming up as far as his grounds and overlooking the sports. The barrier consisted of spiked hurdles placed across either side of the roadway, the space between them, sufficient for a vehicle to pass, being ordinarily left open, as there were other premises beyond to which the road led. When sports were going on, the defendant closed this opening by means of a pole across, from one hurdle to the other. It was admitted that what the defendant did in erecting the barrier was unauthorised and wrongful; and it was found by the jury that the use of the spiked hurdles in the road was dangerous to the safety of persons using it. The plaintiff on a dark night was lawfully on the road coming from one of the houses beyond the barrier, and knowing of the opening ordinarily left, passed along the middle of the road, feeling his way through it, and, as he thought, between the hurdles. He then turned on to the footpath, and almost immediately came into collision with one of the hurdles, which some person, unauthorised by the defendant, had removed and placed there, the result being the loss of an eye into which the spike entered. There was no ground for imputing any negligence to the plaintiff contributing to the accident; the night was too dark for the obstruction on the footpath to be seen:—Held, that the defendant having unlawfully placed a dangerous obstruction in the road was liable if injury occurred to an innocent party lawfully using the road, his unlawful act being the primary cause of the evil, although the immediate cause of the injury was the act of some other person. *Ibid*.

*Fall of chimney pot: landlord and tenant.* [See No. 15 infra.]

(C) IN PERFORMANCE OF DANGEROUS ACTS.

(a) *Management of dangerous article.*

13.—The defendant, a gasfitter, was employed by M. & Co. to repair a gas-meter in a cellar on their premises. In order to repair the meter the defendant took it away, replacing it by a temporary connection consisting of a flexible tube, one end of which was pushed into the inlet pipe, and the other end into a pipe communicating with the house. The plaintiff, a servant of M. & Co., whose duty it was to light the gas in the cellar, afterwards went there with a light, and was injured by an explosion of gas which immediately ensued. The jury having found that the defendant was negligent in doing the work, and that the accident proceeded entirely from the defendant's negligence, it was held that the defendant was liable. *Parry v. Smith*, 48 Law J. Rep. C.P. 731; Law Rep. 4 C.P. D. 325.

(b) *Cattle frightened by shunting of railway trucks.*

14.—Cattle belonging to the plaintiff were driven at night along an occupation road, which crossed a branch line of the defendants' railway on a level. As they were passing over the crossing they became frightened, owing to a number of trucks being shunted in a negligent manner, and part of them escaped from the control of their drivers, and were found dead on the main line of the defendants' railway, which they reached owing to defects in the fence of an orchard and garden adjoining the railway:—Held (affirming the judgment of the Queen's Bench, 43 Law J. Rep. Q.B. 69; Law Rep. 9 Q.B. 263), that there was sufficient evidence that the death of the cattle was the natural result of the defendants' negligence. *Sneecby v. The Lancashire and Yorkshire Railway Company* (App.), 45 Law J. Rep. Q.B. 1; Law Rep. 1 Q.B. D. 42.

*Construction of public works.* [See HIGHWAY, 16.]

*Opening coal-shoot in highway.* [See MASTER AND SERVANT, 14.]

*Stolen cheque with forged indorsement: conversion.* [See BILL OF EXCHANGE, 12.]

*Van left in highway.* [See NUISANCE, 8.]

(D) PERSONS IN PARTICULAR RELATIONS.

(a) *Injury to licensee or stranger using premises.*

15.—The plaintiff, a stranger to the defendants, was injured by a chimney-pot accidentally falling upon him from a house in the occupation of a tenant to the defendants. The defendants were under no contract with their tenant to repair, and the premises were not out of repair at the time they let them:—Held, that the defendants were not liable to the plaintiff for the injury he had sustained. *Nelson v. The Liverpool Brewery Company*, 46 Law J. Rep. C.P. 675; Law Rep. 2 C.P. D. 311.

Held also, that this would not be altered by a custom amongst landlords to do external repairs in the absence of any express provision in the agreement for letting, since such custom would not create an obligation to repair, for the neglect of which they could have been sued by their tenant. *Ibid.*

16.—The female plaintiff accompanied her daughter to the defendants' station at Worcester, for the purpose of seeing her off by a train then about to start according to the time bills and drawn up at the platform of departure. In order to get to the platform from which the train started from the booking office where the female plaintiff had taken a ticket for her daughter, the line had to be crossed by a bridge which was approached by a steep flight of steps. At the top, and at right angles to the steps, was the bridge. Across the bridge, resting on the parapet (4 ft. 6 in. high) and about six feet to ten feet from the head of the flight

of steps there was placed a plank, on which a servant of the company was standing for the purpose of cleaning lamps suspended from the roof and hanging over the middle of the bridge; the plank was thus presented edgewise to the sight. The female plaintiff proceeded with her daughter up the steps. On reaching the top they turned to the right, advanced a few paces along the bridge, when the female plaintiff was knocked down and injured by coming into contact with the plank. It was broad daylight, but the plank was not perceived by either of the two women, who were walking along with their eyes fixed on the ground. The female plaintiff had often used the same bridge for the same purpose on previous occasions, and had always found it free from obstruction:—Held (by Denman, J.), that there was no evidence of negligence to go to the jury; by Lopes, J., that there was evidence of negligence to go to the jury. *Watkins v. The Great Western Railway Company*, 46 Law J. Rep. C.P. 817.

Per Denman, J.—That the duty of the company towards those who in practice they allow to accompany passengers in order to see them off by the train without asking special permission, is not lower than towards those whom they accompany. *Ibid.*

17.—The plaintiff was the consignee of a heifer, which was to be carried by the defendants and delivered at their station at Penrith. On the arrival of the loose box containing the heifer at the station, there was only one porter to shunt the box to a place where the heifer could be taken out. The plaintiff, therefore, with the assent of the station-master, assisted in the shunting, and while so engaged was injured through the negligence of the company's servants:—Held (affirming the decision of the Court below), that the plaintiff was not a mere licensee, nor was he in the position of a fellow-servant. His true position was that of a consignee taking delivery from the company in a manner assented to by the company, and as such was entitled to recover, if while so engaged he was injured by the negligence of the company's servants. *Holmes v. The North Eastern Railway Company* (38 Law J. Rep. Exch. 161) applied. *Degg v. The Midland Railway Company* (26 Law J. Rep. Exch. 171), and *Potter v. Faulkner* (31 Law J. Rep. Q.B. 30) distinguished. *Wright v. The London and North Western Railway Company* (App.), 45 Law J. Rep. Q.B. 570; Law Rep. 1 Q.B. D. 252.

18.—The plaintiff, a licensed waterman, went to the defendant's barge to complain that, contrary to a rule of the Thames Conservancy Board, the barge was navigated by one man only. Being referred by the man in charge to R., the defendant's foreman, the plaintiff proceeded along the defendant's wharf to see R., and while walking towards R. along the wharf he was, without warning, struck and injured by a bale of goods which fell upon him, owing to the negligence of the defendant's servants. In an action founded on the above facts, the jury

having found for the plaintiff.—Held, that the verdict was warranted by *Corby v. Hill* (27 Law J. Rep. C.P. 318), and *Indormaur v. Dames* (36 Law J. Rep. C.P. 181). *White v. France*, 46 Law J. Rep. C.P. 823; Law Rep. 2 C.P. D. 308.

(b) *Persons engaged in dangerous work.*

19.—The defendants employed a contractor to do certain work upon a side wall of a dark tunnel at a point where the line was on a curve, so that workmen could not see a train approaching till it was within twenty or thirty yards of them. The space between the rail and the wall was just sufficient for a workman to keep clear of a train if sensible of its approach. Trains passed the spot every ten minutes, and when a train passed on the further line the noise would prevent a workman from hearing the approach of a train upon the line nearest to him. There was no light at the spot in question; no one was stationed to give notice of an approaching train, nor was the speed of trains slackened on approaching the spot, nor was any signal given by whistling or otherwise. The plaintiff was a workman in the service of the contractor so employed, and had been working in the tunnel, though not at precisely the same spot, for a fortnight, when he was struck by a train while reaching across the rails to find a tool which he had laid upon the ground. The jury found that there was negligence on the part of the company in not providing a look-out man or altering the usual mode of conducting the traffic:—Held, that the plaintiff having continued the work, with the full knowledge of its dangerous nature, had no remedy against the company. *Woodley v. The Metropolitan Railway Company* (App.), 46 Law J. Rep. Exch. 521; Law Rep. 2 Ex. D. 384.

(c) *Surveyor of highways.*

[See HIGHWAY, 18.]

(d) *Sub-contractor.*

20.—Builders having finished the outside of a house, removed the scaffolding which protected passengers on the highway, and employed sub-contractors to do plastering and other work inside the house. One of the sub-contractors' servants accidentally knocked a tool out of a window, which fell and injured a passer by. In an action against the builders, the jury found that the accident was caused by the negligence of the builders in not providing some protection for the public. They also found that the scaffolding had been rightly removed:—Held, that the defendants were entitled to judgment. *Pearson v. Cow* (App.), Law Rep. 2 C.P. D. 369.

*Dangerous act: principal employing contractor liable for contractor's negligence.* [See EASEMENT, 1.]

*Managing partner; contribution of co-partners.* [See PARTNERSHIP, 18.]

(e) *Shipowner and captain.*

21.—The defendant Lester, who was the registered owner of a ship, and who was also registered as "managing owner," under the Merchant Shipping Act, 1875, traded with her for about three months, employing the defendant Lilee as captain. It was then verbally agreed between Lester and Lilee, that on condition Lester received one-third of the net profits, Lilee should be at liberty, without being subject to any control on the part of Lester, to take the ship wherever and to whatever port he chose, to take any cargo, and to refuse any cargo. Lilee was also to engage and pay the seamen, and to find all stores required by the ship. The plaintiffs' wharf having been injured through the negligent management of the ship while under the control of Lilee, they brought an action against Lester and Lilee:—Held, that Lester had so far retained his ownership of the ship as not to divest himself of responsibility for the negligence of Lilee, and he was therefore liable in the action. *Fowler v. Lock* (41 Law J. Rep. C.P. 99) distinguished. *Steel v. Lester*, 47 Law J. Rep. C.P. 43; Law Rep. 3 C.P. D. 121.

(f) *Master and servant: common employment.*

[See MASTER AND SERVANT, 5-8, and No. 17 supra.]

(g) *Cheque stolen in transmission: conversion by innocent party.*

22.—The plaintiffs, merchants in New York, enclosed in a letter to W. & Co., their correspondents in England, a cheque drawn on Smith & Co., bankers, London, and indorsed by the plaintiffs to W. & Co. The letter was placed with others for the purpose of being posted, but was abstracted, and the cheque was some time after presented to the defendants by one C., the cheque at that time bearing a forged indorsement to C. At the request of C., the defendants obtained cash for the cheque from Smith & Co., and allowed C. to draw for the amount:—Held, there being no evidence of negligence in the plaintiffs disentitling them to sue, that they were entitled to recover from the defendants the amount of the cheque, for the property in the cheque never having passed out of the plaintiffs, the defendants were guilty of a conversion, and therefore the plaintiffs were entitled to waive the tort, and hold the proceeds of the cheque to be money received to the plaintiffs' use. *Arnold v. The Cheque Bank; The Same v. The City Bank*, 45 Law J. Rep. C.P. 562; Law Rep. 1 C.P. D. 578.

Evidence was tendered by the defendants, which was rejected, of a practice of sending, besides the letter containing the draft, a letter of advice by the same or another ship, with a view to shew that the plaintiffs in omitting to do so were estopped by their own negligence from recovery:—Held, that such evidence was rightly rejected, for negligence in order to ope-

rate as an estoppel must be in the transaction itself, and there was no duty, either towards W. & Co. or the general public, cast on the plaintiffs to comply with such a practice, which could only be collateral to the transaction. *Ibid.*

*By solicitor: measure of damages.* [See SOLICITOR, 14.]

*By telegraph company in transmission of message.* [See TELEGRAPH COMPANY, 1.]

#### (E) CONTRIBUTORY NEGLIGENCE.

23.—Where the plaintiffs sued the defendants for damage to property by negligence of their servants, and the defence of contributory negligence was set up at the trial, the Judge directed the jury to find for the defendants unless satisfied that the accident was solely caused by the negligence of the defendants' servants without any contributory negligence of the plaintiffs or their servants.—Held (reversing the decision of the Exchequer Chamber, 44 Law J. Rep. Exch. 73; Law Rep. 10 Exch. 100), that this was a misdirection, for that the plaintiffs, even though guilty of negligence contributing to the accident, were entitled to recover if the defendants' servants might, by ordinary care and diligence, have avoided the mischief which happened. *Radley v. The London and North Western Railway Company* (H.L.), 46 Law J. Rep. Exch. 573; Law Rep. 1 App. Cas. 754.

24.—S., a railway passenger, having taken his ticket on the up-line platform, commenced to cross the line to get to the down-line behind a train standing on the up-line at a place where there were boards up forbidding persons to cross the line, though it was proved that persons were never in fact prevented by the railway officials from so crossing. The time was night. As S. went he was caught by the down express and killed. The driver of the express swore he had whistled, and some railway servants swore they heard the whistle; but the friends of S. who were with him swore that they were in a position to hear, but did not hear any whistle.—Held, that the question of negligence was properly left to the jury, *dis.* Lords Hatherley, Coleridge, and Blackburn, who thought that there should have been a non-suit in the absence of contradicted evidence in support of the plaintiffs' right to a verdict. *The Dublin, Wicklow and Wexford Railway Company v. Slattery* (H.L. Ir.), Law Rep. 3 App. Cas. 1155.

[And see SHIPPING LAW, E 17-19.]

#### (F) STATUTORY NEGLIGENCE.

25.—The plaintiffs and the defendant possessed adjoining collieries in the Forest of Dean, which were gales subject to 1 & 2 Vict. c. 43, and the rules made thereunder. The defendant's gale being drained by a steam engine, he was bound by rule 19 to work the engine, so as to prevent the water of his gale from falling into the plaintiffs' gale. The defendant stopped

his engine, whereby the plaintiffs' gale was flooded and damaged. Section 29 of the Act provides that a person working his gale contrary to the rules shall be liable to forfeit it, and may be evicted by Her Majesty; and in addition thereto "the compliance with such rules may be enforced by and on behalf of Her Majesty, or by any other person, by injunction of Her Majesty's Court of Exchequer, or otherwise, in such a manner as the said Court shall on application think fit."—Held, that the plaintiffs had a statutory private right which had been violated by non-compliance with the rules on the part of the defendant; that section 29 gave no specific remedy for such breach of duty, and that the plaintiffs were therefore entitled to maintain an action at Common Law to recover damages. *Ross v. Price*, 45 Law J. Rep. Exch. 777; Law Rep. 1 Ex. D. 269.

[And see ACTION, 2; NUISANCE, 5; PUBLIC BODY, 1; RAILWAY, 8.]

#### (G) DAMAGES: LOSS OF SERVICE BY INJURY TO SERVANT.

26.—A master cannot maintain an action *per quod servitium amisit* against a railway company for an injury to his servant whilst a passenger on the company's railway, caused by neglect of their duty to carry safely the servant according to their contract with him as such passenger, unless the master was a party to the contract. But where the servant is injured by the negligence of another railway company, not party to the contract, in running their train against the train in which the servant is such passenger, the master can maintain an action *quod servitium amisit* against such other company. *Berringer v. The Great Eastern Railway Company*, 48 Law J. Rep. C.P. 400; Law Rep. 4 C.P. D. 163.

*Question for judge or jury.* [See CARRIER, 16.]

*Damages: personal injury by railway accident.*

[See DAMAGES, 15.]

*Misdirection: excessive damages: new trial.*

[See COLONIAL LAW, 6.]

#### NEGOTIABLE INSTRUMENT.

[See BILL OF EXCHANGE; SCRIP CERTIFICATE.]

#### NEW SOUTH WALES.

[See COLONIAL LAW, 30-35.]

#### NEW TRIAL.

[See PRACTICE, T.]

#### NEW TRUSTEES.

[See TRUSTEE ACTS, 4-8.]

#### NEW ZEALAND.

[See COLONIAL LAW, 36 37]

## NEWSPAPER.

*Publication of defamatory statements in.* [See LIBEL, 6-9, 20, 21.]

## NEXT FRIEND.

[See BANKRUPTCY, M 27; INFANT, 27; PRACTICE, T 7.]

## NEXT-OF-KIN.

*Gifts or bequests to.* [See SETTLEMENT, 12; WILL CONSTRUCTION, H 21-24, 30.]

*Claim by, against Crown.* [See CROWN, 7.]

*Lunatic: grant of administration to stranger.* [See PROBATE, 8.]

*Married woman: grant to trustees of settlement.* [See PROBATE, 12.]

*Witness to will.* [See TRUST, A 5.]

## NOISE.

[See NUISANCE, 1.]

## NOMINATION PAPER.

[See MUNICIPAL CORPORATION, 4-8.]

## NOTICE.

*Action, of.* [See ACTION, 7, 8.]

*Appeal, of.* [See PRACTICE, B 19-22.]

*Assignment of chose in action, of.* [See CHOSE IN ACTION, 2.]

*Assignment of reversion, of.* [See EJECTMENT, 1.]

*Constructive notice.* [See BILL OF EXCHANGE, 26; MORTGAGE, 30; SPECIFIC PERFORMANCE, 19.]

*Dishonour, of.* [See BILL OF EXCHANGE, 15-18.]

*Injunction, of, by telegram.* [See BANKRUPTCY, N 6.]

*Motion or other application, of.* [See PRACTICE.]

*Patent, of objection to extension of.* [See PATENT, 27.]

*Payment into Court, of.* [See TRUSTEE RELIEF ACT, 5.]

*Priority by giving notice.* [See MORTGAGE, 22-29.]

*Trial, of.* [See PRACTICE, HH 2-4.]

## NUISANCE.

## (A) ACTION IN RESPECT OF.

(a) *Noise and vibration: acquisition of right to cause.*

(b) *Liability of lessor or occupier.*

(c) *By corporation or local board acting as sanitary authority.*

(d) *By persons acting under authority of statute.*

(e) *Obstruction of highway.*

(f) *Escape of sewage from drain.*

(g) *Urinal: injunction.*

## (B) ABATEMENT OF.

## (C) WHEN PUNISHABLE.

(a) *Indecency.*

(b) *Noxious effluvia.*

(c) *Discharging refuse into stream.*

(d) *Sale of goods unfit for food.*

## (A) ACTION IN RESPECT OF.

(a) *Noise and vibration: acquisition of right to cause.*

1.—User, which is neither physically preventible nor actionable, cannot found an easement either by common law or under the Prescription Act. A confectioner had for more than twenty years prior to 1873 used pestles and mortars on his premises, which transmitted noise and vibration over that part of the adjoining premises which was a yard. In 1873 the owner of the adjoining premises, a physician, built a consulting-room in the yard, and then the noise and vibration became a serious nuisance to him, and he brought an action for an injunction:—Held, that as the nuisance was in its nature such that it could not be physically interrupted, and had not become actionable until the consulting-room was built, the defendant had not acquired an easement, and that the injunction must be granted. *Sturges v. Bridgman* (App.), 48 Law J. Rep. Chanc. 785; Law Rep. 11 Ch. D. 853.

## (b) Liability of lessor or occupier.

2.—A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by blasting, and A. authorised the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against both A. and B. On demurrer by A.,—Held, that he, the landlord, was liable, although the nuisance was actually created by the act of his tenant, because the terms of the demise were an authority from him to B. to create the nuisance, which was therefore the necessary consequence of the mode of occupation contemplated in the demise. *Rick v. Basterfield* (16 Law J. Rep. C.P. 273) distinguished. *Harris v. James*, 45 Law J. Rep. Q.B. 545.

3.—The defendant was tenant and occupier of a newly-erected stable, adjoining and all but touching the flank wall of a house in the suburbs of London, and which stable was erected on a mound of made earth at a higher level than the basement of the plaintiff's house, and the result was that water, mixed with stable drainage and sewage leaking from a broken soil pipe in the stable yard, oozed through the wall of the

plaintiff's house, so as to be a nuisance. On a bill filed by the plaintiffs, as owners of the house, for an injunction to restrain the nuisance occasioned by the damp, and also by the noise of the horses kept in the stable,—Held, that the occupier of the house should be a party to the suit, inasmuch as the alleged nuisances were of a temporary nature. *Broder v. Saillard*, 45 Law J. Rep. Chanc. 414; Law Rep. 2 Ch. D. 692.

The bill having been amended by the addition of the occupier as co-plaintiff, it appeared that the damp was due to the circumstance of the stable being erected on made earth, placed there unknown to the defendant by some predecessor in title:—Held, nevertheless, that an injunction should be granted, for the reason that the possessor of land is responsible for nuisances arising on it, by whatever means occasioned. Held also, with regard to the noise, that the stable was so situated that the ordinary use of it occasioned an annoyance amounting to a nuisance. Under the circumstances, no costs were given to the successful plaintiffs. *Ibid*.

(e) *By corporation or local board acting as sanitary authority.*

4.—A corporation which became the sanitary authority in their town in 1873, suffered sewage to continue to run from a drain in the town into the plaintiff's canal, by a culvert running through the plaintiff's property, which created some nuisance and some damage to the plaintiff:—Held, that an information would lie, and that the corporation were liable to be restrained by injunction from continuing such nuisance and damage, though they derived no profit from the works causing the nuisance. *The Attorney-General v. The Mayor of Basingstoke*, 45 Law J. Rep. Chanc. 726.

5.—If a sewer when transferred to a local board or other sanitary authority, under the Public Health Act, 1875, was in such a state that, independently of the Act of Parliament, it would give to any landowner a right to an injunction to restrain the use of that sewer so as to be a nuisance, the local board would be in the same position as any other owner of a sewer would be. Distinction between the right to an injunction to restrain a wrongful act and an injunction in the nature of a mandatory injunction. Neglect by a board to perform a public statutory duty does not entitle every individual who may be injured by such neglect to bring an action for damages or a mandatory injunction. The proper remedy where there is such a neglect as to amount to a refusal to take steps, is to apply for a *mandamus*; and application for such a *mandamus*, being the prerogative *mandamus*, should still, notwithstanding the Judicature Act, 1873, s. 25. sub-s. 8, be made to the Queen's Bench Division. Where a board has itself done acts which, independently of a statutory authority, would be an actionable nuisance at common law, a board is liable as any private

individual would be to an action for damages or an injunction. The defendants were constituted the sanitary authority, under the Public Health Act, 1875, for a district in November, 1875. At that time there was an existing nuisance, with regard to which the plaintiff had frequently, since 1874, complained to the previous sanitary authority, and he continued his complaints to the present defendants. In July, 1876, no steps having been taken by the board to abate the nuisance, he brought an action for an injunction to restrain them from permitting sewage to pass through the drains under their control so as to be a nuisance to him:—Held (reversing the decision of Malins, V.C.), that, assuming the existence of an actionable nuisance, as it had not been created or increased by the defendants, the plaintiff had no right of action against them. Observations on *The Attorney-General v. The Mayor of Basingstoke* (45 Law J. Rep. Chanc. 720; see last case). *Glossop v. The Heston and Isleworth Local Board* (App.), 49 Law J. Rep. Chanc. 89; Law Rep. 12 Ch. D. 102.

(d) *By persons acting under authority of statute.*

6.—A Metropolitan Gas Act provided that gas companies shall supply all persons requiring gas within the districts they supply. A Metropolitan Gas Company's Act provided for the determination by referees of such degrees of purity as might reasonably be required without occasioning a nuisance, and the Gas Clauses Act, 1847, provided that nothing in these Acts shall free a company from liability on account of nuisance. Semble, the company would be restrained from creating a nuisance, though the requisitions of the referees could not be complied with without creating such nuisance. *The Attorney-General v. The Gas Light and Coke Company*, 47 Law J. Rep. Chanc. 534; Law Rep. 7 Ch. D. 217.

7.—A hospital for small-pox was erected by the defendants, a body created under the Metropolitan Poor Act, 1867, and the plan pursued by them was sanctioned by the Local Government Board. In an action by neighbouring occupiers for damages for a nuisance, the jury found that the hospital was a nuisance, and that the defendants had not exercised all proper and reasonable care in carrying it on:—Held (affirming the judgment of the Queen's Bench Division, 48 Law J. Rep. Q.B. 562; Law Rep. 4 Q.B. D. 433), that the defendants would not be protected by the sanction of the Local Government Board if what was sanctioned was not legal; and that the statute under which the defendants acted did not authorise the creation of a nuisance or interference with private rights. *Hill v. The Managers of the Metropolitan Asylums District* (App.), 49 Law J. Rep. Q.B. 228; affirmed on appeal by the House of Lords, Law Rep. 6 App. Cas. 193; Law Rep. 50 Ch. 353.

*User of land for military purposes under Defence Acts.* [See INJUNCTION, 20.]

(e) *Obstruction of highway.*

8.—The defendant left a house van, attached to a steam engine and plough, for the night on the grass on the side of a public road about five feet from the metalled part of the road. The plaintiff's testator drove along the road in a cart drawn by a horse which was a kicker, but the defendant was not aware of its vice. The horse shied at the van and began kicking, fell and kicked the testator as he rolled out of the cart, wherefrom he died. In an action for wrongfully obstructing the highway, the jury found that the testator's death was occasioned by the van standing where it did, and by the inherent vice of the horse, but they negatived contributory negligence:—Held, that the defendant was liable. *Harris v. Mobbs*, Law Rep. 3 Ex. D. 268.

9.—Damages were awarded in respect of loss of custom occasioned by building operations that might have been carried on (less advantageously to the builder) so as to cause less obstruction. The Judicature Acts have not repealed Lord Cairns's Act. *Fritz v. Hobson*, 49 Law J. Rep. Chanc. 321; Law Rep. 14 Ch. D. 542.

*Projection over footpath in front of building.*  
[See PUBLIC HEALTH ACT, 12.]

(f) *Escape of sewage from drain.*

10.—The defendant occupied a house under which was an old drain, which, after receiving the sewage of such house, ran under and received the sewage of several other houses, then turned back and came again under the defendant's house, and ran from it under the cellar of the plaintiff's house, which adjoined that of the defendant, and from thence it went away to a public sewer. The drain got out of repair by reason of age and wear and tear, and the consequence was that water and sewage escaped and came into the plaintiff's cellar, and injured his goods there. The defendant did not know that the drain turned back and ran through his premises under those of the plaintiff, nor was the defective state of the drain attributable to any negligence of the defendant:—Held, that the defendant was, however, liable for the damage the plaintiff had so sustained, as it was the defendant's duty to keep the sewage from passing from his own premises to those of the plaintiff otherwise than along the old drain through which only the plaintiff, as the occupier of the servant tenement, was bound to receive it. *Humphreys v. Cowstons* (App.), 46 Law J. Rep. C.P. 438; Law Rep. 2 C.P. D. 239.

(g) *Urinal: injunction.*

11.—The intended erection by a vestry, acting under the powers given by section 88 of 19 & 20 Vict. c. 120, of a urinal in a mews (which, in the opinion of the Court, was a highway within section 96 of the Act) at a distance of eight feet from the back door of the plaintiff A., and the

cellar entrance of the plaintiff B., and quite close to a narrow passage down which several young females had to pass daily on their way to the show-rooms of the plaintiff C.—Held, to be such a nuisance as to afford ground for a perpetual injunction. What amounts to a dedication of a street to the public considered. *Vernon v. The Vestry of St. James, Westminster*, 49 Law J. Rep. Chanc. 130; affirmed on appeal, 50 Law J. Rep. Chanc. 81; Law Rep. 16 Ch. D. 449.

*County Court: power of, to grant injunction.*  
[See COUNTY COURT, 5.]

*Obstruction of access of air to chimney.* [See EASEMENT, 5.]

*Trees poisonous to cattle.* [See NEGLIGENCE, 5.]

(B) ABATEMENT OF.

12.—By 18 & 19 Vict. c. 121. s. 12, where a nuisance is ascertained by a local authority to exist, "the person by whose act, default, permission or sufferance the nuisance arises or continues" may be summoned before justices who may make an order on such person for the abatement or discontinuance and prohibition of the nuisance. By the same Act, section 8, the word nuisance shall include any watercourse, drain, &c., so foul as to be a nuisance or injurious to health. By a local Act, all public sewers were vested in the corporation of the borough, who were to maintain, cleanse and flush the same, and to provide them with proper traps and means of ventilation. The appellants were possessed of chemical works connected by drains with a public sewer passing under a street of the borough, and poured down these drains liquids which while separate in the drains were innocuous, but which met in the sewer and when in combination there generated a gas injurious to health which escaped into the street and was a nuisance to inhabitants passing along the street. The corporation had not properly trapped the sewer so as to prevent the escape of gas from it:—Held, that the public sewer was a drain or watercourse within the meaning of section 8 of 18 & 19 Vict. c. 121, and that the nuisance arose from the act, default, permission or sufferance of the appellants, notwithstanding that the corporation by their negligence might have contributed to it, and that the appellants were rightly convicted. *The St. Helens Chemical Works v. The Mayor, &c., of St. Helens* (App. Div.), 45 Law J. Rep. M.C. 150; Law Rep. 1 Ex. D. 196.

13.—Under the Nuisances Removal Acts (18 & 19 Vict. c. 121. ss. 12, 13, and 29 & 30 Vict. c. 90. s. 19), justices made an order on the 15th of May, 1875, for the abatement of a nuisance and prohibiting the recurrence of the same. On the 11th of August, 1875, the Public Health Act, 1875 (38 & 39 Vict. c. 55), came into operation and repealed the above Nuisances Removal Act, but with a saving clause in section 343 that such repeal should not affect any right or

liability acquired, accrued or incurred under any enactment thereby repealed. A complaint was made before the justices for the disobedience of the above order by allowing a recurrence of the nuisance on the 12th of August, 1875. The justices refused to convict on the ground that the order was gone by reason of the repealing statute:—Held, that the justices were wrong on the ground that the defendant was liable to be convicted, as he had incurred a liability under the repealed enactment which was not affected by the repeal. *Barnes v. Edleston* (App. Div.), 45 Law J. Rep. M.C. 162; Law Rep. 1 Ex. D. 102.

14.—On the 11th of March, 1871, an order of justices was made on the appellant and his partners, in the trade of a dyer, to cease to send forth black smoke from a certain chimney, under section 12 of the Nuisances Removal Act, 1855, with liberty to the informant to enter on default and do what was necessary to execute the order. On the 14th of March, 1874, a further order was made under the same section that they should discontinue the nuisance, and that its recurrence should be prohibited. On the 1st of May, 1875, the appellant was convicted under section 13 of the same Act, for disobeying the order of abatement of the 11th of March, 1871, and on the same day was also convicted of disobeying the order of prohibition of the 14th of March, 1874. Both convictions proceeded on the evidence that on one day black smoke issued from the appellant's chimney:—Held, that both convictions could not be maintained. *Edleston v. Barnes*, 45 Law J. Rep. M.C. 73; Law Rep. 1 Ex. D. 67.

15.—The appellants, an urban sanitary authority, committed a nuisance by depositing refuse on the lands of contractors who had agreed to remove it from thence and prevent its becoming a nuisance. An order was made against the appellants to abate the nuisance under the Public Health Act, 1875, s. 96, and to prohibit them in future:—Held, that the order, so far as it directed abatement, was bad as it could not be complied with by the defendants without committing a trespass, but that the rest of the order was good, the nuisance having been created by the appellants' act. *The Mayor, &c., of Scarborough v. The Rural Sanitary Authority of Scarborough* (Div. App.), Law Rep. 1 Ex. D. 344.

#### (C) WHEN PUNISHABLE.

##### (a) Indecency.

16.—An obscene exhibition in a booth on a racecourse with closed doors, to a number of spectators who have paid for their admission upon the invitation of the keepers of the booth to the general public is a misdemeanour at common law. *Reg. v. Saunders* (C.C.R.), 45 Law J. Rep. M.C. 11; Law Rep. 1 Q.B. D. 15.

##### (b) Noxious effluvia.

17.—Under the Public Health Act, 1875, s.

114, relating to complaints by an urban sanitary authority of trades causing effluvia which are "a nuisance or injurious to the health of any of the inhabitants of the district" of such authority, complaint was made of a trade causing effluvia which were shewn to be a nuisance, but were not proved to affect health, except the health of persons already ill:—Held, that injury to the health of persons already ill was injury to health within the enactment; and by Stephen, J., that any nuisance by effluvia from an offensive trade, although not a nuisance to health, was a nuisance within the enactment. *The Malton Local Board of Health v. The Malton Farmers' Manure and Trading Company (Lim.)*, 49 Law J. Rep. M.C. 90; Law Rep. 4 Ex. D. 302.

##### (c) Discharging refuse into stream.

18.—A tanner, who discharged in the course of his business refuse into a natural stream which flowed into a navigable river four miles off, was convicted of an offence under 14 Geo. 3. c. 96:—Held, that the conviction must be quashed, first, because the Act only applied to artificial streams; second, because it was not "wilfully" done. *Smith v. Barnham* (Div. App.), Law Rep. 1 Ex. D. 419.

##### (d) Sale of goods unfit for food.

19.—The council of a borough under section 90 of the Municipal Corporations Act, empowering them to make by-laws for the suppression of all such nuisances as are not already punishable in a summary manner, made a by-law imposing a penalty on any butcher, &c., or other person who should have in his possession, with intent to sell or expose for sale, any unsound, putrid or unwholesome meat, &c., or other victuals or provisions unfit for the food of man, or which would be deleterious to the health of persons who might feed thereon. The appellant was charged under this by-law with having in his possession, with intent to sell, some cheese unfit for the food of man:—Held, that the by-law was properly made, was still in force, and that the having in possession with intent to sell, or exposing for sale, cheese which was in fact unfit for human food, was a nuisance at common law, and so within the scope of the 90th section of the Municipal Corporations Act, and that the appellant was within the by-law. *Shillito v. Thompson*, 45 Law J. Rep. M.C. 18; Law Rep. 1 Q.B. D. 12.

#### NULLITY OF MARRIAGE.

[See DIVORCE, 10-13.]

#### OBSCENE PUBLICATION.

[Importation of, prohibited. 39 & 40 Vict. c. 36. s. 42.]

1.—An order made for the destruction of



books under Lord Campbell's Act (20 & 21 Vict. c. 83. s. 1) must state that the magistrate making it is satisfied, not only that the books are obscene, but also that their publication will amount to a misdemeanour proper to be prosecuted. *Ex parte Bradlaugh*, 47 Law J. Rep. M.C. 105; Law Rep. 3 Q.B. D. 507.

2.—The defendant was found guilty upon an indictment for publishing a certain indecent book called the "Fruits of Philosophy." The book itself was not set out in the indictment:—Held, that such omission was no ground for a motion to quash the indictment or arrest the judgment. *Reg. v. Bradlaugh*, 46 Law J. Rep. M.C. 286; Law Rep. 2 Q.B. D. 569. But held, on appeal, that in an indictment for publishing an obscene book the words alleged to be obscene must be set out in full; and the defect to set them out will not be cured by a verdict of guilty. *Reg. v. Bradlaugh and Besant* (App.), 48 Law J. Rep. M.C. 5; Law Rep. 3 Q.B. D. 607.

3.—In an appeal to sessions against an order made by a magistrate under Lord Campbell's Act (20 & 21 Vict. c. 83), for the destruction of certain books found on the appellant's premises, it was proved that the complainant had died after the summons was issued, but before the order appealed against was made. Thereupon it was contended by the appellant that the proceedings lapsed, as there was then no person in the position of a prosecutor:—Held, that inasmuch as the proceedings were *quasi* criminal in their nature, the death of the complainant created no lapse, and that it was the duty of the magistrate, having once issued his summons on the information, to proceed. *Reg. v. Truelove*, 49 Law J. Rep. M.C. 57; Law Rep. 5 Q.B. D. 336.

#### OBSTRUCTION.

*Highway, of.* [See HIGHWAY, 19-23; NUISANCE, 8, 9.]

*Light and air, of.* [See LIGHT AND AIR, 5-9.]

*Stream or watercourse, of.* [See RIVER, 3, 5; WATER, 3.]

*Way, of.* [See WAY, 5.]

#### OFFICIAL ASSIGNEE.

*Insolvency: law of Victoria.* [See COLONIAL LAW, 52.]

*Stock Exchange, of.* [See STOCK EXCHANGE, 2.]

#### OFFICIAL LIQUIDATOR.

[See COMPANY, H 20-30.]

#### OFFICIAL REFEREE.

[See PRACTICE, Y 1-6.]

DIGEST, 1875-1880.

#### ONUS PROBANDI.

[See EVIDENCE; PRESUMPTION.]

#### OPERA.

*Musical score: copyright.* [See COPYRIGHT, 12.]

#### OPTION.

*Of purchase.* [See LANDLORD AND TENANT, 18; REMOTENESS, 16.]

#### ORDER.

[See PRACTICE, R.]

#### ORDER AND DISPOSITION.

[See BANKRUPTCY, F 8-19.]

#### ORGAN.

*Control of, by incumbent.* [See CHURCH AND CLERGY, 24.]

#### ORIGINAL OR SUBSTITUTIONAL GIFT.

[See WILL CONSTRUCTION, N 1, 2.]

#### OUTLAWRY.

[Abolition of, in civil cases. 42 & 43 Vict. c. 59. s. 37.]

#### PACIFIC ISLANDERS PROTECTION.

[See KIDNAPPING ACT.]

#### PACKER.

A packer has by the custom of trade a general lien upon all the goods of a customer in his possession for all moneys due to him from that customer, and not merely for money owing in respect of those particular goods. *In re Witt & Company; ex parte Shubrook* (App.), 45 Law J. Rep. Bankr. 118; Law Rep. 2 Ch. D. 489.

#### PAID-UP SHARES.

[See COMPANY, D 56-72.]

#### PAINTING.

[See COPYRIGHT, 17.]

#### PALATINE COURT.

[See LANCASTER PALATINE COURT.]

#### PANNAGE.

*Right of.* [See COMMON, 3.]

3 F

## PARENT AND CHILD.

- (A) RIGHTS AND DUTIES OF PARENT AS TO CUSTODY, MAINTENANCE AND EDUCATION OF CHILD.
- (B) RIGHTS IN CONNECTION WITH PROPERTY.

- (A) RIGHTS AND DUTIES OF PARENT AS TO CUSTODY, MAINTENANCE AND EDUCATION OF CHILD.

The Courts of Common Law exercise, concurrently with the Courts of Equity, jurisdiction over questions relating to the custody and education of infants, but follow the rules of equity in interfering with the right of a father to the custody of his children, where he applies for a *habeas corpus* to obtain possession of them. *Ex parte Goldsworthy*; in *re Goldsworthy*, 46 Law J. Rep. Q.B. 187; Law Rep. 2 Q.B. D. 75.

Where it is made out to the satisfaction of the Court that a father has indulged in a course of gross and habitual intemperance, associated with contaminating language and conduct, which have shewn a bad influence in the results on the morals and language of his child, then the Court will not interfere to replace the child in his custody by ordering it to be removed from a custody against which nothing has been alleged. It is for the father, on applying for a writ of *habeas corpus* to take his child out of a custody proper in itself, to satisfy the Court that it can be replaced in his custody without some essential injury to its well-being. *Ibid.*

*Covenant in separation deed, effect of.* [See HUSBAND AND WIFE, 60.]

*Infant's Custody Act, 1873.* [See INFANT, 22-25.]

- (B) RIGHTS IN CONNECTION WITH PROPERTY.

*Gift by parent to child.* [See ADVANCEMENT, 1-6.]

*Marriage with consent of parents.* [See WILL CONSTRUCTION, L 9.]

## PARISH.

[Statutory regulations as to divided parishes. 39 & 40 Vict. c. 61, and 42 & 43 Vict. c. 54. ss. 4-7.]

[As to parish property. 39 & 40 Vict. c. 62.]

[As to union assessment. 43 & 44 Vict. c. 7.]

[As to land tax, &c. 43 & 44 Vict. c. 19. ss. 37, 38, 74, 79.]

The parish of St. Sepulchre, the church of which is within the city of London, is situate partly within the city of London and partly in the county of Middlesex. Five churchwardens of the parish church are annually elected, three by the vestry of the part of the parish within the city of London and two by the vestry of the part in the county of Middle-

sex. The vicar and the churchwardens elected by the city portion of the parish petitioned the ordinary for a faculty to authorise certain repairs in the parish church, and the churchwardens elected by the Middlesex portion of the parish appeared as opponents in the cause, and prayed the Court to direct the faculty, if granted, to issue to them jointly with the petitioners, and to declare what were the rights of the respective parties to the suit as to the management of the church. The churchwardens elected by the city portion of the parish had for a long series of years admittedly had the sole control of a certain trust fund available for payment of the costs of the proposed alterations:—Held, that the churchwardens elected by each portion of the parish were equally officers of the ordinary in all matters relating to the management of the parish church, and that a faculty must issue to the petitioners and the opponents jointly. *The Vicar of St. Sepulchre v. The Churchwardens of St. Sepulchre*, Law Rep. 5 P.D. 64.

*Advowson: right of election in parishioners.* [See CHURCH AND CLEERGY, 1.]

*Charity: "bona fide parishioner."* [See CHARITY, 26.]

*Churchwarden: new parish: townships: custom.* [See STATUTE, 3.]

*Grant to "inhabitants."* [See COMMON, 3.]

*New parish or district: burial fees in.* [See BURIAL, 3.]

*Quoad sacra: Scotch law: banns of marriage.* [See SCOTCH LAW, 14.]

*Sale of land allotted to parish for building materials: pre-emption.* [See HIGHWAY, 10.]

*"Separately maintaining its own highways."* [See HIGHWAY, 3.]

## PARLIAMENT.

- (A) PRIVILEGE OF PARLIAMENT.
- (B) ELECTION OF MEMBERS: ELECTION PETITIONS.
- (C) REGISTRATION OF VOTERS.

## (a) Qualification.

## (1) County vote.

(i) *Infancy.*

(ii) *Forty-shilling freeholder.*

(iii) *Disqualification of voter by bribery.*

## (2) Borough vote.

(i) *Freehold: residence.*

(ii) *Boundary of borough.*

(iii) *Rating qualification.*

(iv) *Receipt of alms.*

## (b) Duties, &amp;c., of revising barrister.

## (1) Notice of objection.

(i) *County vote.*

(ii) *Borough vote.*

## (2) Amendment.

## (3) Power of commitment: interruption of proceedings.

[Certain occupiers of dwelling-houses allowed to vote, notwithstanding the under-letting by them of such premises for short terms. 41 Vict. c. 3.]

[Extension of the hours of polling in the Metropolis. 41 Vict. c. 4.]

[Amendment of the law relating to the registration of voters in Parliamentary boroughs and the enrolment of burgesses in municipal boroughs. 41 & 42 Vict. c. 26.]

[Amendment of the Acts relating to election petitions and to corrupt practices at elections. 42 & 43 Vict. c. 75.]

[The conveyance of voters to the poll allowed. Continuation of the Acts relating to the prevention of corrupt practices and the Acts relating to election petitions. 43 Vict. c. 18.]

[The Representation of the People (Scotland) Act, 1868, amended. 43 & 44 Vict. c. 6.]

#### (A) PRIVILEGE OF PARLIAMENT.

1.—It is only in cases of gross contempt of Court that the Court will make an order for the committal of a member of Parliament. The Court declined to make an order for the committal of a member of the House of Commons during the session of Parliament for non-compliance with an order directing him to pay money and deliver over documents within a specified time. The Parliament having subsequently been dissolved, and the late member of Parliament not having been re-elected at the ensuing general election, the motion for his committal was renewed within forty days after the dissolution:—Held, that the privilege of the late member of Parliament extended over a period of forty days after the dissolution. Held also, that, under the circumstances, the refusal of the former motion was no bar to the subsequent application grounded on the same contempt. *In re The Anglo-French Co-operative Society*, 49 Law J. Rep. Chanc. 388; Law Rep. 14 Ch. D. 533.

#### (B) ELECTION OF MEMBERS: ELECTION PETITIONS.

2.—The jurisdiction conferred on the Court of Common Pleas by the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), is not in all respects the same as in ordinary causes, but is subject to the provisions of the Act. The scope of the Act is that petitions should not be mere pleadings, but that they should be real, well considered, and not likely to be withdrawn, either in whole or in part. *Aldridge v. Hurst. The Horsham Election Petition*, 45 Law J. Rep. C.P. 431; Law Rep. 1 C.P. D. 410.

The right of petitioning shews that the Act contemplates, in regard to petitions, not merely the rights of candidates not returned, but the rights of the constituency; and therefore that that part of the prayer in an election petition which claims the seat cannot, after the twenty-one days have elapsed, when no other petition

could be presented, and thus the voters be prevented from claiming the seat for one who may be the duly elected representative, and, on the other hand, excluding recriminatory charges which put in issue the claim that the claimant is not a person entitled to the seat, be withdrawn on the mere application of the person presenting it. *Ibid*.

The practice of election committees of the House of Commons, which, by section 26 of the Parliamentary Elections Act, 1868, is to be observed, appears strongly in favour of not excluding recriminatory charges by the sitting member when the seat is claimed by petition, and the petitioner afterwards desires to abandon the claim. *Ibid*.

Semble, the withdrawal of that portion of the prayer of a petitioner which claims the seat is *in pari materia* with the provision of the Act relative to the withdrawal of a whole petition, and consequently within the provisions of section 35 and rules xlv. *et seq.* *Ibid*.

3.—Section 6, sub-section 5, of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), states that the security for costs to the amount of 1,000*l.* which is to be given at the time of presenting an election petition under that Act, "shall be given either by recognisance to be entered into by any number of sureties not exceeding four, or by a deposit of money," &c. It is a sufficient compliance with this enactment that the recognisance be entered into by one surety only. *The Hereford (City) Election Petition. Preece v. Pulley*, 49 Law J. Rep. C.P. 686.

4.—The power to change the place of trial of an election petition under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 225), can be exercised only by the Court, and not by an Election Judge. *In re The Tewkesbury (Borough) Election Petition*, 49 Law J. Rep. C.P. 686; Law Rep. 5 C.P. D. 544.

Semble, the Court will not exercise such power unless there are special circumstances more than mere inconvenience why the trial should not be had in the borough or county (as the case may be) to the election for which the petition relates. *Ibid*.

5.—The Court has no power to order interrogatories to be delivered to a respondent to a Parliamentary election petition, under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125); for though section 2 gives the Court the same powers, with reference to such petitions; as it would have if such petition were an ordinary cause, yet this is "subject to the provisions of the Act;" and section 26 enacts, that until rules have been made (and none have been made as to interrogatories), the "principles, practice and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions" are to be observed in the case of election petitions under the Act. *In re The Wallingford (Borough) Election Petition. Wells v. Wren*, 49 Law J. Rep. C.P. 681; Law Rep. 5 C.P. D. 546.

6.—In the affidavits used upon an application under section 36 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), for leave to withdraw a petition against the return of a member, it is not enough for the petitioner and the respondent to swear that "to the best of their knowledge, information and belief the withdrawal of, or application to withdraw, the petition, is not the result of any corrupt arrangement or in consideration of the withdrawal of, or application to withdraw, any other petition." They must make a positive affidavit that they have not been parties to any corrupt arrangement, and deny, to the best of their knowledge and belief, that any such arrangement has been made by their agents. The existence of any such arrangement must also be denied by the agents themselves. *Johnson v. Rankin*; *Isaac v. Seeley*, Law Rep. 5 C.P. D. 553.

#### (C) REGISTRATION OF VOTERS.

##### (a) Qualification.

##### (1) County vote.

##### (i) Infancy.

7.—A person who is not of full age on the last day of July next preceding the day on which the Revision Court is held, is not entitled to the franchise, although he be otherwise qualified, and is of full age when the Revision Court is held. *Hargreaves v. Hopper*, 45 Law J. Rep. C.P. 105; Law Rep. 1 C.P. D. 195.

##### (ii) Forty-shilling freeholder.

8.—To have frank tenement to the value of forty shillings a year, within the meaning of 8 Hen. 6. c. 7, which will give a qualification for the county franchise, it is not necessary that a person should have that sum annually from one rent-charge, but two or more rent-charges may be added together to make up the required value. *Wood v. Hopper*, 45 Law J. Rep. C.P. 108; Law Rep. 1 C.P. D. 192.

9.—A., who was seised in fee of certain land subject to a lease, by which a rent was reserved, granted to B. in fee an annual rent-charge of 2*l.* 10*s.*, charged upon and issuing out of such land. The rent reserved by such lease was amply sufficient to meet the rent-charge, which was duly paid by A. to B.:—Held, that B., notwithstanding such lease was still subsisting, had a freehold tenement under 8 Hen. 6. c. 7, which entitled him to a county vote. *Danson v. Robins*, 46 Law J. Rep. C.P. 62; Law Rep. 2 C.P. D. 38.

10.—S. claimed to be entitled, as a freeholder, to vote for the county in respect of a lease of part of the waste of the manor of N. The burgesses of the borough of N. had from time immemorial exercised rights of common of pasture over the manor of N., and at Courts leet holden for the borough of N., it had been the practice for 100 years past and upward for the mayor and burgesses of the borough to pre-

sent to the lord of the manor of N. individual burgesses for occupation of pieces of waste land of the manor; in all such cases the person so presented took possession of the apportioned pieces of waste, and paid rent to the lord. About one-tenth of the wastes had been thus enclosed, but a sufficiency of such land was left for the use by the commoners of their rights of pasture. S. being duly presented for occupation of a piece of the waste land in accordance with the custom, entered into occupation thereof, and in 1861 was granted a lease by the lord, similar to leases which, since 1838, had been granted in like cases, namely, a lease for three lives, with a covenant for renewal. S. continued to occupy under this lease, and paid rent to the lord:—Held, that S. had such a freehold interest as would entitle him to be registered as a voter for the county. *Phillips v. Salmon*, 47 Law J. Rep. C.P. 53; Law Rep. 3 C.P. D. 97.

11.—Certain persons who were seised in fee of a rent-charge of 120*l.* a year, subdivided it into fifty-four parts, and sold thirty-four of such parts, and by a deed in consideration of 52*l.* 5*s.*, paid by each of the purchasers, therein called "beneficiaries," the vendors, therein called "trustees," declared that they stood seised of one fifty-fourth part of the said rent-charge "in trust for each of the said beneficiaries, his heirs and assigns absolutely," and that they stood seised of the remaining parts in trust for themselves, the said trustees in fee. There was a covenant by each of the beneficiaries that in the event of his wishing to sell his share, he should first offer it to the trustees at a price to be ascertained, in case of dispute, by arbitration, and there was a clause declaring that the said trustees, or other the trustees or trustee for the time being of the said deed, should "respectively have absolute power of sale over the said rent and premises, exercisable at their or his discretion, without any further consent on the part of any person":—Held, that the power of sale vested in the trustees by this deed was not one which they could exercise for their own benefit so as to enable them to forfeit the shares of the said beneficiaries, and that, therefore, until such power of sale was exercised, each beneficiary had a freehold interest in the rent-charge, which (being of sufficient value for that purpose) entitled him to the county franchise. *Ashworth v. Hopper*, 45 Law J. Rep. C.P. 99; Law Rep. 1 C.P. D. 179.

12.—A testator devised his copyhold lands to trustees upon trust to sell and invest the proceeds and pay the dividends to his wife for life, and after her decease to divide the proceeds among his children equally—the share of each son to become vested and payable at twenty-one; the share of each daughter to become vested at twenty-one or marriage, and the trustees to stand possessed of each daughter's share upon trust to pay the dividends to her during her life for her sole use independent of her husband (if any), and after her decease in trust for

her children. The trustees duly proved the will, and were admitted to the copyholds according to the custom of the manor. The wife predeceased the testator, and at the time of his death there were three sons and one daughter; the daughter was married and had issue, who were infants. The sale of the copyhold lands was postponed, and in the meantime the children of the testator became of full age, and by verbal agreement among themselves, in which the husband of the daughter concurred, agreed to keep the copyhold lands unconverted. The rents, which were of sufficient annual value to confer the franchise on each of the testator's children, were received by the trustees and divided amongst the testator's children yearly. The appellant, one of the testator's sons, claimed to vote as a freeholder in respect of his equitable interest in the copyholds:—Held, that the appellant had no such freehold estate as would entitle him to be registered as a voter for the county. *Spencer v. Harrison*, 49 Law J. Rep. C.P. 188; Law Rep. 5 C.P. D. 97.

(iii) *Disqualification of voter by bribery.*

13.—By the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), section 11, sub-section 14, the Judge who has tried an election petition in which a charge is made of any corrupt practice at the election, is to report to the Speaker *inter alia* "whether any corrupt practice has been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice;" and by section 43 of such Act it is enacted that "where it is found by the report of the Judge upon an election petition under the Act that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election," and shall, amongst other things, be incapable of being registered as a voter during seven years next after being so found guilty. An election Judge appointed to try a petition against the election and return of A. G. as a member to serve in Parliament for the borough of K. reported, in compliance with the directions of the Parliamentary Elections Act, 1868, that it was proved before him that the said A. G. was guilty of a corrupt practice at the said election within the true intent and meaning of the Corrupt Practices Prevention Act, 1854, and he further reported that the nature of such corrupt practice was the promising before and at the time of the said election to certain voters for the said borough of K. and other inhabitants thereof that the said A. G. would, in the event of his being returned at the said election, and after such return, give to such voters and other voters and inhabitants of K. an entertainment consisting, among other things, of meat and drink, with the view and intent to induce such voters to vote for him the said A. G. at such election:—Held, that, even if the promising to

give an entertainment to voters under the circumstances stated in such report amounted to bribery, it was not found by such report, either in express words or by necessary inference, that bribery had been committed by or with the knowledge and consent of the said A. G. at the said election, and that therefore the said A. G. was not disqualified by the said 43rd section of the Parliamentary Elections Act, 1868, from being registered as a county voter. *Grant v. The Overseers of Pagham*, 47 Law J. Rep. C.P. 59; Law Rep. 3 C.P. D. 80.

(2) *Borough vote.*

(i) *Freehold: residence.*

14.—By 2 Will. 4. c. 45. s. 33, no person qualified as a freeholder to vote for a borough, shall be registered unless he shall have resided for six calendar months previous to the 31st of July within the borough or seven miles thereof. The appellant was entitled to a vote for the borough of Exeter, in respect of a freehold qualification. With the exception of two months, he had, as tenant, occupied a house within the limits of the borough for six calendar months previous to the 31st of July. For those two months the appellant, with his wife and child, went to reside with his mother-in-law, who occupied one of a number of almshouses, also situate within the borough. The appellant's residence there was contrary to the rules of the almshouses, but he was not disturbed, and, except for one day when he went to London on business, he and his family lived and slept as guests in the house so occupied by his mother-in-law for the two months:—Held, that the appellant's residence within the borough was a sufficient compliance with the requirements of 2 Will. 4. c. 45. s. 33, to entitle him to be registered. *Beal v. Ford*, 47 Law J. Rep. C.P. 56; Law Rep. 3 C.P. D. 73.

15.—A person on the list of voters for the city of Exeter had not in fact resided within seven miles of that city for six calendar months previous to the 15th of July, but during a small portion of that time he had been in London serving under articles of clerkship to a solicitor there. He had, however, a separate bedroom set apart for his exclusive use in his father's house, which was situate within seven miles of Exeter, where he had continuously resided previously to his going to London to serve under such articles, and where, subject to such articles, he always intended to reside, and where in fact on the expiration of such articles he did so reside:—Held, that such person whilst serving in London under such articles had not a sufficient constructive residence within seven miles of Exeter to satisfy the requirements of 2 & 3 Will. 4. c. 45. s. 31. *Ford v. Drew*, 49 Law J. Rep. C.P. 172; Law Rep. 5 C.P. D. 59.

(ii) *Boundary of borough.*

16.—An alteration of parish boundaries under the Divided Parishes and Poor Law Amendment Act, 1876, does not affect the parliamentary

divisions of counties and limits of boroughs for election purposes, so as to transfer the votes of voters from one division or borough to another. The parish of S. was within the parliamentary borough of New Shoreham, but an isolated portion of the parish of S. called Broadbridge Heath, was locally situated within the parish of Horsham, which parish is coterminous with the parliamentary borough of Horsham. The Local Government Board under the powers of the above Act amalgamated Broadbridge Heath with the parish of Horsham:—Held, that persons qualified to vote in respect of property situate within Broadbridge Heath were not entitled to vote for the borough of Horsham, but retained their right to vote for the borough of New Shoreham. *Foster v. Medwin*, 49 Law J. Rep. C.P. 297; Law Rep. 5 C.P. D. 87.

### (iii) Rating qualification.

17.—Section 19 of 32 & 33 Vict. c. 41, enacts that—"The overseers in making out the poor-rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid."—Held, that this clause applies not only to cases where the owner is "liable" by agreement with the overseers under section 3, or by order of the vestry under section 4 of the same Act, but also to cases where the owner is liable by agreement with the occupier to pay the rates. *Barton v. The Town Clerk of Birmingham*, 48 Law J. Rep. C.P. 87.

The same section provides that—"any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted." H. had, during the qualifying period, resided within the borough, and had occupied, as yearly tenant, a set of rooms as a "counting-house" within the meaning of 2 Will. 4. c. 45. s. 27. This set of rooms was one of several separate sets in the same house which were similarly occupied. The landlord, who himself occupied part of the premises but did not sleep there, paid all rates for the whole house, and his name appeared on the rate-book as occupier. H. had not claimed to be rated or tendered payment of any rates; nor was his name entered in the book. The rent paid by H. was more than it otherwise would have been, in consideration of the landlord paying the rates:—Held, that the landlord was "liable to the payment of the rate instead of the occupier" within the first part of section 19, and that H. was entitled to the franchise by virtue of the proviso at the end of the section. *Ibid.*

*Cross v. Alsop* (40 Law J. Rep. C.P. 53), distinguished. *Smith v. The Overseers of Seghill*, (44 Law J. Rep. M.C. 114) followed. *Ibid.*

18.—It is a condition precedent to the overseers of a parish being empowered to make any abatement or deduction from a poor-rate under section 4, sub-section 2 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), that the owner of the rateable hereditaments should give notice to such overseers in writing that he is willing to be rated in respect of all such hereditaments of which he is owner, whether the same be occupied or not; and the giving of such notice is a matter which cannot be waived by the overseers who are in discharge of a public duty. Therefore where no such notice was given, but the owner (pursuant to an agreement with his tenant, the occupier,) paid the poor-rate made in respect of the house the tenant occupied, and was allowed by the overseers a deduction from the rate not exceeding the limit given by such section 4, sub-section 2, but which deduction was not authorised by any other clause in the Act, it was held that there had not been such a payment of poor-rate as was by the Act to be deemed a payment of the full rate by the occupier for the purpose of the franchise, and, consequently, that such occupier was not entitled to the borough franchise under section 3 of the Representation of the People Act, 1867. *Bennett v. Atkins*, 48 Law J. Rep. C.P. 95; Law Rep. 4 C.P. D. 80.

### (iv) Receipt of alms.

19.—Land was devised to trustees upon trust to distribute a portion of the rents "unto the poorest inhabitants" of the tything of W. as the said trustees should think fit. The portion generally amounted to 40*l.* a year, and was annually distributed amongst about eighty of the labouring population of the tything according to the discretion of the trustees in sums varying from 2*s.* 6*d.* to 12*s.* 6*d.*, according to the necessities of the recipient and the number of his family. A. B. and C. D., who were agricultural labourers and inhabitants of the said tything, and on the list of voters for the borough, received each during the electoral year, 12*s.* 6*d.* of the money so distributed under the said trust. Neither of them had during such period received parochial relief, but A. B. had frequently in previous years received parochial relief, and C. D. had two years before applied for parochial relief, but had been refused on the ground that it was considered he did not need it:—Held, that both A. B. and C. D. had received alms within the meaning of section 36 of 2 Will. 4. c. 45, and were therefore disqualified from voting. *Harrison v. Carter; Cook's Case and Port's Case*, 46 Law J. Rep. C.P. 57; Law Rep. 2 C.P. D. 26.

### (b) Duties, &c., of revising barrister.

#### (1) Notice of objection.

##### (i) County vote.

20.—Where the name of a person inserted in the list of claimants for a county is objected

to, the revising barrister has only to consider whether the claimant is entitled to be on the list in respect of his qualification described on such list; he is not to require proof of due notice of the claim, for that is a matter between the claimant and the overseers. *Davies v. Hopkins* (27 Law J. Rep. C.P. 6), followed. *Leonard v. Alloways*, 48 Law J. Rep. C.P. 81.

(ii) *Borough vote.*

21.—Notice of objection to the name of the appellant being retained on the list of voters for the borough of Bedford, was sent to the office of the collector of poor rates, appointed by the guardians of the poor of five parishes, constituting the borough of Bedford. The collector was in the habit of discharging all the ordinary overseer's duties, including that of making up the lists. He transacted the whole of the business connected with the poor-rates and the preparation of the list of voters at his said office, which was within the borough, where all the parish books were kept, and all notices of claims and objections were sent. The collector produced such notices to any voter requiring to see them, and also attended to produce them at the Revising Barrister's Court. The overseers did nothing whatever besides receiving notice of claims and objections if sent to them, and signing the lists which the collector produced to them, and there was no other office in the borough where any parish business was transacted:—Held, that the collector's office was "the place for transacting parochial business" within 6 Vict. c. 18. s. 101, and that the notice was duly served. And, semble, that the collector was a person executing the duties of overseers of the poor within that section. *Green v. Mepham*, 48 Law J. Rep. C.P. 92.

22.—The statute 41 & 42 Vict. c. 26, gives in Schedule A. Form I. the forms of notices of objection in a parliamentary borough, No. 1 to the overseers, No. 2 to the person objected to. And then follows a note: "If there is more than one list of parliamentary voters, the notice of objection in each of the above cases Nos. 1 and 2, should specify the list to which the objection refers, and if the list referred to is made out in divisions, the notice of objection should specify the division to which the objection refers:—Held, that the list which the notice of objection should specify is the list of voters under each head of franchise, and that it is not necessary to specify the parish to which the objection refers. *Mortlock v. Farrer*; *Hall v. Cropper*, 49 Law J. Rep. C.P. 160; Law Rep. 5 C.P. D. 73.

23.—In a notice of objection to a person on the list of parliamentary voters for a borough, the objector, who was himself on such list, and as such entitled to object, described himself as "on the list of voters for the parish" of W., instead of "on the list of parliamentary voters for the parish" of W., in accordance with Form (I.) No. 2 in the schedule to the Parliamentary

and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26):—Held, that this was a mistake within the meaning of section 28, sub-section 2 of that Act, and that the Revising Barrister both could and ought to have corrected such mistake. *James v. Howarth*, 49 Law J. Rep. C.P. 169; Law Rep. 5 C.P. D. 225.

24.—The parliamentary borough of Liskeard consists, first, of the municipal borough which is part of the parish of Liskeard; secondly, of so much of the parish of Liskeard as is not within the municipal borough; and, thirdly, of the parish of St. Cleer. Each of these places has separate parochial officers and rates, and for the purpose of distinction the first is known as "the borough of Liskeard," and the second is known as "the parish of Liskeard." In a notice of objection to a person on the list of parliamentary voters for the borough, and given under 41 & 42 Vict. c. 26, the objector was described as being "on the list of parliamentary voters for the parish of the borough of Liskeard, Division 1:—Held, that such notice of objection was sufficient, as the borough of Liskeard was a parish as defined by section 4 of 41 & 42 Vict. c. 26, and the notice followed the words of the Form (I.) No. 2 in the schedule to such Act. *Sargent v. Rodd*, 49 Law J. Rep. C.P. 195.

(2) *Amendment.*

25.—The description of the qualification of a county voter in the fourth column of the register consisted of fifteen specified plots of land on the Victoria estate. He had in fact parted with fourteen of these plots, but the plot which he retained was of sufficient qualifying value to confer the franchise:—Held, that the Revising Barrister had power and ought to have amended by striking out the surplus plots. *Smith v. Woolston*, 48 Law J. Rep. C.P. 84; Law Rep. 4 C.P. D. 73.

Semble, that since 28 & 29 Vict. c. 36, s. 6, the Revising Barrister must confine the objector to the particular column and grounds of objection specified in the notice of objection. *Ibid.*

26.—The appellant was duly qualified to vote for the county as occupier of a house and land rated at 12*l.* and upwards. The appellant's name, which should have appeared on the list of voters entitled "as occupiers of the rateable value of 12*l.* and under 50*l.* rental," by mistake appeared on the list of voters entitled "in respect of property, including occupiers at a rent of 50*l.* and upwards." Opposite to his name in the third column of this list under the heading, "nature of qualification," was inserted "occupier of a house and land rated at 12*l.* and upwards." On objection to the vote,—Held, that under the powers of amendment given by 6 Vict. c. 18, s. 46, the Revising Barrister had power to transfer the appellant's name to the proper list. *Ballard v. Robins*, 47 Law J. Rep. C.P. 50; Law Rep. 3 C.P. D. 92.

27.—By section 28 of the Parliamentary and

Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), the Revising Barrister shall, with respect to the lists of voters which he is appointed to revise, perform the duties and have the powers following:—(1) "He shall correct any mistake which is proved to him to have been made in any list;" (2) "He may correct any mistake which is proved to him to have been made in any claim or notice of objection." The appellant claimed for the first time to have his name inserted in the list of voters in respect of a lodger qualification. The claim, which was in the Form (H.) No. 2, of the Parliamentary and Municipal Registration Act, 1878, was insufficient, inasmuch as the appellant had omitted from the 4th and 5th columns respectively to state the amount of rent he paid and the address of his landlord. The Revising Barrister refused to amend.—Held, that these were mistakes in a "claim" within section 28, sub-section 2, and that the Barrister had therefore a discretionary power, and was not bound to amend. *Pickard v. Baylis*, 49 Law J. Rep. C.P. 182; Law Rep. 5 C.P. D. 235.

28.—The 41 & 42 Vict. c. 26, does not, any more than 6 & 7 Vict. c. 28, empower a Revising Barrister to substitute a different qualification for that appearing on the list. Therefore when the qualification of a person on the list of borough voters was described in the third column as "house" and in the fourth column as "8 Birley Place," and such person made a declaration according to section 24 of 41 & 42 Vict. c. 26, in which he declared that the correct particulars of his qualification ought to be stated in the third column "houses in succession," and in the fourth column "8 Birley Place and 9 Birley Place," it was held that the Revising Barrister had no power to amend the list in accordance with such declaration. *Porret v. Lord*, 49 Law J. Rep. C.P. 176; Law Rep. 5 C.P. D. 65.

29.—Section 28 of the Parliamentary and Municipal Registration Act (41 & 42 Vict. c. 26), which declares the duties and powers of the Revising Barrister, by sub-section 7 enacts that he shall expunge from the list the name of every person "incapacitated by any law or statute from voting at an election:—Held, that the incapacity referred to was the general incapacity which would exist in the case of peers, women, aliens, &c., and not such transitory incapacity as would exist by reason of the receipt of parochial relief, insufficient occupation, &c. *Stome v. Joliffe* (43 Law J. Rep. C.P. 265) followed. *Hayneard v. Scott*, 49 Law J. Rep. C.P. 167; Law Rep. 5 C.P. D. 231.

(3) *Power of commitment: interruption of proceedings.*

30.—To a plaint in a County Court for assault and false imprisonment, in giving the plaintiff into the custody of a policeman, and causing him to be turned out of a Revision Court being held for the revision of the lists of parliamen-

tary voters, the defendant, the presiding Revising Barrister, pleaded that he ordered the plaintiff to be so turned out because he was a person interrupting the business of the Court within the meaning of the 28 Vict. c. 36. s. 16. The plaintiff was a witness, and in giving evidence in support of a voter's claim, had called down the censure of the Revising Barrister in respect of his conduct with regard to evidence given at a Court held in the previous year, and therefore was ordered out of Court. The defendant did not profess to turn the plaintiff out of Court on the ground that he was disturbing the business, nor was the plaintiff in fact disturbing the business of the then Court:—Held, that the plea was not proved, and therefore the defendant was liable. *Willis v. MacLachlan* (App. Div.), 45 Law J. Rep. Exch. 689; Law Rep. 1 Ex. D. 376.

Quere, whether if the defendant had adjudged that it was desirable that the plaintiff should be removed because he was disturbing the business, or for any other lawful cause, and had so pleaded it, it would not be an answer to the action. *Ibid.*

*Expenses of opposing Bill in Parliament.* [See MUNICIPAL CORPORATION, 16.]

## PARLIAMENTARY DEPOSIT.

1.—An Act incorporating a tramway company provided that in certain events (which happened) a parliamentary deposit, or such portion thereof as should not be required for compensations as therein mentioned, should be forfeited to the Crown and paid to the account of the Exchequer in such manner as the Court of Chancery should direct, or in the discretion of the Court of Chancery if the company was insolvent and had been ordered to be wound up, or a receiver had been appointed, should wholly or in part be paid to such receiver or to the liquidator of the company, or be otherwise applied as part of the assets of the company for the benefit of the creditors thereof:—Held (reversing the decision of Malins, V.C., Law Rep. 2 Ch. D. 373), that the company was not insolvent within the meaning of the Act, and the deposit payable to the liquidator, because the company was wound up as unable to pay its debts, but that only such part (if any) of the deposit was payable to the liquidator as, after exhausting the unpaid capital, was required to satisfy the creditors of the company. *In re The Bradford Tramway Company* (App.), 46 Law J. Rep. Chanc. 89; Law Rep. 4 Ch. D. 18.

2.—Where a limited company empowered by a provisional order of the Board of Trade to make a tramway has not made such tramway within the time limited for the purpose, and has been ordered to be wound up by the Court, and an application is made for the return of the deposit under the Board of Trade rules, which provide that in such cases the deposit shall either be forfeited, or in the discretion of the



Court be paid to the liquidator, or be otherwise applied as part of the assets of the company for the benefit of the creditors, the creditors only, and not the shareholders, are to be considered. The only creditors to be considered under such circumstances are meritorious creditors; and the promoters are not by any subterfuge or device, either directly or indirectly, to get the benefit of the deposit if the tramway is not made. *In re The Lowestoft, Yarmouth and Southwold Tramways Company*, 46 Law J. Rep. Chanc. 393; Law Rep. 6 Ch. D. 484.

#### PAROCHIAL RECORDS.

[Amendment of the law relating to Parochial Records. 39 & 40 Vict. c. 58.]

#### PAROL EVIDENCE.

[See EVIDENCE, 1-4.]

#### PARSONAGE.

*Repairs of: money paid in under Lands Clauses Act.* [See LANDS CLAUSES ACT, 27.]

#### PART PERFORMANCE.

*Statute of Frauds, taking case out of.* [See COMPANY, D 19; FRAUDS, STATUTE OF, 22; SPECIFIC PERFORMANCE, 12.]

#### PARTIAL LOSS.

[See MARINE INSURANCE, 17.]

#### PARTICULARS.

[See PRACTICE, I I 7.]

*Of breaches of, or objections to, patent.* [See PATENT, 27, 30, 31.]

*Of sale.* [See VENDOR AND PURCHASER, 4.]

#### PARTIES.

[See PRACTICE, U.]

#### PARTITION.

##### (A) PRACTICE IN ACTIONS FOR.

- (a) *Jurisdiction to decree partition.*
- (b) *Trustees for sale: beneficiaries not necessary parties.*
- (c) *Representation of unascertained classes.*
- (d) *Evidence in support.*
- (e) *Receiver.*
- (f) *Form of judgment.*
- (B) SALE UNDER THE PARTITION ACT, 1868, 31 & 32 VICT. C. 40.
  - (a) *Property incapable of partition: section 5.*
  - (b) *Jurisdiction: anticipating period fixed by testator.*
  - (c) *Request for sale by married woman or infant.*

DIGEST, 1875-1880.

- (d) *Sale on motion for judgment.*
- (e) *Right to demand sale under section 4.*
- (f) *Sale before certificate in county court: objection to title.*
- (g) *Effect of decree for sale in working conversion.*
- (h) *Election by married woman to take, as personally.*

##### (C) COSTS.

[Amendment of the Partition Act, 1868. 39 & 40 Vict. c. 17.]

##### (A) PRACTICE IN ACTIONS FOR.

###### (a) *Jurisdiction to decree partition.*

1.—Partition, at the suit of tenants for life, of property devised and bequeathed to trustees, who were directed by the will to work quarries and dispose of the stones therefrom, with power for that purpose to make roads, refused. *Taylor v. Grange* (App.), 49 Law J. Rep. Chanc. 794; Law Rep. 15 Ch. D. 165.

Decision of Fry, J. (49 Law J. Rep. Chanc. 24), affirmed. *Ibid.*

###### (b) *Trustees for sale: beneficiaries not necessary parties.*

2.—Leasehold property had become vested, as to two-thirds—under a will—in the plaintiffs as trustees upon trust for sale; and as to the remaining third—under another will—in the defendant G. during her life, and, after her death, in the other defendants as trustees upon trust for sale. An action having been brought for partition or sale of the property,—Held, that the trustees for sale being before the Court, an immediate order for partition might be made, without making the persons interested in the proceeds of sale parties to the action, or serving them with notice of the order, and without directing any preliminary enquiries. *Stace v. Gage*, 47 Law J. Rep. Chanc. 608; Law Rep. 8 Ch. D. 451.

3.—In a partition action trustees sufficiently represent their *cestuis que trustent*. *Simpson v. Denny*, Law Rep. 10 Ch. D. 28.

###### (c) *Representation of unascertained classes.*

4.—The action was for execution of the trusts of a will under which the following persons and classes had distinct interests dependent upon the construction of a reversionary gift: (1) the heir-at-law; (2) the next-of-kin; (3) children of the heir who had died before the period of distribution; (4) children of the heir living at that period; (5) children living at that period of next-of-kin who were then dead; (6) children of next-of-kin who had survived their parents and died before the period of distribution. The only parties before the Court belonged to class 5; and there was evidence that it would be difficult to answer enquiries as to 1, 2, 3 and 4:—On motion for judgment it was directed that persons should be appointed at chambers to represent, for the purpose of

determining the questions of construction, the persons and classes numbered 1, 2, 3 and 4; enquiries as to 5 and 6, and if it should appear that there were any persons within class 5 and that they had all since died, or that there were any persons within class 6, then the like direction as to those classes respectively; the chief clerk to certify with respect to the above matters independently in the first instance. *In re Peppitt's Estate*; *Chester v. Phillips*, 46 Law J. Rep. Chanc. 95; Law Rep. 4 Ch. D. 230.

The reversionary gift raised a distinct interest in H. R. P., who had gone to California in 1848, two years before the testator's death, and had not been heard of for twenty years past. The plaintiff was the actual legal personal representative of the testator:—The judgment directed that if it should appear that H. R. P. survived the testator and had no legal personal representative, a person should be appointed at chambers to represent his estate for the purposes of the action. *Ibid*.

(d) *Evidence in support.*

5.—In a partition action where persons claiming under a derivative title propose to take a judgment directing enquiries as to persons interested, and a sale dependent upon the answers to those enquiries, the only evidence necessary (in addition to the will creating the tenancy in common) is a general affidavit concisely verifying the statement of claim. Form of judgment in such an action. *Senior v. Hereford*, Law Rep. 4 Ch. D. 494.

6.—Where a plaintiff claimed partition of leaseholds to one-fourth of which he claimed to be entitled under a will which he charged the defendant with having suppressed, and which had never been proved:—Held, that he could obtain no relief until probate had been granted, and that the action must stand over pending the necessary proceedings in the Probate Division. *Pinney v. Hunt*, Law Rep. 6 Ch. D. 98.

(e) *Receiver.*

7.—Where the plaintiff is in possession the Court can appoint a receiver until the hearing under the Judicature Act, 1873, s. 25, sub-s. 8. *Porter v. Lopes*, Law Rep. 7 Ch. D. 358.

(f) *Form of judgment.*

8.—The judgment in an action under section 8 of the Partition Act, 1868, may provide for an application for sale being made by any person interested, as soon as it has been certified that all persons who are not parties to the action and who ought to be served with notice of the judgment have been so served, although the parties to the action are not interested in a moiety of the hereditaments proposed to be sold. The application for sale should be made in chambers, notwithstanding that the action has been commenced in a district registry. *Sykes v. Schofield*, 49 Law J. Rep. Chanc. 833; Law Rep. 14 Ch. D. 629.

(B) SALE UNDER THE PARTITION ACT, 1868, 31 & 32 Vict. c. 40.

(a) *Property incapable of partition: section 3.*

9.—In a partition action, the property in its nature being incapable of partition, the owners of three-sixteenths desired a sale by auction under the 3rd section of the Partition Act, 1868. The owners of the remaining thirteen-sixteenths objected to a sale, but offered to purchase the three-sixteenths at a valuation under the 5th section:—Held (reversing the decision of *Malins, V.C.*); that the 5th section of the Act does not apply where the 3rd section does; that under the circumstances the case came within the 3rd section, and that there must be a sale by auction. *Gilbert v. Smith* (App.), 48 Law J. Rep. Chanc. 352; Law Rep. 11 Ch. D. 78.

10.—In an action for partition, the property being incapable of actual partition, the owners of three-sixteenths desired a sale by auction under the 3rd section of the Partition Act, 1868. The owners of the remaining thirteen-sixteenths objected to a sale, but offered to purchase the three-sixteenths at a valuation under the 5th section:—Held (by Lord Blackburn and Lord Watson, *dissentiente* Lord Hatherley), affirming the decision of the Court of Appeal (see last case), that the 5th section of the Act does not apply where the 3rd section does; that the case was within the 3rd section, and that there must be a sale by auction. *Pitt v. Jones* (H.L.), 49 Law J. Rep. Chanc. 795; Law Rep. 5 App. Cas. 651.

(b) *Jurisdiction: anticipating period fixed by testator.*

11.—Where a testator has fixed the period at which his real estate is to be sold, the Court has no jurisdiction to anticipate that period, even on the application, under the Partition Acts, of persons equitably entitled to an undivided moiety for sale in lieu of partition. *Swains v. Denby*, 49 Law J. Rep. Chanc. 734; Law Rep. 14 Ch. D. 326.

(c) *Request for sale by married woman or infant.*

12.—A request for a sale on behalf of a married woman may be made by her counsel duly authorised. *Crookes v. Whitworth*, Law Rep. 10 Ch. D. 289.

[But see *Wallace v. Greenwood*, 50 Law J. Rep. Chanc. 289; Law Rep. 16 Ch. D. 362.]

13.—The request for sale on the part of an infant, under the Partition Act, 1876, s. 6, may be made by his next friend or guardian *ad litem*, as being the "person authorised to act" on his behalf in the action; the word "guardian" in the section meaning guardian *ad litem*; but the Court will not comply with a request for sale made on behalf of an infant under the above section unless it is satisfied that a sale is for the benefit of the infant. *Rimington v. Hartley*, Law Rep. 14 Ch. D. 630.

*Platt v. Platt* (28 W. R. 533) not followed. *Ibid*.

*(d) Sale on motion for judgment.*

14.—The Court has power, under section 4 of the Partition Act, 1868, to direct an immediate sale of the property, on motion for judgment on admissions contained in the pleadings. *Burnell v. Burnell*, 48 Law J. Rep. Chanc. 412; Law Rep. 11 Ch. D. 213.

*(e) Right to demand sale under section 4.*

15.—The 4th section of the Partition Act gives the owner of a moiety an absolute right to demand a sale, unless the opposing parties shew cause to the contrary. *Rome v. Gray*, 46 Law J. Rep. Chanc. 279; Law Rep. 5 Ch. D. 263.

16.—The plaintiff in a partition action was owner of one-fourth of the property, the subject of the action; he claimed a right to purchase at a valuation under section 5 of the Partition Act:—Held that the owner of the other three-fourths was entitled under section 4 to have a sale by auction. *Roughton v. Gibson*, 46 Law J. Rep. Chanc. 366.

The larger owner in case of purchase by her was directed to pay into Court one-half the purchase-money only. *Ibid*.

17.—The plaintiff and B. purchased nineteen leasehold houses as tenants in common. B. died, having bequeathed his moiety to trustees on trusts under which his widow was entitled to the rents in specie for her life. The plaintiff brought this action against B.'s trustees, and as owner of a moiety claimed a sale. It appeared that there would be no difficulty in effecting a partition, that the effect of a sale would be to diminish the income received by B.'s widow by one-half, and that the action would probably not have been brought but for ill-feeling existing between the parties:—Held, that those circumstances were a "good reason to the contrary" within the meaning of the Partition Act, section 4, and in the exercise of its discretion the Court directed a partition instead of a sale. *Saxton v. Bartley*, 48 Law J. Rep. Chanc. 519.

18.—Where the plaintiff and defendant were entitled in equal moieties to a mansion and 185 acres, and the plaintiff, who was in occupation of the house, desired a partition on the ground that he was tenant-for-life of a larger estate which almost surrounded and was intermixed with the 185 acres, and with which the mansion had been formerly held, but the defendant who was also an adjoining owner asked for a sale and wished to buy the property,—Held, that the plaintiff had shown no "good reason" against a sale. *Porter v. Lopes*, Law Rep. 7 Ch. D. 368.

*(f) Sale before certificate in county court: objection to title.*

19.—By a County Court decree a sale was directed of certain real estates, which had been devised to S. and others as tenants in common, and it was referred to the Registrar to make proper enquiries with reference to S. An affi-

davit was produced to him proving the fact that S. had not been heard of for more than seventeen years, and the heir of S. being before the Court the sale was carried out. No certificate having been made by the Registrar as to the result of the enquiries, and the produce of the sale being over 500*l.*, the cause was transferred to the Court of Chancery:—Held, on a motion by the purchaser, for his discharge on the ground that the sale was invalid, as having been made on an erroneous decree, and before any certificate by the Registrar as to the result of the enquiries, that although there was an error in the decree, yet there being a legal presumption on the evidence that S. died intestate and without issue, and his heir-at-law being a party to the suit, all the parties interested were, in fact, before the Court at the date of the decree, and they being willing to convey, the purchaser was bound to accept the title, and could not rely on the technical objection. *Rawlinson v. Miller*, 46 Law J. Rep. Chanc. 252; Law Rep. 1 Ch. D. 52.

*(g) Effect of decree for sale in working conversion.*

20.—The sale of an infant's real estate under a decree in a partition suit does not work a conversion.—*Steed v. Procco* (43 Law J. Rep. Chanc. 687) distinguished. *Foster v. Foster* 45 Law J. Rep. Chanc. 301; Law Rep. 1 Ch. D. 588.

21.—In a partition suit a sale was ordered of real estate to seven-eighths of which the plaintiff was entitled, and to one-eighth of which Mrs. Q., a married woman, was entitled. It was then arranged between the parties that the plaintiff should buy Mrs. Q.'s share, and by an order of the Court it was ordered that the plaintiff should pay 1,200*l.* as the purchase-money of such share into Court, and that on such payment the plaintiff should be let into possession, and all proper parties sign and execute a proper conveyance. The plaintiff paid the purchase-money, but then, before any conveyance was executed, Mrs. Q. died:—Held, that the purchase-money of Mrs. Q.'s share must be treated as real estate. *Mildmay v. Quicke* (App.), 46 Law J. Rep. Chanc. 667; Law Rep. 6 Ch. D. 553.

Mrs. Q. and her husband had severed in their defence, and Mrs. Q.'s solicitors had obtained a charging order and stop order on the fund in Court for the costs due to them in the suit, and appeared on the present hearing on further consideration:—Held, that they must bear their own costs of appearance by counsel as well as of the stop order. *Ibid*.

*(h) Election by married woman to take as personality.*

22.—Where a married woman is entitled to a share of purchase-money representing real estate sold by order of the Court in a partition action, she may, by separate examination in Court, elect to have her share in the money

treated as personality, and paid out to her husband. *Standerling v. Hall*, 48 Law J. Rep. Chanc. 382; Law Rep. 11 Ch. D. 652.

23.—The Court will not permit a married woman to elect to take her share of proceeds of sale of real estate as personality without her separate examination, even where the share does not amount to 200*l*. *In re Sham. Topham v. Burgoyne*, 49 Law J. Rep. Chanc. 213.

[But see *Wallace v. Greenwood*, 50 Law J. Rep. Chanc. 289; Law Rep. 16 Ch. D. 362.]

#### (C) COSTS.

24.—Excepting under special circumstances, the costs of a partition action should be borne by the parties in proportion to their interests, as declared by the judgment. *Cannon v. Johnson* (40 Law J. Rep. Chanc. 46; Law Rep. 11 Eq. 90) followed. The costs of a partition action can be taxed as between solicitor and client, only by the consent of the parties, otherwise they must be taxed as between party and party. *Ball v. Kemp-Welch*, 49 Law J. Rep. Chanc. 528; Law Rep. 14 Ch. D. 512.

### PARTNERSHIP.

#### (A) HOW CONSTITUTED: PARTICIPATION IN PROFITS.

#### (B) CONSTRUCTION AND EFFECT OF PARTNERSHIP ARTICLES.

- (a) *Covenant not to engage in other business.*
- (b) *Power to introduce son.*
- (c) *Power of exclusion: goodwill.*
- (d) *Goodwill: dissolution: death.*
- (e) *Parol variation: settlement of accounts.*

#### (C) PROPERTY OF PARTNERSHIP.

- (a) *Goodwill.*
  - (1) *Valuation of.*
  - (2) *Assignment of: right to use name of firm.*

- (b) *Banking accounts.*

#### (D) LIABILITY OF PARTNERSHIP FOR ACTS OF MEMBERS.

- (a) *Power to bind firm by bill of exchange.*
- (b) *Renewal of lease by one partner in own name.*
- (c) *Submission to arbitration: negligence of managing partner.*
- (d) *Joint and several liability: effect of judgment against co-partner.*
- (e)  *Ostensible partner.*

#### (E) DISSOLUTION.

- (a) *Return of premium.*
- (b) *Fraud: lien on assets for purchase-money.*
- (c) *Agreement for repayment of balances "out of the business."*
- (d) *Business carried on by surviving partner: division of profits.*

#### (F) CHANGE OF FIRM: NOVATION OF CONTRACT.

#### (G) RIGHTS OF CREDITORS OF BANKRUPT PARTNERSHIP.

#### (H) JURISDICTION AND PRACTICE IN PARTNERSHIP ACTION.

- (a) *Action to restrain breach of covenant.*
- (b) *Costs.*

#### (A) HOW CONSTITUTED: PARTICIPATION IN PROFITS.

1.—The Act 28 & 29 Vict. c. 86 does not protect persons lending names for partnership purposes under agreements to share in the profits unless the true relation of the parties towards each other is that of creditors and debtors, and not of active and dormant partners; and such agreements, in order to be effectual, must be in writing and signed by the parties. Various definitions of partnership considered. *Pooley v. Driver*, 46 Law J. Rep. Chanc. 466; Law Rep. 5 Ch. D. 458.

The defendants advanced a loan to a firm for the purposes of the partnership, under a deed of contract which was expressed to be made under the 28 & 29 Vict. c. 86, and provided that the defendants might inspect and take copies of the partnership account; that the partners should, during the continuance of the loan, pay to the defendants on account of the profits certain proportions of the yearly profits; and that within six months after the expiration or sooner determination of the partnership (which was for a term of fourteen years) a settlement of accounts should be made by the partners, who were then to repay the loan, less any sum overpaid on account of the profit, with an arbitration clause:—Held, that the defendants were liable as partners for the debts of the firm, notwithstanding the Act. *Ibid*.

2.—The question whether an agreement constitutes a partnership is one of intention to be gathered from the whole document; and if it contains the ordinary stipulations in partnerships between dormant and ostensible partners, it will be held to constitute a partnership *quoad* a party to the agreement advancing capital, notwithstanding a stipulation that the money is advanced by way of loan to the other parties, under the 1st section of the 28 & 29 Vict. c. 86, and that the advance shall not constitute him a partner; the mere disclaimer of intention being insufficient to override the clear meaning of the instrument. *In re Megeand; ex parte Delhasse* (App.), 47 Law J. Rep. Bankr. 65; Law Rep. 7 Ch. D. 511.

3.—In order to bring a case within 28 & 29 Vict. c. 86, there must be a contract in writing, shewing on the face of it that the transaction is a loan. Per Lord Chelmsford. *Syers v. Syers* (H.L.), Law Rep. 1 App. Cas. 174.

A partnership at will was held to be constituted by signing a document as follows: "In consideration of the sum of 250*l*. this day paid to me I undertake to execute a deed of co-partnership to you for one-eighth share in the profits of the Oxford Music Hall and Tavern, to be drawn up under the Limited Partnership Act of 28 & 29 Vict. c. 86, called an Act to

amend the Law of Partnership," and a letter denying the existence of a partnership was held not to have determined such partnership at will. In a suit for specific performance of such an agreement the defendant put in an answer shewing a desire that if the partnership ever existed it should be terminated:—Held, that it was thereby determined. *Ibid*.

4.—Participation in profits, though very cogent, and in some cases standing alone sufficient evidence of partnership, is not conclusive, and may be outweighed by other circumstances. *Pooley v. Drirer* (46 Law J. Rep. Chanc. 466; Law Rep. 5 Ch. D. 458) discussed. *Ex parte Tennant*; *in re Howard* (App.), Law Rep. 6 Ch. D. 303.

A father, whose son desired to be an underwriter and become a member of Lloyd's, became security for his son for 10,000*l.*, according to the rules of Lloyd's. The son executed a written agreement by which, after a recital of the security given by the father, he (the son) covenanted that S. alone should underwrite at Lloyd's in the son's name; that S. should be paid 200*l.* a year and one-fifth of the net profits of underwriting; that the father should be at liberty to withdraw the whole of his security on notice being given to the son and other necessary parties, and immediately after such notice S. should cease to underwrite for the son or in his name; and that half the net profits of underwriting, deducting the share of S., should, together with 25*l.* per annum, be considered as owing and be paid to the father by the son. The business was carried on in the son's name, the creditors being unaware that the father was connected with it:—Held, that no partnership was constituted between the father and the son. *Ibid*.

5.—A contract between two persons to realise a particular estate on a joint account, containing an express provision that such contract was not to be construed as a partnership, was nevertheless held to constitute a partnership. *Moore v. Davies*, Law Rep. 11 Ch. D. 261.

6.—S., a builder, who was engaged in building eight houses under an ordinary building contract, entered into an agreement (dated in 1877) with H., which recited that S. was indebted to H. in the sum of 88*l.*, and had requested H. to supply him with 50,000 bricks at a certain price, and to make further advances, and had agreed to enter into that agreement for the purpose of giving security for the repayment of the moneys then owing, and for the 50,000 bricks, and any further advances, and also "certain benefits to H., as a consideration for such advances," and whereby it was agreed that S. would, on demand, pay the 88*l.*, the price of the 50,000 bricks, and the further advances; that S. would forthwith proceed with two of the eight houses, and keep accounts of his expenditure in respect of them, which accounts were to be open to the inspection of H.; that S. would deposit his building contract with H. as security; that S. would use the 50,000

bricks in the erection of the two houses only; that S. would procure the leases of the two houses to be granted to the nominees of H.; that the leases should be sold at prices to be fixed by H., and the proceeds applied in payment of the moneys owing from S. to H.; that H. "should be entitled also, as a further consideration, and in addition to the said advances thereinbefore mentioned, absolutely to one moiety of the profit on the said two houses," such profit to be the difference between the net cost price of erection and the proceeds of sale; and that if the proceeds of sale of the two houses should be insufficient to pay the moneys owing to H., and the moiety of the profit before mentioned, the remaining houses should be charged therewith. The plaintiffs had supplied S. with timber for the erection of the two houses:—Held, that (independently of the statute, 28 & 29 Vict. c. 86. s. 1) the agreement entered into between S. and H. did not constitute H. a partner with S. in respect to the two houses, so as to render H. liable to the plaintiffs for the timber supplied by them. *Kelly v. Scott*, 49 Law J. Rep. Chanc. 383.

[And see BANKRUPTCY, D 11.]

#### (B) CONSTRUCTION AND EFFECT OF PARTNERSHIP ARTICLES.

##### (a) *Covenant not to engage in other business.*

7.—The common clause in partnership deeds that "neither partner shall engage in any other business, except on account of and for the benefit of the partnership," being merely a negative covenant, the only remedy for a breach thereof is an action for an injunction to restrain the continuance of the breach, or for a dissolution of the partnership, or for damages. Where, therefore, partnership articles contained such a clause, and one of the partners clandestinely purchased a share in another business, not in rivalry with the partnership, and from which no damage or loss whatever resulted to the partnership,—Held (affirming the decision of the Master of the Rolls), that the other partners had no equity against the defaulting partner for an account of the share and profits made by him in the other business. *Dean v. M'Dowell* (App.), 47 Law J. Rep. Chanc. 537; Law Rep. 8 Ch. D. 345.

Per Curiam.—In such a case the damages would be merely nominal. *Ibid*.

Semble.—In order to sustain an action for an account of profits in such a case, the clause should provide that, in case of any breach, the other partners shall have the option either of taking the share and profits of the defaulting partner in the other business, or of leaving him alone to bear the loss, if any, resulting therefrom.—*Somerville v. Mackay* (16 Ves. 382) distinguished. *Ibid*.

##### (b) *Power to introduce son.*

8.—By articles of partnership it was agreed that, except as thereafter provided, none of

the partners should hire any clerk or servant in the business, but T., one of the partners, might introduce two of his sons as pupils or clerks, at a salary, such sons to have an option of becoming partners. T. introduced two sons, the second of whom died without becoming a partner:—Held, that T. could not introduce or employ a third son as pupil or clerk. Held also, that an action to restrain breach of a partnership covenant would lie, though the plaintiff did not pray for a dissolution. *Watney v. Trist*, 45 Law J. Rep. Chanc. 412.

(c) *Power of exclusion: goodwill.*

9.—“Goodwill” held to be included in “other the estate and effects” of a partnership. *Stewart v. Gladstone*, 47 Law J. Rep. Chanc. 423; Law Rep. 10 Ch. D. 626.

The exercise of a power of exclusion held not to be invalidated by taking accounts to carry out the exclusion on a wrong basis.—*Blisset v. Daniel* (10 Hare, 493) distinguished. *Ibid.*

*Power to expel: arbitration clause: fraud.* [See ARBITRATION, 6.]

(d) *Goodwill: dissolution: death.*

10.—A clause in articles of partnership, providing in the case of the death of a partner within the time fixed by the articles for payment to his executors of a sum as purchase-money for his interest in the goodwill, was held to apply to the partnership at will carried on after the expiration of the term. The price of the goodwill was held on the construction of the whole deed to include capital. *Cox v. Wilmoughby*, 49 Law J. Rep. Chanc. 237; Law Rep. 13 Ch. D. 863.

(e) *Parol variation: settlement of accounts.*

11.—Where by partnership articles it was agreed that the accounts should be settled half-yearly, at Lady Day and Michaelmas, and that on the death of a partner his share should be taken at the amount settled by the last half-yearly account, and it was subsequently arranged by parol that the accounts should be settled once a year, namely, at Michaelmas:—Held, that this parol variation did not affect the money interests of the partners, and that upon the death of a partner in May the accounts must be settled up to the 25th of March previous. *Laves v. Laves*, Law Rep. 9 Ch. D. 98.

(C) PROPERTY OF PARTNERSHIP.

(a) *Goodwill.*

(1) *Valuation of.*

12.—It is now settled that goodwill is ordinarily a distinct part of the property of a trading partnership; and therefore under a provision in partnership articles for valuation of the partnership property and effects at its close, the goodwill is a matter for valuation.

*Hall v. Hall* (20 Beav. 139), and *Burfield v. Rouch* (31 Beav. 241) not followed. *Reynolds v. Bullock*, 47 Law J. Rep. Chanc. 773.

[And see No. 10 supra.]

(2) *Assignment of: right to use name of firm.*

13.—The assignment of the goodwill of a business includes the exclusive right, as against the assignor, to continue the use of the name and style of the firm under which the business has been carried on; and this rule applies although the name of the assignor is the name or part of the name of the firm. *Levy v. Walker* (App.), 48 Law J. Rep. Chanc. 273; Law Rep. 10 Ch. D. 436.

When a partner retires from a firm the *onus* is on him to give notice of the fact to all persons with whom the firm have had dealings; and if he do not, he will remain liable for the debts of the firm. *Ibid.*

Dictum of Cairns, L.C., in *Maxwell v. Hogg* (36 Law J. Rep. Chanc. 433; Law Rep. 2 Chanc. 307), that a man has a right of property in his name, dissented from. *Ibid.*

*Sale of goodwill: implied contract not to solicit custom of former customers.* [See VENDOR AND PURCHASER, 13, 14.]

(b) *Banking accounts.*

14.—Upon the death of one partner in a firm having an account at a banker's the surviving partner has a right to draw cheques upon the partnership account. *Backhouse v. Charlton*, Law Rep. 8 Ch. D. 444.

Where accounts are kept by a firm at a banker's, each partner having a right to draw cheques, and accounts are also kept there by the individual partners, the bankers are not bound to enquire into the propriety of any transfer of funds from and to the different accounts. *Ibid.*

*Farming business: tenants in common.* [See TENANT IN COMMON, 3.]

(D) LIABILITY OF PARTNERSHIP FOR ACTS OF MEMBERS.

(a) *Power to bind firm by bill of exchange.*

15.—A partner has no implied authority to bind his firm by issuing acceptances in blank. *Hogarth v. Latham & Company* (App.), 47 Law J. Rep. Q.B. 339; Law Rep. 3 Q.B. D. 643.

F., of the firm of L. & Co., gave an acceptance purporting to be made by the firm, with a blank for the name of the drawer. C. gave it to H. for value. H. filled up the bill, putting the name of his firm, H. & C., as drawers, and indorsed it to himself, knowing when he did so that F. had no authority to accept the bill:—Held, that L. & Co. were not liable on the bill at the suit of H. *Ibid.*

Semble, that a *bona fide* holder for value to whom the bill had come in a perfect state would have been entitled to sue. *Ibid.*

16.—Action on two bills of exchange, one

indorsed by the defendant W. B., the other addressed to him as "Mr. W. B., Chemical Works, R.," and accepted "W. B." The defendant W. B. carried on a chemical business at R. In 1878 he and the defendant M. became partners, and thenceforth carried on the same business at the same place under the same name, "W. B." The account of the defendant W. B. at the bank became the firm account, and no alteration was made either in the name or the mode of keeping that account. It was agreed that the defendant M. should be a dormant partner, that the defendant W. B. should manage the business, and that neither partner should draw, indorse or accept bills without the written consent of the other. The bills sued on were made after the formation of the partnership, and were negotiated by the defendant W. B. without the knowledge or consent of the defendant M. in renewal of accommodation transactions entered into prior to the partnership. The proceeds of the two bills were paid into the account at the bank. W. B. drew on this account for goods supplied to the business, but also drew out for his private purposes sums exceeding in amount the proceeds of these bills, and he never treated these accommodation transactions as part of the chemical business, nor did he consider that he was binding the partnership by them. The plaintiffs, when they discounted the bills, did not know of the existence of M. or of the partnership. The jury found that the signature "W. B." on each of the bills was intended to denote the firm:—Held (affirming the decision of the Common Pleas Division, 48 Law J. Rep. C.P. 428; Law Rep. 4 C.P. D. 204), that the finding of the jury was against the weight of evidence; that there was nothing to prevent the defendant M. from denying his liability upon these bills to which he was no party, and from which he derived no benefit; that he was not liable on them, and that judgment ought to be entered for him. Held also (reversing the decision of the Common Pleas Division), that where a signature to a bill is common to an individual, and a firm of which the individual is a member, and when the individual carries on no business separate from the firm, there is a presumption that the bill is given for and is binding on the firm. *The Yorkshire Banking Company v. Beaton and Mycock*; *The Leeds and County Bank v. The Same* (App.), 49 Law J. Rep. C.P. 380; Law Rep. 5 C.P. D. 109.

(b) *Renewal of lease by one partner in own name.*

17.—In a partnership at will there is no implied authority at law giving to one partner, without the consent of his co-partner, power, on the expiration of the lease of the premises where the partnership business is being carried on, to take a renewed lease of the same premises or a lease of any other premises, for the purpose of carrying on the partnership business, or any portion of it. *Clements v. Norris* (App.), 47

Law J. Rep. Chanc. 546; Law Rep. 8 Ch. D. 129.

The same rule, in the absence of stipulations to the contrary, applies to partnerships created by deed. *Ibid.*

Semble, that the rule would equally apply where partnership premises are burnt down or otherwise destroyed, or are taken by a railway or any other corporation under the powers of their special Act. *Ibid.*

(c) *Submission to arbitration: negligence of managing partner.*

18.—The managing partner of a colliery worked beyond the boundaries of the colliery without proper enquiry as to such boundaries, and, after notice from the adjoining owner that he was committing a trespass, recklessly continued such workings without consulting his co-partners under the *bona fide* belief that the adjoining owner had no title to the disputed area. An action against him for trespass and damages by the adjoining owner was referred to arbitration. The co-partners had no knowledge of the action until after the reference had been agreed to. They attended the reference, however, and did not object to it. The arbitrator found that a trespass had been committed, and assessed the damages at 6,000*l.* The co-partners refusing to contribute, the managing partner brought an action against them, claiming a declaration that the 6,000*l.* damages was a partnership debt, and that the defendants were bound to contribute rateably to it:—Held, that the co-partners had acquiesced in the arbitration, and were bound by the award, which was equivalent to a verdict by a jury, and the judgment of the Court thereon. *Thomas v. Atherton* (App.), 48 Law J. Rep. Chanc. 370; Law Rep. 10 Ch. D. 185.

But held, that, inasmuch as the managing partner had acted with culpable negligence in continuing to work in the disputed area after notice from the adjoining proprietor, and without consulting his co-partners, he alone was liable for the damages. *Ibid.*

(d) *Joint and several liability: effect of judgment against co-partner.*

19.—The defendant being jointly interested with W. & Co. in a contract in respect of which they were indebted to the plaintiff, the plaintiff recovered judgment against W. & Co. W. & Co. afterwards became bankrupt. The plaintiff proved against their estate, and then brought an action on the contract against the defendant:—Held, that the judgment obtained against W. & Co. was a bar to the action. *Kendall v. Hamilton* (App.), 47 Law J. Rep. C.P. 665; Law Rep. 3 C.P. D. 403; affirmed by the House of Lords, 48 Law J. Rep. C.P. 705; Law Rep. 4 App. Cas.

Partnership debts are not necessarily joint as well as several, the liability of the estate of a deceased partner on a partnership contract being based on the ground that where there is no

survivorship of interest there ought not to be survivorship of liability. *Ibid.*

(c) *Ostensible partner.*

20.—A bank proved in the liquidation of A. for a debt of 5,600*l.*, which they claimed from him, and afterwards sued for the same debt S., who had given them a guarantee of 1,000*l.* on behalf of A., and whom they alleged to have been a partner with A. S. denied the partnership, and ultimately a compromise was entered into between him and the bank, by which the bank were to receive 2,800*l.* in satisfaction of their claim against him and against another person who had given another guarantee on behalf of A. The guarantee of S. was given up to him, with a receipt indorsed upon it by the bank, expressed to be for 1,000*l.*, "in payment and discharge of the within guarantee, and also of all claims against him in reference to or in connection with" A.'s firm:—Held (by the Court of Appeal), that, assuming S. to have been a partner with A., this receipt did not operate as a release of S., and consequently that the bank were entitled to maintain their proof. *Ex parte Good; in re Armitage* (App.), 46 Law J. Rep. Bankr. 65; Law Rep. 5 Ch. D. 46.

Per Bacon, C.J.—The rule that a release of one joint debtor operates to release the other also is founded upon the fact that the second would, if he were sued by the creditor, have a right to enforce contribution from the first. The rule, therefore, does not apply to a release of a merely ostensible partner, between whom and the person with whom he has held himself out to be a partner, no such right of contribution exists. *Ibid.*

The bank's proof was sent to the trustee in December, 1872. In December, 1875, he gave notice of rejection:—Held (by Bacon, C.J.), that it was too late for the trustee to proceed in that way, but that the proper course would have been to apply to the Court under rule 73 to have the proof expunged. *Ibid.*

[And see BANKRUPTCY, D 14.]

*Stock in company in name of partners.* [See TRUST, D 16.]

*Stoppage in transitu: common partner.* [See SALE OF GOODS, 30.]

(E) DISSOLUTION.

(a) *Return of premium.*

21.—A partner whose misconduct has caused a dissolution is not entitled to any return of premium. *Bluck v. Capstick*, 48 Law J. Rep. Chanc. 766; Law Rep. 12 Ch. D. 863.

(b) *Fraud: lien on assets for purchase-money.*

22.—An incoming partner set aside the agreement for partnership on the ground of misrepresentation:—Held, that he was entitled, subject to the satisfaction of partnership debts, to a lien

on the partnership assets, both for purchase-money and partnership disbursements. *Mycock v. Beatson*, 49 Law J. Rep. Chanc. 127; Law Rep. 13 Ch. D. 384.

(c) *Agreement for repayment of balances out of the business.*

23.—An agreement between four partners recited that they had considerable sums employed in the business, which it might be impracticable or highly detrimental to repay from the business immediately after the retirement or decease of either of them, and provided that in case of the retirement or death of either, the balance due to such retiring or deceased partner should be "repaid out of the business by the continuing or surviving partners," by annual instalments of 2,000*l.* One partner died, and his share in the business was ascertained in suits instituted for that purpose and for the administration of his estate, to be 64,000*l.*, and the instalments were directed to be paid by the surviving partners, and the survivors and survivor of them, until further order. After some years two of the surviving partners died, and then the third became insolvent:—Held (affirming the decision of the Master of the Rolls), that the estates of the two were liable for the unpaid balance of the 64,000*l.* *Wilmer v. Currey* (2 De Gex & S. 347) observed upon. *Beresford v. Browning* (App.), 45 Law J. Rep. Chanc. 36; Law Rep. 1 Ch. D. 30.

(d) *Business carried on by surviving partner.*

24.—A. and B. entered into partnership in the business of oil and lamp sellers, for a term of ten years, under articles which provided that after payment of interest on their respective capitals, the net profits should be divided equally between them. The ten years' term having expired, A. and B. continued to carry on the business until A.'s death, as a partnership at will, on the footing of the partnership articles. After A.'s death, B., without the consent of A.'s representatives, and claiming (but as the Court held erroneously) to be entitled so to do under a clause in the articles, continued to carry on the business alone for a period of three years, retaining and employing the capital of A. therein. At the time of the constitution of the partnership, and at all times subsequently, the capital of A. largely exceeded that of B. In a partnership suit by the representatives of A. against B.,—Held, that after making a proper allowance to B. for his services in managing and carrying on the business during the three years, the profits earned during that period were divisible rateably between the representatives of A. and B., according to the proportions in which the partners were entitled to the capital employed in the business. *Yates v. Finn*, 49 Law J. Rep. Chanc. 188; Law Rep. 13 Ch. D. 839.

*Assignment of lease to one partner.* [See LEASE, 13.]



## (F) CHANGE OF FIRM: NOVATION OF CONTRACT.

25.—Previously to 1872 A. and B. were partners as bankers. In that year they took in two new partners. Very shortly after the partners were taken in A. died. In 1874 B. died. In 1875 the bank went into liquidation. The bank was in the habit of issuing deposit receipts to customers who left money with them. When the account on deposit was altered the note was changed. The depositors at the time of the bankruptcy all proved against the estate of the two surviving partners for the amount of their claims, but those who had deposits prior to the admission of the new partners desired to prove against the estate of A. Three test cases were taken, one in which the deposit receipt had not been changed since the new partners had been admitted. Another, where the note had been changed and the account increased. Another, where the note had been changed and the account diminished. All the depositors had received interest from the new partners:—Held, that in all three cases there had been complete novation, and that therefore the depositors were not entitled to prove against A.'s estate. *Bilborough v. Holmes*, 46 Law J. Rep. Chanc. 446; Law Rep. 5 Ch. D. 255.

*Continuation after dissolution: operation of old articles.* [See No. 10 supra.]

## (G) RIGHTS OF CREDITORS OF BANKRUPT PARTNERSHIP.

26.—The rights of the joint creditors of a firm cannot be affected by any act of one member of that firm. *Ex parte The Manchester and County Bank*; in *re Mellor*, 48 Law J. Rep. Bankr. 94; Law Rep. 12 Ch. D. 917 (on app. Law Rep. 13 Ch. D. 465).

A. & B. carried on in partnership, under the firm of A. & Co., a business of which the capital and stock-in-trade belonged to A. A. died, having appointed B. & C. his executors, with power to continue to carry on the business, and to employ in it his capital and stock-in-trade. B. & C. carried on the business under the same firm of A. & Co., and continued to use in it A.'s capital and stock-in-trade. B. & C. became bankrupt. Part of the stock-in-trade which existed at A.'s death still remained in specie:—Held, that the joint creditors of A. & B. were entitled to have the joint assets of A. & B. which remained in specie applied first in payment of their debts. *Ex parte Morley* (43 Law J. Rep. Bankr. 28) followed. In *re Simpson* (43 Law J. Rep. Bankr. 147) distinguished. *Ibid.*

*Joint and separate estates: proof of joint creditor against separate estate.* [See BANKRUPTCY, D 16.]

*Proof against joint estate: debt incurred by fraud.* [See BANKRUPTCY, D 17.]

DIGEST, 1875-1880.

## (H) JURISDICTION AND PRACTICE IN PARTNERSHIP ACTIONS.

## (a) Action to restrain breach of covenant.

27.—An action to restrain breach of a partnership covenant will lie, although the plaintiff does not pray for a dissolution. *Watney v. Trist*, 45 Law J. Rep. Chanc. 412.

## (b) Costs.

28.—The costs of a partnership action which has been occasioned by no fault on either side, should be ordered to be paid out of the partnership assets, following the ordinary rule in administration actions; but where the action has been rendered necessary by the misconduct of either party, the Court has jurisdiction, and should order that party to pay the costs occasioned by his misconduct. *Hamer v. Giles*; *Giles v. Hamer*, 48 Law J. Rep. Chanc. 508; Law Rep. 11 Ch. D. 942.

29.—The costs of a partnership action are payable out of the net partnership assets which remain after first paying the partnership debts, including any balances which may be found due from the partnership to either of the partners. *Austin v. Jackson* (Law Rep. 11 Ch. D. 942 n.) approved and followed. *Potter v. Jackson*, 49 Law J. Rep. Chanc. 232; Law Rep. 13 Ch. D. 845.

*Action: pleading: demurrer: Statute of Limitations.* [See LIMITATIONS, STATUTE OF, 13.]

*Admission of partnership agreement with denial that terms agreed upon.* [See PRACTICE, W 9.]

*Agreement between firm of publishers and author: determination of agreement by complete change of members of firm.* [See CONTRACT, 26.]

*Opening settled accounts between partners: liberty to surcharge and falsify.* [See ACCOUNT, 1.]

*Payment into court upon admission.* [See PRACTICE, V 5.]

## PARTY WALL.

In the absence of evidence as to the ownership of a party wall, a jury is entitled to find that it is owned by the adjoining proprietors as tenants in common. *The Standard Bank of British South Africa v. Stokes*, 47 Law J. Rep. Chanc. 554; Law Rep. 9 Ch. D. 68.

At common law there was no action against a tenant in common for pulling down a party wall for the purpose of building a new one, or for repairing a party wall, or for replacing an old foundation by a new one, even without notice to the adjoining owner. In such a case there is no destruction or destructive waste. *Ibid.*

But the rights and duties of adjoining owners, as defined by the Metropolitan Buildings

Act, 1855, are in substitution of those which existed at common law, and are not merely an addition thereto. *Ibid.*

The plaintiffs and the defendant were adjoining owners, and there was a party wall between their respective premises. The defendant gave notice, under the 85th section of the Metropolitan Buildings Act, of his intention to raise the party wall and do other works. By that section the plaintiffs were to express assent to the work within fourteen days, or dissent was to be inferred. Each party appointed a surveyor; but the plaintiffs never expressed assent to the work, although correspondence passed between them and the defendant. By the 7th section, in case of difference between the parties, unless they agree to appoint one surveyor, they are each to appoint one, and those two to appoint a third, and such one or two or three surveyors are to make an award:—Held, that, in the absence of consent by the plaintiffs, a difference had arisen, and the defendant was committing a breach of the Act in proceeding with the work without such appointment of surveyors and award. *Ibid.*

The term "raise" in sub-section 6, section 82, is not confined to raising above ground, but includes raising a wall by something added to the foundation. *Ibid.*

[And see *LANDLORD AND TENANT*, 3; *METROPOLIS*, 2, 3.]

#### PASSAGE COURT.

[See *LIVERPOOL PASSAGE COURT*.]

#### PASSENGER.

[See *CARRIER*, 7-20; *RAILWAY*, 14-19.]

*Passenger duty*. [See *RAILWAY*, 31.]

#### PAST MEMBERS.

[See *COMPANY*, H 58, 59.]

#### PASTURE.

*Lammas lands: suit by commoner*. [See *COMMON*, 1, 2.]

*Lease from local board: right to pasturage*. [See *HIGHWAY*, 15.]

*Right of lord to approve waste*. [See *COMMON*, 4.]

#### PATENT.

##### (A) VALIDITY OF.

- (a) *Report of public officer: want of novelty.*
- (b) *First and true inventor: prior publication.*
- (c) *Patent for combination.*

##### (B) SPECIFICATION.

- (a) *Provisional specification: nature and effect of.*
- (b) *Claim in: nature and effect of.*
- (c) *Amendment of.*

##### (C) SEALING.

##### (D) LICENCE.

##### (E) INFRINGEMENT.

- (a) *What amounts to.*
- (b) *Principal and agent.*
- (c) *Contract with Crown: purchase or agency.*
- (d) *Injunction: when granted.*

##### (F) EXPIRATION: FOREIGN PATENT.

##### (G) PROLONGATION OF.

##### (H) JURISDICTION AND PRACTICE IN ACTIONS AS TO.

- (a) *Injunction against foreign sovereign.*
- (b) *Discovery and particulars.*
- (c) *Evidence of breaches.*
- (d) *Mode of trial.*
- (e) *Interlocutory injunction.*
- (f) *Effect of disclaimer.*

[Regulations as to preparation and passing of letters patent. 43 & 44 Vict. c. 10. ss. 3, 4.]

##### (A) VALIDITY OF.

##### (a) *Report of public officer: want of novelty.*

1.—The Board of Trade, under the City of London Gas Act, 1868, appointed three gas referees, whose duties were to inspect the works of the gas companies, with the view of ascertaining the means adopted therein for purifying gas, and to test the gas and prescribe the maximum of impurity to be allowed; the companies were required by the Act to give to the referees all facilities for the performance of their duties. The referees made experiments at the respondents' works, with a view to improvements in the purification of gas; and in January, 1872, drew up a report thereon, which three months afterwards they submitted to the Board of Trade. Shortly before the report was submitted, one of the referees took out a patent for improvements, the principle of which had been indicated in the report:—Held (affirming the decision of the Court of Appeal, 45 Law J. Rep. Chanc. 843; Law Rep. 2 Ch. D. 819), that the material processes claimed by the specification were shewn by the evidence to have been known to and used by the public before the date of the patent, and that, even if it had been otherwise, all the contents of the report were public property, so that there was no consideration for a patent. Held, also, that the referees were bound to give to the public the full benefit of all discoveries made by them in the course of their official investigations, and that it was *ultra vires* for them to agree to treat any communication by one of their number as confidential, so as to enable him to take out a patent for such discovery. *Patterson v. The Gas Light and Coke Company (H.L.)*, 47 Law J. Rep. Chanc. 402; Law Rep. 3 App. Cas. 239.

##### (b) *First and true inventor: prior publication.*

2.—Where the only substantial evidence of prior publication of an invention lay in the fact

that a single copy of an American book had been presented to the Patents Office library, where it had remained uncatalogued and unnoticed,—Held, that this did not amount to a prior publication. *Plimpton v. Spiller*, 47 Law J. Rep. Chanc. 211; Law Rep. 6 Ch. D. 412.

3.—A man is the “first and true inventor” within the Statute of Monopolies (21 Jac. 1. c. 3), if he is the first to introduce a foreign invention; or is the first to take out a patent in the case of contemporaneous inventions; or patents an invention previously invented, but not sufficiently disclosed. *Plimpton v. Malcolmson*, 45 Law J. Rep. Chanc. 505; Law Rep. 3 Ch. D. 531.

To avoid a patent on the ground of prior publication, it is not enough that the invention has been published; it must have been made public to such an extent that a knowledge of it may be assumed among persons conversant with the subject. *Lang v. Gisborne* (31 Law J. Rep. Chanc. 769) explained. *Ibid*.

A prior publication to avoid a patent must contain a description equivalent to a sufficient specification. *Betts v. Neilson* (37 Law J. Rep. Chanc. 321; on app. 40 Law J. Rep. Chanc. 317) dissented from. *Ibid*.

The test of a sufficient specification is whether it would enable an ordinary workman, exercising the actual knowledge common to the trade, to make the machine. It need not give information of every detail, but it must not tax invention. *Ibid*.

4.—Where an invention is communicated in England by one British subject to another, the person to whom the communication is made is not the “first and true inventor” within 21 Jac. 1. c. 3. The legal personal representative of an inventor who has not taken out a patent cannot take out a patent for such invention. *Murden v. The Saville Street Foundry and Engineering Company*, Law Rep. 3 Ex. D. 203.

5.—An English patent may be granted to a foreigner resident abroad for an invention communicated to him by another foreigner resident abroad. *In re Wirth's Patent* (L.C.), Law Rep. 12 Ch. D. 303.

#### (c) Patent for combination.

6.—A new and beneficial combination and application of old machinery is properly the subject-matter of a patent. *Harrison v. The Anderston Foundry Company* (H.L. Sc.), Law Rep. 1 App. Cas. 574.

Per Lord Cairns.—Where there is a patent for a combination, the combination and the merit must both be proved by evidence. *Ibid*.

#### (B) SPECIFICATION.

##### (a) Provisional specification: nature and effect of.

7.—The office of a provisional specification is not to give information to the public, but only to protect the inventor until the filing of

the final specification. And where a provisional specification contained a description of an invention, part of which was omitted from the final specification,—Held, that the part omitted did not amount to prior publication of the invention so as to avoid for want of novelty a subsequent patent taken out for such omitted part. *Stoner v. Todd*, 46 Law J. Rep. Chanc. 32; Law Rep. 4 Ch. D. 58.

8.—A provisional specification claimed to use a solution composed of two substances for the purpose of preserving animal substances. The complete specification lodged six months afterwards claimed a solution composed of one only of the substances so claimed, such substance having been previously used alone. In an action for infringement of the patent by using such one substance alone,—Held, that although the process set forth in the provisional specification was new, yet the patent did not secure to the patentee the invention of the use of the one substance in solution as set out in the complete specification. *Bailey v. Robertson* (H.L. Sc.), Law Rep. 3 App. Cas. 1055.

##### (b) Claim in: nature and effect of.

9.—The office of the claim at the end of a specification is to tell the public exactly what the invention is, and when, according to the natural construction of the claim, a patent would be void for want of novelty, the patentee is not at liberty to refer to the descriptive part of and drawings accompanying the specification, for the purpose of validating the patent by shewing that some other is the true construction. *Hinks v. The Safety Lighting Company*, 46 Law J. Rep. Chanc. 185; Law Rep. 4 Ch. D. 607.

10.—The object of a claim is not to claim anything which is not mentioned in the specification, but to disclaim something which might otherwise be supposed to be claimed, and it must always be construed with reference to the whole context of the specification. *Plimpton v. Spiller* (App.), 47 Law J. Rep. Chanc. 211; Law Rep. 6 Ch. D. 412.

A patentee of an improvement in skates, in his specification described his invention as relating to an improvement in attaching the rollers or runners to the stock or footstand of a skate, whereby the rollers or runners were made to turn or cant by the rocking of the stock or footstand, so as to facilitate the turning of the skate on the ice or floor; and he described also a mode of making the skate applicable to ice by substituting flat runners for rollers, and a mode of securing the runners by clamping them between pairs of discs, the runners having smooth angular edges so that they might be reversed when the inner edges lost their angularity by wear, and a fresh sharp edge obtained, and when both edges of one surface became worn, the runner might be inverted and two more sharp edges obtained; and he claimed first applying rollers or runners to the stock

or footstand of a skate as described, so that the rollers or runners might be clamped or turned so as to cause the skate to be moved in a curved line; and, secondly, the mode of securing the runners and making them reversible as above described:—Held, that the second part of the claim was to be read with reference only to the first part, and not as a substantive claim, and that the want of novelty in the second part of the claim did not invalidate the patent. *Ibid*.

11.—Where part of an invention described in a specification was old, but the rest was novel, useful and valuable,—Held, that the specification was valid as to the rest, that portion being therein properly claimed. *Frearson v. Lee*, Law Rep. 9 Ch. D. 48.

12.—A specification which describes one of the materials to be used by a generic term comprising a variety of species the majority of which would be unsuitable, is bad. So also if a skilled mechanic would not, without performing a series of experiments, be able to construct the machine from the description. By the specification of a machine for crushing meal, the rollers between which the meal was to be crushed were described as “to have a surface consisting of material containing so much silica as not to colour the meal or flour. I prefer to make them of iron coated with china, and finally turned with diamond tools;” and the claim was (*inter alia*) for the use of material “of the hardness required.” It was necessary to make the rollers of a very hard china, such as had scarcely been made in Europe during this century, and peculiarly tough, and to fix them in a peculiar manner to an iron core or spindle which carried them; and according to the evidence, a miller or a skilled mechanic would not, without making a series of experiments, discover of what china the rollers must be made or how they must be fixed to the spindle:—Held (affirming the judgment of Fry, J.), that the specification was bad and the patent invalid. *Plimpton v. Malcolmson* (see No. 3 *supra*) explained. *Wegmann v. Corcoran* (App.), Law Rep. 13 Ch. D. 65.

Per Fry, J.—Although the grantee of a patent for an invention communicated to him by a foreigner resident abroad is only bound to tell the public all that he himself knows, yet if the original inventor has not told him enough to enable him so to describe the invention as that it can be constructed by the aid only of the specification, the patent will be invalid. *Ibid*.

#### (c) Amendment of.

13.—By a mistake of the copyist words constituting a complete line of the draft specification were omitted from the engrossment filed at the Great Seal Patent Office:—Held, that the Master of the Rolls, as Keeper of the Records, had jurisdiction to order the mistake to be amended. *In re Johnson's Patent*, 46 Law J. Rep. Chanc. 555; Law Rep. 5 Ch. D. 503.

#### (C) SEALING.

14.—In certain cases, after granting one patent, the Crown will grant a second for a similar invention. Two patentees, D. and R., applied independently, on the 29th of April, 1879, for letters patent for similar inventions, and R.'s letters patent having been sealed on the 25th of July, 1879, on the 5th of August, 1879, he entered an opposition to the sealing of D.'s letters patent. Fraud was not suggested:—Held, that D.'s letters patent ought to be sealed and dated as of the day of application, which was also the date of R.'s letters patent. *Ex parte Bates and Redgate* (38 Law J. Rep. Chanc. 501; Law Rep. 4 Chanc. 577) questioned. *In re Dering's Patent* (L.C.), Law Rep. 13 Ch. D. 393.

15.—The word “caveat” in the Patent Law Amendment Act, s. 20, applies to anything in the nature of an opposition at any stage, and is not confined to opposition before the Lord Chancellor. There is jurisdiction to seal a patent notwithstanding that application for the seal may not have been made within the period of provisional protection and one month further, provided the delay has been caused by opposition, and in such a case the Lord Chancellor can extend the time for filing the final specification beyond one month after the expiration of the term of the provisional specification. *In re Somerset and Walker's Patent* (L.C.), Law Rep. 13 Ch. D. 397.

#### (D) LICENCE.

16.—The licensee of a patent cannot dispute the novelty or utility of the patent or the sufficiency of the specification. *Clark v. Adie*—No. 2 (H.L.), 46 Law J. Rep. Chanc. 598; Law Rep. 2 App. Cas. 315.

A. obtained a patent for “improvements” in horse-clipping machines, and granted to C. a licence to manufacture machines in accordance with the patent. The improvement described in A.'s specification comprised, among other items, the parallelism of the teeth of the comb, and the addition of an extra comb-plate when required so as to regulate the length to which the hair might be clipped. C. manufactured clippers not having parallel teeth nor an extra comb-plate, but, in other respects, similar to those patented by A., and resisted payment of the royalties under the licence in respect of these clippers, on the ground that the remaining items were old, and that the specification must be so construed as to exclude these items from the claim. As evidence in support of this contention, it was sought on behalf of C. to produce prior specifications of English and American inventions:—Held, that upon the natural construction of the specification it included a claim, not only in respect of the parallel teeth and extra comb-plate, but also in respect of the other items, and that C. was not entitled to contest the validity of the patent so as to excuse him from payment of royalty under the licence. *Ibid*.

## (E) INFRINGEMENT.

(a) *What amounts to.*

17.—Mere private experiment is not an infringement of a patent, but private manufacture with a view to sale is, although no sale has actually taken place. *Frearson v. Loe*, Law Rep. 9 Ch. D. 48.

18.—Where a patent is taken out for an invention consisting of the combination in one thing of several subordinate parts, the question whether or not a person taking and using a certain number of such parts and omitting others has taken the substance of the invention and thereby infringed the patent is a question not of law, but of fact, to be decided by the jury or Court with reference to the circumstances of the particular case. *Clark v. Adie* (H.L.), 46 Law J. Rep. Chanc. 585; Law Rep. 2 App. Cas. 315.

Where a patent is taken out for a combination, it will protect the several subordinate parts and all subordinate combinations of such parts, provided the subordinate parts or combinations be themselves properly subjects for a patent, and also provided that it is clearly and precisely defined by the specification what are the subordinate parts or combinations of parts in respect of which, as well as the entire combination, protection is claimed. *Ibid.*

A patent was taken out for "improvements" in a machine for clipping horses and other animals: one of the improvements relied upon was the combination in the machine of four things, viz.—first, the arching of the cutter-plate so as to give elasticity; second, the use of fixed stems instead of screws to connect the cutter-plate and comb-plate; third, the adjustment of certain nuts and washers so as to prevent friction; and fourth, the mode of communicating motion to the cutter-plate so as to bring it into the true time of cutting. The first item was not described or referred to in the specification, but was merely shewn by certain drawings attached to the specification; each of the three other items was admitted to have been well known and used in the trade; the specification did not contain any distinct claim in respect of the combination:—Held, that the specification was not sufficient, and that the combination of the four items was not protected by the patent. *Ibid.*

19.—Where a patent has been granted in England for a new process for producing more cheaply a chemical product which was previously known, the importation and sale in England of this substance made abroad according to the patented process is an infringement of the patent. *Von Heyden v. Neustadt* (App.), Law Rep. 14 Ch. D. 230.

20.—A patentee is entitled, for the protection of his patent, to give notice to persons intending to deal with a rival patentee that they are about to infringe his patent, provided such notices are given *bona fide*, and with no collateral object; and a patentee is not bound to

follow up such notices by legal proceedings, and will not be liable to an action for damages for, or to be restrained by injunction from, giving the notices. If, however, a patentee in bad faith, or knowing that he has no valid patent, threatens customers of a rival patentee with proceedings, with a view to the injury of his rival in his trade, he will, like any other person making a false assertion to the injury of another in his trade, be liable to an action for damages, and may be restrained by injunction. A patentee is also liable to be restrained by injunction, notwithstanding his *bona fides*, from continuing to issue notices of infringement unless he proves in an action where the validity of his patent is in issue that his allegation of infringement is true. *Rollins v. Hinks* (41 Law J. Rep. Chanc. 358; Law Rep. 13 Eq. 355); *Asmann v. Lund* (43 Law J. Rep. Chanc. 655; Law Rep. 18 Eq. 330), considered. *Halsey v. Brotherhood*, 49 Law J. Rep. Chanc. 786; Law Rep. 15 Ch. D. 514.

A subsisting patent is presumed, *prima facie*, to be valid, and an interlocutory injunction will be granted to restrain an infringement, even when the patent is of recent date, unless the defendant by his affidavits shews a *prima facie* case of invalidity to be determined at the trial. *Ibid.*

Leave to amend a statement of claim, which contains an allegation of fraud which fails, will not be granted. *Ibid.*

21.—In April, 1877, the plaintiffs bought from a company in liquidation a patent for an invention which rendered nitroglycerine insensible to shocks and capable of transport. The plaintiffs sued the defendants for infringement, pleading that the defendants had purchased "lithofracteur" (a substance made in infringement of their patent) from K. & Co., of Cologne, which was delivered to the defendants at the mouth of the Thames, and kept by them either ashore or afloat in British waters, and thence exported. The defendants admitted purchasing lithofracteur prior to April, 1877. At the trial the plaintiffs applied to add the liquidator of the old company as co-plaintiff in respect of acts prior to April, 1877:—Held, that the application must be refused and the evidence confined to acts since April, 1877. Evidence was opened shewing that on three occasions lithofracteur had been imported to London by K. & Co., the bills of lading being made out in the names of K. & Co., and indorsed by their manager in London to the defendants, who held an importation licence. The defendants having duly obtained leave from the Custom House authorities, had in their own names procured the delivery of these cargoes and transhipped them to lighters, from which they were afterwards taken and dealt with by K. & Co.'s London manager. There was evidence that in procuring the delivery of the cargoes the defendants acted merely as Custom House agents for K. & Co., and without remuneration. The plaintiffs asked leave to amend by charging

the defendants with infringement as such agents:—Held, that the plaintiffs ought to have liberty to amend without going into further evidence, the defendants to have liberty to amend their defence and adduce evidence in support, and the costs to be reserved. Held also (on the amended pleadings), that, having regard to the nature of the invention, the procuring the delivery and transhipment of the cargoes was a user of the plaintiffs' invention, and that whether the defendants were acting as owners or as agents for the owners, the plaintiffs were equally entitled to an injunction against them, with an enquiry as to damages, and costs. *Nobel's Explosive Company v. Jones & Company*, 49 Law J. Rep. Chanc. 726.

(b) *Principal and agent.*

22.—Improvements in "card" covered rollers were the subject of a patent. A., under a contract to "clothe" rollers for B., made cards, and in accordance with the patent. The cards were "nailed" to the rollers by a person selected by B., and paid by A.:—Held, that the "nailer" was the agent of A., and that A. had infringed the patent. *Sykes v. Howarth*, 48 Law J. Rep. Chanc. 769; Law Rep. 12 Ch. D. 826.

(c) *Contract with Crown: purchase or agency.*

23.—The appellant was the assignee of several letters patent for the improvement of breech-loading fire-arms; and the respondents were a joint stock company who entered into a contract with the Secretary of State for War for the manufacture and delivery of certain rifles for the public service. By the terms of the contract the tubes and stocks of the rifles were to be manufactured by the respondents out of materials supplied by the Government. In manufacturing the rifles the respondent made use of the processes which were the subject of the letters patent. In an action for infringement of the letters patent,—Held (reversing the judgment of the Court of Appeal), that the contract did not make the respondents servants or agents of the Crown within the decision in the case of *Feather v. The Queen* (6 B. & S. 257; 35 Law J. Rep. Q.B. 200), so as to absolve them from the infringement, and that they were consequently liable in the action. *Dixon v. The London Small Arms Company* (H.L.), 46 Law J. Rep. Q.B. 617; Law Rep. 1 App. Cas. 632.

Remarks on the case of *Feather v. The Queen*. Ibid.

(d) *Injunction when granted.*

24.—Where the owners of a ship fitted it up with pumps which infringed the plaintiff's patent,—Held, that the master as well as the owners could be restrained by injunction from using such pumps. *Adair v. Young* (App.), Law Rep. 12 Ch. D. 13.

25.—Injunction granted to restrain a threatened infringement, although there was no proof

of actual infringement. *Freeman v. Lee*, Law Rep. 9 Ch. D. 48.

[And see No. 20 supra.]

(F) EXPIRATION: FOREIGN PATENT.

26.—Where letters patent in this country bear date before, but are sealed after the grant of a patent in a foreign country, they must be taken to have been granted on the day of the date and not of the sealing, and will not therefore, under section 25 of 15 & 16 Vict. c. 83, expire with the foreign patent. *Holste v. Robertson* (App.), 46 Law J. Rep. Chanc. 1; Law Rep. 4 Ch. D. 9.

(G) PROLONGATION OF.

27.—Rule VI. of the Rules in Patent Cases provides that "parties served with petitions shall lodge in the Council office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayer of such petition:—Held, that such notice need not state the particulars of such objections. *In re Ball's Patent*, 48 Law J. Rep. P.C. 24; Law Rep. 4 App. Cas. 171.

Section 41 of the 15 & 16 Vict. c. 83 does not apply to proceedings in the Privy Council. Ibid.

28.—When the utility of a patent has not been tested by actual employment, a *prima facie* presumption is raised against its utility, and such presumption can only be rebutted by strong evidence that the patent is of practical utility. *In re Hughes' Patent*, 48 Law J. Rep. P.C. 20; Law Rep. 4 App. Cas. 174.

(H) JURISDICTION AND PRACTICE IN ACTIONS AS TO.

(a) *Injunction against foreign sovereign.*

29.—The Court has no jurisdiction to restrain a foreign sovereign from removing out of this country property belonging to him, alleged to be an infringement of an English patent, and the fact that such sovereign has submitted to be a defendant for the purpose of recovering his property does not affect his rights. *Vavasour v. Krupp* (App.), Law Rep. 9 Ch. D. 351.

(b) *Discovery and particulars.*

30.—Interrogatory whether certain articles made by the defendant were not identical with those patented by the plaintiffs, if not, how they differed, and as to the names and addresses of persons by whom the defendant alleged prior user. Answer that the articles differed, but the difference could only be pointed out by ocular demonstration:—Held, sufficient. Held also, that the defendant was bound to set forth some of the names and addresses. *Crossley v. Tamey*, Law Rep. 2 Ch. D. 533.

31.—In a patent suit the form of order requiring the defendant to furnish further and better particulars of objections, should follow the words of section 41 of the Patent Law

Amendment Act, and require the defendant to state in his particulars merely "the place or places at, or in which, and in what manner, the invention is alleged to have been used or published prior to the date of the patent," but under such an order the defendant must furnish full and sufficient particulars. *Flomer v. Lloyd* (App.), 45 Law J. Rep. Chanc. 746; Law Rep. 6 Ch. D. 297.

(c) *Evidence of breaches.*

32.—Particulars of breach of a patent alleged divers sales between certain dates, and particularly to two persons. An answer of the defendant admitted a sale to H., a third person. Evidence of the transaction with H. was admitted against the defendant. *Sykes v. Howarth*, 48 Law J. Rep. Chanc. 769; Law Rep. 12 Ch. D. 826.

(d) *Mode of trial.*

33.—An order was made in a patent cause by a Judge at Chambers, at the instance of the plaintiff, in opposition to the wish of the defendant, that the cause should be tried before a Judge sitting with assessors, and that the plaintiff's notice of trial, given before the Judicature Acts, should be varied accordingly; the defendant thereupon gave notice that he required to have the issues of fact tried before a Judge and jury; the plaintiff having applied to have assessors nominated in pursuance of the order, the Judge at Chambers referred the whole matter to the Court:—Held, that the defendant was entitled, under the Judicature Act, 1875, Order XXXVI., rule 3, to have the case tried by a Judge and jury, instead of by a Judge and assessors. *Sugg v. Silber*, 45 Law J. Rep. Q.B. 460; Law Rep. 1 Q.B. D. 362.

(e) *Interlocutory injunction.*

34.—On motion for an interlocutory injunction in an action for the infringement of a patent the balance of convenience is to grant the injunction on the plaintiff's undertaking as to damages if the defendant's trade is a new one, but to refuse an injunction on the defendant's undertaking to account if his business is old established. *Plimpton v. Spiller* (App.), Law Rep. 4 Ch. D. 286.

(f) *Effect of disclaimer.*

35.—D. obtained an interlocutor against T. for infringing D.'s patent (granted in 1866), and he afterwards altered his specification by disclaimer, and brought another action for infringement against T. The Court of Session having held that they could not grant a second interdict, but having sisted process to allow D. to bring a complaint for breach of the original interdict:—Held, that this was irregular and could not be sustained, and that D. ought to have instituted a fresh action. The House, however, in order to stop litigation at the re-

quest of both parties, reviewed the judgment complained of. *Dudgeon v. Thomson* (H.L. Sc.), Law Rep. 3 App. Cas. 34.

When the invention patented is a combination of instruments, an infringement of the patent must be an infringement of the combination. *Ibid.*

*Stay of proceedings pending appeal.* [See PRACTICE, C 70.]

PAUPER.

[See POOR LAW.]

*Action by.* [See PRACTICE, U 38.]

*Security for costs by.* [See COSTS, 59, 68.]

PAUPER LUNATIC.

[See LUNATIC, 20-24; POOR LAW, 16, 17.]

PAVING.

*Expenses and rates.* [See METROPOLIS, 6-10; PUBLIC HEALTH ACT, 18-29.]

PAWNBROKER.

The Pawnbrokers Act, 1872, which in section 25 provides that "the holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and the pawnbroker shall accordingly (on payment of the loan and profit) deliver the pledge to the person producing the pawn-ticket, and he is thereby indemnified for so doing," governs the rights between pawnbroker and customer only, and the pawnbroker who delivers the pledge to the person producing the pawn-ticket is not indemnified against the true owner, without whose consent the pledge has been made, but the true owner is entitled to enforce his rights at common law by action. *The Singer Manufacturing Company v. Clark*, 49 Law J. Rep. Exch. 224; Law Rep. 5 Ex. D. 37.

PAYMENT.

*Appropriation of payments: debtor and creditor.* [See DEBTOR AND CREDITOR, 3; TRUST, C 7.]

*Into court.* [See PRACTICE, V; LANDS CLAUSES ACT, 17, 18; TRUSTEE RELIEF ACT, 1-5.]

*Mistake of law, under.* [See MISTAKE, 1.]

*Out of court.* [See LANDS CLAUSES ACT, 29-40; PRACTICE, V; TRUSTEE RELIEF ACT, 6-8.]

PEDIGREE.

[See EVIDENCE, 27.]

PEERAGE.

*Scotch Earldom.*

1.—The creation by Queen Mary in 1565 of the Earldom of Mar proved by a long train of

circumstantial evidence. *The Mar Peorage Case*, Law Rep. 1 App. Cas. 1.

The force and effect of the *prima facie* presumption of law that a peerage is descendible to heirs male considered and explained. *Ibid.*

*Use : shifting clause.*

2.—One clause in a patent may be invalid without the patent itself being invalid. *The Buckhurst Peerage Case* (H.L.), Law Rep. 2 App. Cas. 1.

There can be no use or trust in the case of a peerage. *Ibid.*

A patent of a barony contained a proviso thus: "and we will that if the said R. W. or any other person taking under this patent shall succeed to the earldom of W., and there shall upon or at any time after the occurrence of such event be any other younger son or any heir male of the body of any such other younger son, then, and as often as the same shall happen, the succession to the honours and dignities hereby created shall devolve upon the heir who would be next entitled to succeed to the dignity if the person so succeeding to the earldom of W. was dead without issue male:—"—Held, that the proviso was invalid, and that a baron succeeding to the earldom retained his barony. *Ibid.*

*Circumstantial evidence, effect of.* [See EVIDENCE, 29.]

## PENAL SERVITUDE.

[Minimum term of, after previous conviction for felony or crime. Provisions as to tickets-of-leave. 42 & 43 Vict. c. 55. ss. 1, 2.]

## PENALTY.

*Common informer : action by corporation.*

1.—A corporation cannot sue for penalties as a common informer unless expressly authorised by statute. Where, therefore, by a private Act penalties were imposed for selling one sort of coal for another within twenty-five miles of the General Post Office, and the penalty was recoverable by the "person or persons who shall inform or sue for the same,"—Held, that the plaintiffs, who were a corporation, could not sue for the penalty. *The Guardians of St. Leonard's, Shoreditch, v. Franklin*, 47 Law J. Rep. C.P. 727; Law Rep. 3 C.P. D. 377.

*Action for, under by-law of railway company.*

2.—A by-law was made by a railway company, under the powers of their special Act, and of 8 & 9 Vict. c. 20, in these terms: "No passenger will be allowed to enter any carriage on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket, specifying the class of carriage and the stations for conveyance between which such ticket is issued. . . . Any person travelling without a ticket, or failing or refusing to shew

or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of the journey":—Held, that in order to entitle the company to take proceedings under this by-law, a notice of demand for the fare due must have been first made to the passenger who refused or was unable to produce his ticket. *Brown v. The Great Eastern Railway Company*, 46 Law J. Rep. M.C. 231; Law Rep. 2 Q.B. D. 406.

[And see RAILWAY, 15–19.]

*Action for : judgment obtained by covin and collusion.* [See COVIN AND COLLUSION.]

*Bond : loan payable by instalments : balance payable upon default in payment of one instalment.* [See BOND, 3.]

*Building contract : penalty or liquidated damages.* [See CONTRACT, 37.]

*Default in payment of, under 35 & 36 Vict. c. 94, s. 51, sub-s. 2.* [See ALEHOUSE, 20.]

*Disqualification of alderman.* [See MUNICIPAL CORPORATION, 1.]

*Dramatic copyright : licence by one owner.* [See COPYRIGHT, 10.]

*Mortgage by instalments : proviso making whole debt enforceable on default.* [See MORTGAGE, 4.]

*Pharmacy Act : incorporated company.* [See PHARMACY ACT.]

*Public Health Act, under : frontage line.* [See INJUNCTION, 3.]

*Vestryman acting without qualification.* [See VESTRY, 2.]

## PENSION.

[The Pensions Commutation Act, 1871, amended. 39 & 40 Vict. c. 73.]

[Gratuities to Admiralty and War Office clerks. 41 & 42 Vict. c. 53.]

For the purpose of determining whether property is vested in a married woman for her separate use, the whole frame of the deed, will or other instrument creating the trust must be narrowly examined. *In re Peacock's Pension Fund*, 48 Law J. Rep. Chanc. 265; Law Rep. 10 Ch. D. 490.

In a deed the words "comfortable maintenance," coupled with a restriction on alienation and the whole frame and intention of the deed, held to vest personal property in a married woman to her separate use. *Ibid.*

*Civil servant : Superannuation Act.* [See PETITION OF RIGHT, 4.]

*Retired county court judge, pension of, liable to seizure under sequestration.* [See PRACTICE, AA 2.]

*Sequestration of civil servant's pension.* [See DIVORCE, 40.]



PER CAPITA OR PER STIRPES.

[See WILL CONSTRUCTION, K 9.]

PER-CENTAGE.

*Accounts: court fees.* [See PRACTICE, A 6, 7.]

PERJURY.

*Jurisdiction of justices: petty sessions.*

1.—S. was arrested on an illegal warrant and taken before the justices in petty sessions, who, having heard the charge and taken evidence in support of it, convicted him. No objection was taken by S. to the jurisdiction of the justices. H. was afterwards indicted for perjury committed by him at the hearing of the case at petty sessions, and convicted, subject to the opinion of the Court for Crown Cases Reserved as to the jurisdiction of the justices in petty sessions, the objection thereto being that S. was arrested on a warrant which had been issued without any information in writing or on oath:—Held (Kelly, C.B., *dissentiente*), that the charge having been made in the presence of S., who was then and there called upon to answer it, it was immaterial, so far as the jurisdiction of the justices to hear that charge was concerned, whether the accused was before them voluntarily or otherwise, or on legal or illegal process, and therefore that H. was rightly convicted of perjury. *Reg. v. Hughes*, 48 Law J. Rep. M.C. 151; Law Rep. 4 Q.B. D. 615.

*Evidence on trial for.*

2.—Upon the trial of an indictment for perjury, alleged to have been committed at the hearing of an action in the High Court of Justice, the production by the officer of the Court of the copy of the writ filed under Order V. rule 7, and the copy of the pleadings filed under Order XLI. rule 1, of the Rules of the Supreme Court is sufficient evidence that the action existed. *Reg. v. Scott* (C.C.B.), 46 Law J. Rep. M.C. 259; Law Rep. 2 Q.B. D. 415.

[And see CRIMINAL LAW, 3.]

PERPETUITY.

[See REMOTENESS.]

PERSONÆ DESIGNATÆ.

[See WILL CONSTRUCTION, H 3.]

PERSONATION.

[See ELEMENTARY EDUCATION ACTS, 1.]

PETITION.

[See PRACTICE.]

*For adjudication in bankruptcy.* [See BANKRUPTCY, M 37-39.]

*To wind up company.* [See COMPANY, H 1-19.]

DIGEST, 1875-1880.

*Election.* [See MUNICIPAL CORPORATION, 12, 13; PARLIAMENT, 2-6.]

*In other cases.* [See LANDS CLAUSES ACT; TRUSTEE ACT; TRUSTEE RELIEF ACT; SETTLED ESTATES ACT.]

PETITION OF RIGHT.

1.—Demurrer allowed to a petition of right presented by a medical officer in the army claiming compensation for loss sustained by him by reason of his being deprived of an appointment alleged by him to be permanent, and compulsorily retired upon half-pay. *In re Tufnell*, 45 Law J. Rep. Chanc. 731; Law Rep. 3 Ch. D. 164.

2.—The Crown is entitled, under the provisions of the Petitions of Right Act, 1860, and the Rules of Court, 1875, to discovery of documents by a suppliant in a petition of right. *Tomlinson v. The Queen* (App.), 48 Law J. Rep. Exch. 453; Law Rep. 4 Ex. D. 252.

3.—Where the British sovereign makes a treaty of peace with a foreign state, and receives, under it, money from the foreign state on account of debts due to British subjects from subjects of the foreign state,—Held (affirming the decision of the Queen's Bench Division, 45 Law J. Rep. Q.B. 249; Law Rep. 1 Q.B. D. 487), that no petition of right will lie to compel the payment or distribution of the money to the British subjects to whom such debts are due. *Rustomjee v. The Queen* (App.), 46 Law J. Rep. Q.B. 238; Law Rep. 2 Q.B. D. 69.

4.—The Superannuation Act, 1859, s. 2, after prescribing a scale of superannuation allowances for civil servants according to length of service, provides that, if any question shall arise as to the claim of any civil servant for superannuation under this clause, "it shall be referred to the Commissioners of the Treasury, whose decision shall be final." Where, therefore, a civil servant makes a claim for superannuation allowance to the Commissioners of the Treasury, and their Lordships decide upon the amount of the allowance to be made, such decision is final, and cannot afterwards be made the subject of litigation in any civil tribunal. *Cooper v. The Queen*, 49 Law J. Rep. Chanc. 490; Law Rep. 14 Ch. D. 311.

5.—Where moneys were paid by executors under a Royal Warrant to the Solicitor to the Treasury as trustee for the Crown on the supposition that there were no next-of-kin of the testator, on the next-of-kin coming forward and establishing their title under a petition of right, the Crown was declared liable to pay interest at 4l. per cent. on all moneys come to the hands of the Solicitor to the Treasury from the times they respectively were received by him. *In re Gosman*, 49 Law J. Rep. Chanc. 590; Law Rep. 15 Ch. D. 67.

*By way of appeal against order of Board of Trade detaining vessel.* [See MERCHANT SHIPPING ACT, 1.]

## PETROLEUM.

[The Petroleum Act, 1871, continued and amended. 42 & 43 Vict. c. 47.]

## PEW.

Pew rents of a district church, constituted under the Church Building Acts, are livings appointed for ecclesiastical ministers, within the 13 Eliz. c. 20, and a mortgage of them is therefore void. *In re Lovson; ex parte Arrowsmith* (App.), 47 Law J. Rep. Bankr. 46; Law Rep. 8 Ch. D. 96.

*Prescriptive right to.* [See CHURCH AND CLERGY, 17.]

## PHARMACY ACT.

In sections 1, 15 of the Pharmacy Act, 1868, which prohibit under a penalty any person, not being a duly registered chemist, from selling or keeping open shop for the sale of poisons, or using the name of chemist or druggist, the word "person" does not include a corporation; and a corporation having a department for sale of drugs under the management of a duly registered chemist, are not liable to the penalty. *The Pharmaceutical Society of Great Britain v. The London and Provincial Supply Association (Lim.)* (App.), 49 Law J. Rep. Q.B. 338; Law Rep. 5 Q.B. D. 310; (H.L.), 49 Law J. Rep. Q.B. 736; Law Rep. 5 App. Cas. 857.

Semble (per Lord Blackburn), a corporation employing an unqualified manager would be liable. *Ibid.*

Decision of the Queen's Bench Division (48 Law J. Rep. Q.B. 387; Law Rep. 4 Q.B. D. 313) reversed. *Ibid.*

## PHOTOGRAPH.

[See COPYRIGHT, 14.]

## PICTURES.

[See COPYRIGHT, 14-18.]

## PIERS AND HARBOURS.

1.—Where a pier Act requires the exhibition on a board of "the duties for the time being authorised to be taken as thereinbefore mentioned," and supplies a schedule of maximum tolls, but allows their being reduced and raised again by resolution of the proprietors, it is not enough for the board to contain the schedule, but it must exhibit the tolls as at the time in question fixed by resolution. *Gregon v. Potter*, 48 Law J. Rep. M.C. 86; Law Rep. 4 Ex. D. 142.

2.—A provisional order made by the Board of Trade, under the general Pier and Harbour Act, 1861, sanctioned by a confirmation Act, authorised the construction of a pier at the end of a street, and blocking it up:—Held, that

any public right of way from the street to the breach was taken away. *The Mayor of Yarmouth v. Simmons*, 47 Law J. Rep. Chanc. 792; Law Rep. 10 Ch. D. 518.

A public right of way is not saved as a right of the Crown under the above sections of the general Act. *Ibid.*

If there is an inconsistency between the general Act and a subsequent special Act, the latter will prevail. *Ibid.*

[And see HARBOUR; HARBOURS, DOCKS, AND PIERS CLAUSES ACT.]

## PILOT AND PILOTAGE.

[See SHIPPING LAW, R.]

## PLACES OF WORSHIP SITES ACT.

A father, tenant for life, is the guardian of his infant son, tenant in tail in remainder, for the purpose of concurring under the Places of Worship Sites Act, 1873, in a grant by himself of a site for a church—*Baggallay, J.A.*, dissenting; and semble,—the Court has no power to appoint a guardian for the purpose of concurring under the Act. *In re The Marquis of Salisbury* (App.), 45 Law J. Rep. Chanc. 250; Law Rep. 2 Ch. D. 29.

## PLATE.

[Duties and Marks on Foreign Plate. 39 & 40 Vict. c. 35. ss. 1, 2, sch.]

[Importation of Plate. 39 & 40 Vict. c. 36. s. 42.]

## PLEADING.

[See PRACTICE, W.]

## PLEASURE-GROUNDS.

*Laying out of, under Public Health Act.* [See PUBLIC HEALTH ACT, 15.]

## PLEDGE.

[Of goods or documents of title to goods by vendor retaining or vendor obtaining possession of documents of title after sale. 40 & 41 Vict. c. 39.]

D. & Sons pledged, in return for advances, certain goods to the plaintiffs. The plaintiffs agreed to deliver the goods to them or their order as sold on condition of D. & Sons paying over to the plaintiffs the proceeds of any sale of those goods. D. & Sons afterwards obtained advances on a pledge of the same goods from the defendants, who were unaware of the dealings between D. & Sons and the plaintiffs. D. & Sons then told the plaintiffs that they had obtained a purchaser, and would hand over the price received, and thus induced the plaintiffs to transfer the goods to them. The advances

made by the defendants not having been repaid they sold the goods. In an action by the plaintiffs against the defendants for conversion,—Held (affirming the judgment of the Queen's Bench Division, 48 Law J. Rep. Q.B. 524; Law Rep. 4 Q.B. D. 394), that the plaintiffs could not recover, and that they had parted with the property in the goods, and could not maintain an action against the *bona fide* transferees for value. *Babcock v. Lawson* (App.), 49 Law J. Rep. Q.B. 408; Law Rep. 5 Q.B. D. 284.

*Factors Act: agent: power to pledge as against true owner.* [See FACTORS ACTS, 3.]

*Pawnbroker, pledge with.* [See PAWNBROKER.]

*Pledges not entitled to foreclosure.* [See MORTGAGE, 39.]

### POLICY OF INSURANCE.

[See INSURANCE; MARINE INSURANCE.]

*Gift of, without assignment: right of donee to retain policy.* [See GIFT, 2.]

*Mortgage: priority: notice.* [See MORTGAGE, 22.]

*Novation of contract by policy holder.* [See COMPANY, G 4-9.]

*Trustee Relief Act, payment into Court under.* [See TRUSTEE RELIEF ACT, 2, 3.]

*Under Married Woman's Property Act.* [See HUSBAND AND WIFE, 47, 48.]

### POLL.

*When duly demanded at meeting of company.* [See COMPANY, D 47.]

### POLLUTION OF STREAM.

[See RIVER, 2-4.]

### POOR LAW.

#### (A) GUARDIANS OF THE POOR.

#### (B) AUDITOR: DISALLOWANCE OF EXPENSES OF.

#### (C) SETTLEMENT.

(a) *By residence, under 39 & 40 Vict. c. 61. s. 34.*

(b) *Abolition of derivative settlement: 39 & 40 Vict. c. 61. s. 35.*

(1) *Pauper under the age of sixteen.*

(2) *Wife deriving settlement from husband.*

(3) *Birth settlement.*

#### (D) REMOVAL.

(a) *Payment of relief by parish without removal thither.*

(b) *Irremovability: break of residence.*

(c) *Order of removal: change of law pending order.*

(d) *Pauper lunatic.*

#### (E) CRIMINAL LUNATIC.

[Provisions for the arrangement of divided parishes and for the amendment of the law relating to the relief of the poor. 39 & 40 Vict. c. 61.]

[Amendment of the law relating to District Auditors. 41 & 42 Vict. c. 6.]

[Amendment of the Divided Parishes Act, 1876. 42 Vict. c. 12.]

[Provisions for the adjustment of parish boundaries and for the amendment of the Acts relating to poor relief. 42 & 43 Vict. c. 54.]

[The Union Assessment Committee Acts extended to single parishes under separate boards of guardians. 43 & 44 Vict. c. 7.]

#### (A) GUARDIANS OF THE POOR.

1.—By 4 & 5 Will. 4. c. 76. s. 38, every justice of the peace residing in any parish and acting for the county, riding or division in which a union is situated, is made an *ex officio* guardian, and is entitled to act as such:—Held, that the term "county" in the above section included the county of a town. *Reg. v. Pearce*, 49 Law J. Rep. M.C. 81; Law Rep. 5 Q.B. D. 386.

*Are a charity.* [See CHARITY, 21.]

#### (B) AUDITOR: DISALLOWANCE OF EXPENSES OF.

2.—The 27 & 28 Vict. c. 39 (Union Assessment Committee Amendment Act, 1864), s. 7, enacts that when the overseers of a parish incur any expense in making out any valuation list or supplemental list, with the consent of the vestry, they may charge it to the poor rate:—Held, that the consent of the vestry need not be given before the expense is incurred. *Reg. v. The Overseers of Chorlton-upon-Medlock*, 45 Law J. Rep. M.C. 33; Law Rep. 1 Q.B. D. 62.

#### (C) SETTLEMENT.

(a) *By residence, under 39 & 40 Vict. c. 61. s. 34.*

3.—The operation of 39 & 40 Vict. c. 61. s. 34, by which persons who reside for three years in a parish in such manner as to have acquired in each of such years a *status* of irremovability in accordance with the statutes in that behalf shall be deemed to be settled there, is not retrospective so as to include cases where such *status* has been acquired and lost before the Act came into operation. *Reg. v. The Guardians of the Ipswich Union*, 46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 522.

4.—Where an illegitimate child had when a few weeks old been placed by its mother in the care of another person, with whom it lived from 1871 to 1878, in the A. union, the mother during that period not having exercised any dominion over it, but having virtually abandoned it,—Held, that this constituted a residence of the child in the A. union within the meaning of section 34 of the Divided Parishes and Poor

Law Amendment Act, 1876 (39 & 40 Vict. c. 61). *Reg. v. The Guardians of the Leeds Union*, 48 Law J. Rep. M.C. 129; Law Rep. 4 Q.B. D. 323.

5.—By 39 & 40 Vict. c. 61. s. 34, persons who have resided for three years in a parish, so as in each of such years to have acquired a *status* of irremovability, shall be deemed to be settled therein. L. (a pauper) was born in 1810, in the appellants union, and in 1865 went to reside in the G. union, where he continued to live till 1877. In 1869, after the pauper had acquired a *status* of irremovability in G. for upwards of three years, he met with an accident, and from that time till 1877 received relief from the G. union. In 1877 the pauper went to reside in the respondent union, and shortly afterwards became chargeable there. On the 6th of October, an order for his removal to the appellants union was made by justices, and was confirmed on appeal by the sessions, subject to a special case:—Held, that the order of removal was wrongly made to the appellants union, inasmuch as the pauper had acquired a settlement in G. union, under 39 & 40 Vict. c. 61. s. 34, by virtue of his residence there. *The Guardians of Brompton Union v. The Guardians of Carlisle Union*, 47 Law J. Rep. M.C. 114; Law Rep. 3 Q.B. D. 479.

Semble, that the residence required by 39 & 40 Vict. c. 61. s. 34, may be acquired partly before and partly after the passing of the Act. *Ibid.*

(b) *Abolition of derivative settlement: 39 & 40 Vict. c. 61. s. 35.*

(1) *Pauper under the age of sixteen.*

6.—By 39 & 40 Vict. c. 61. s. 35, derivative settlements are abolished, except in the case of a wife from her husband, and in the case of children under the age of sixteen, who are to take the settlement of their father or widowed mother up to that age, and to retain the settlement so taken until another is acquired. S. & A., husband and wife, had a settlement in the appellants union, and were the parents of three paupers, who became chargeable to the respondent union, whilst under the age of sixteen and unemancipated. S. died in 1873, leaving his widow and the paupers him surviving. The widow married again and thus acquired a fresh settlement in the T. union:—Held, that the settlement of the paupers was in the appellants union where their father was born. *The Guardians of Kynsham Union v. The Guardians of Beadminster Union*, 47 Law J. Rep. M.C. 73; Law Rep. 3 Q.B. D. 344.

7.—A pauper had previously to the passing of 39 & 40 Vict. c. 61, acquired, before he was sixteen years old, a derivative settlement from his father; he had not acquired any settlement in his own right:—Held, that his derivative settlement was not taken away by 39 & 40 Vict. c. 61. s. 35 (abolishing derivative settlements except in the cases there mentioned), the Court being of opinion—first, that the section was retrospective as well as prospective; but secondly, that the exceptions were also, notwithstanding

the use of future words, retrospective as well as prospective. *The Guardians of Westbury-on-Tyeme Union v. The Overseers of Barrow-in-Furness*, 47 Law J. Rep. M.C. 79; Law Rep. 3 Ex. D. 88.

8.—A pauper born in 1840 in the appellants union, had never acquired a settlement in her own right. The pauper's father was born in the L. union, and he had never acquired a settlement elsewhere:—Held (following the decision in *The Guardians of the Westbury Union v. The Overseers of Barrow-in-Furness*, 47 Law J. Rep. M.C. 79; see last case), that the 35th section of 39 & 40 Vict. c. 61 was retrospective in its operation, and that therefore the pauper at the age of sixteen acquired her father's settlement, which was a birth settlement and could be ascertained without enquiry into his derivative settlement. *The Guardians of the Hereford Union v. The Guardians of the Warwick Union*, 48 Law J. Rep. M.C. 111.

9.—Up to the time of the passing of the Poor Law Amendment Act, 1876, an illegitimate child followed the settlement of the mother until the age of sixteen, but after sixteen the child's birth was the place of settlement. Section 35 of the Poor Law Amendment Act, 1876, which, by paragraph 1, abolishes derivative settlements, enacts by paragraph 2 that "an illegitimate child shall retain the settlement of its mother until such child acquires another settlement:—"

—Held, that this statute did not act retrospectively so as to affect the case of an illegitimate pauper who, before the passing of the statute, had attained the age of sixteen. *The Guardians of Tenterden Union v. The Guardians of St. Mary, Islington*, 47 Law J. Rep. M.C. 81.

10.—Where a mother's settlement has been derived from marriage, an illegitimate child under sixteen, born after the mother's divorce, does not take the mother's settlement. *The Overseers of Manchester v. The Guardians of St. Pancras*, Law Rep. 4 Q.B. D. 409.

(2) *Wife deriving settlement from husband.*

11.—Section 35 of 39 & 40 Vict. c. 61, after abolishing derivative settlements save in the case of a wife from her husband and of a child under the age of sixteen (which child was to take the settlement of its father or widowed mother up to that age, and to retain such settlement until another was acquired), proceeds to enact "that if any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born." J. F., the husband of a criminal lunatic pauper, was born in the appellants parish, but his derivative settlement was in G., in the county of Suffolk, whither he went a few weeks after his birth to

reside with his parents. J. F. had never acquired an independent settlement, nor had his wife any settlement in her own right:—Held, that the 35th section of 39 & 40 Vict. c. 61, had no application, inasmuch as the case fell within one of the exceptions therein mentioned, and that accordingly the legal settlement of the pauper was in G., and not in the appellant parish. *The Guardians of Great Yarmouth v. The Clerk of the Peace of London*, 47 Law J. Rep. M.C. 61; Law Rep. 3 Q.B. D. 232.

(3) *Birth settlement.*

12.—The pauper was born in the respondent parish, and had not acquired a settlement in her own right. Her father was born in D., in the appellant union, and had acquired through his father, the pauper's grandfather, a derivative settlement in M.:—Held, that the case came within the last part of 39 & 40 Vict. c. 61. s. 35, and that, as the pauper's settlement could not be ascertained without enquiring into her parent's derivative settlement, she must be deemed to be settled in the respondent parish, the place of her birth. *The Guardians of Woodstock Union v. The Churchwardens, &c., of St. Pancras*, 48 Law J. Rep. M.C. 1; Law Rep. 4 Q.B. D. 1.

(D) REMOVAL.

(a) *Payment of relief by parish without removal thither.*

13.—An order for the removal of a pauper in 1810 was produced on the hearing of an appeal in which it was desired to prove his last settlement. And it was proved that after the date of the order the pauper, who was a cripple, was living in the parish from which he was so ordered to be removed, and that while there and down to his death in 1844 he regularly received payment of relief from the parish to which he had been ordered to be removed; but there was no evidence of his ever having been in fact bodily removed. There was no record of any appeal against the order:—Held, that the payment of relief by the parish adjudged liable to maintain under the order was a sufficient execution of the order, without any evidence of there having been an actual removal, and although the pauper continued to reside in the parish from which he had been ordered to be removed. *Reg. v. The Clifton Union*, 46 Law J. Rep. M.C. 209; Law Rep. 2 Q.B. D. 540.

(b) *Irremoveability: break of residence.*

14.—A man, who had resided for fifteen years in B. union, being compelled to quit the house in which he had been living, took another about half a mile distant, and moved with his family and furniture into it: at the time he did so he was not aware that his new house was situate in C. union. He discovered this fact the next morning, having slept only one night in the house, and at once moved back to a house in the B. union:—Held, on appeal against an order

of removal from the B. union to the place of his settlement, that he had ceased to reside in the B. union, and was therefore removable. *The Guardians of Newark Union v. The Guardians of Glanford Brigg Union*, 46 Law J. Rep. M.C. 285; Law Rep. 2 Q.B. D. 522.  
[And see No. 3 supra.]

(c) *Order of removal: change of law pending order.*

15.—An order of removal was made by justices in 1875 for the removal of a pauper to the appellants' union, on the ground of his having acquired a settlement by birth there. On the 21st of April, 1877, the Queen's Bench Division, on a Special Case stated by the Sessions, quashed the order, on the ground that the pauper's settlement was that acquired from his grandfather in the parish of B., which was no part of the appellants' union. Between the date of the hearing at the Sessions and the decision of the High Court, namely, on the 15th of August, 1876, the Divided Parishes, &c., Act (39 & 40 Vict. c. 61) came into operation, and abolished, *inter alia*, the derivative settlement upon which the appellants relied; and on the 15th of May, 1877, the justices made a fresh order for the removal of the pauper to the appellants' union:—Held, that such last-mentioned order of removal was wrongly made, inasmuch as the parties were concluded by the quashing of the previous order of removal. Held also, that as there was in respect of the pauper a pending order of removal within the meaning of 39 & 40 Vict. c. 61. s. 36, the provisions of that Act relating to settlements had no application. *The Guardians of Barton Regis v. The Churchwardens, &c., of Liverpool*, 47 Law J. Rep. M.C. 62; Law Rep. 3 Q.B. D. 295.

(d) *Pauper lunatic.*

16.—By 24 & 25 Vict. c. 55. s. 3, a married woman who has been deserted by her husband, and who, after such desertion, has resided for three years (altered by 29 & 30 Vict. c. 11. s. 1, to one year) in such a manner as would, if she were a widow, render her exempt from removal, shall not be liable to be removed from the parish wherein she shall be resident unless her husband returns to cohabit with her. A pauper lunatic was married to G. B. in 1840, and resided with her husband for some ten years afterwards. She committed adultery, and was eventually told by her husband to leave his house on that account. She left accordingly, and never returned to cohabit with him. From 1865 up to the time of her removal to the lunatic asylum in 1877 she resided at Chatham, and such residence was in such manner and under such circumstances as would have rendered her irremovable had she been a single woman. The husband's settlement was in the M. Union:—Held, that there had been a "desertion" of the pauper by her husband within the meaning of 24 & 25 Vict. c. 55. s. 3, and that consequently

the pauper did not follow his settlement, but was irremovable from Chatham. Whether the pauper acquired a settlement by residence at Chatham under the Divided Parishes, &c., Act (39 & 40 Vict. c. 61) s. 34, *quære*. *Reg. v. The Guardians of the Maidstone Union*, 49 Law J. Rep. M.C. 25; Law Rep. 5 Q.B. D. 31.

17.—It is provided by 16 & 17 Vict. c. 97. s. 67, that in certain cases a pauper deemed to be a lunatic may be examined by the officiating clergyman of the parish in which he is resident, and that an order may be made by that clergyman and another person, directing him to be received into an asylum. It is enacted by 7 & 8 Vict. c. 101. s. 56, that for the purpose of relief, settlement and removal of poor persons, the workhouse of a union shall be considered as situated in the parish to which such poor person is chargeable:—Held (affirming the decision of the Queen's Bench Division), that an order for the removal of a pauper lunatic under 16 & 17 Vict. c. 97, is not an order within section 56 of 7 & 8 Vict. c. 101, and that such an order made by the officiating clergyman of C. for the removal of a pauper then in the workhouse of C. was duly made, although the pauper did not, before entering the workhouse, reside in the parish of C. *Reg. v. Pemberton*. *Reg. v. Smith* (App.), 49 Law J. Rep. M.C. 29; Law Rep. 5 Q.B. D. 95.

An appeal from an order of the Queen's Bench Division, discharging a rule for a *certiorari* to bring up an order of justices in petty sessions, is not an appeal from an inferior Court within section 45 of the Judicature Act, 1873, and no leave to appeal is required. *Ibid*.

[And see LUNATIC, 20–24.]

#### (E) CRIMINAL LUNATIC.

18.—The last legal settlement of a criminal lunatic into which the justices are directed to enquire by section 7 of 3 & 4 Vict. c. 54, upon an application for an order of maintenance, is the settlement at the date of such enquiry, and not at the date of the order for removal to the asylum. *The Guardians of Barton Regis Poor Law Union v. The Clerk of the Peace for Berks*, 48 Law J. Rep. M.C. 51; Law Rep. 4 Q.B. D. 37.

[And see No. 11 *supra*.]

#### POOR RATES.

[See RATES.]

#### PORTIONS.

(a) *Presumption against double portions, when it arises.*

(b) *Parol evidence to rebut presumption.*

(a) *Presumption against double portions, when it arises.*

1.—The property of a married woman settled as she should appoint by deed or will, and in

default of appointment to her for life for her separate use, with remainder, if she survive her husband, to her executors, administrators and assigns, without restraint on anticipation, is in equity separate estate for the purpose of being bound by her general engagements. *Mayd v. Field*, 45 Law J. Rep. Chanc. 699; Law Rep. 3 Ch. D. 584.

A., a married woman having property so settled on her, covenanted during the coverture (but without reference to herself as a married woman) to cause 1,000*l.* to be paid after her death to the trustees of her daughter's marriage settlement. The trusts were for the daughter for life for her separate use, without power of anticipation, with remainder to the husband for life, with remainder to the children of the marriage in the usual form. This covenant did not refer to the power or the property comprised in the original settlement. Afterwards by her will made in execution of the power during the coverture, A. bequeathed 1,000*l.* on trust for the daughter for life, for her separate use, with remainder on certain trusts for her children slightly different from those declared under the covenant. She also bequeathed the residue of her estate upon certain trusts:—Held, first, that though A.'s covenant could not be supported as an execution of her power, yet her property was so settled on her as to be bound by the covenant as to her general engagement binding her separate estate. Secondly, that the gift of the 1,000*l.* by the will was a satisfaction to the extent to which the daughter and her children took under the settlement. *Ibid*.

A. survived her husband. After his death she made savings out of her settled property, and sold some furniture, also part thereof, and invested the proceeds in stock:—Held, that neither the savings nor the stock passed under her will. *Ibid*.

2.—A father on the marriage of his daughter covenanted to settle a share of his property at his decease, so that (in the events which happened) her children became entitled as tenants in common. The covenantor by his will gave legacies to A., one of such children, and to B. and C., the son and daughter of another, who and whose husband were dead:—Held, that A., B. and C. were put to their election, A. whether he would take his legacy or his share under the covenant, B. and C. whether they would take their legacies or their interest in the covenant derived through their parents as heirs and next-of-kin. *Bennett v. Holdsworth*, 46 Law J. Rep. Chanc. 646; Law Rep. 6 Ch. D. 671.

3.—A father covenanted to leave three-eighths of his property in settlement on one of his two daughters. By his will he settled half his residue on her:—Held, that notwithstanding differences in the trusts under the two instruments, only one portion was intended, and the beneficiaries were put to their election which instrument they would take under. *Russell v. St. Aubyn*, 46 Law J. Rep. Chanc. 641; Law Rep. 2 Ch. D. 398.

(b) *Parol evidence to rebut presumption.*

4.—T., on the marriage of his daughter W., in 1867, covenanted with the trustees of her settlement that his executors would, if he should predecease his wife, then, within six months after her death, transfer to the trustees of the settlement 2,000*l.* consols to be held upon trust for such persons as the daughter should, with consent of the trustees, by deed or will appoint; and in default of appointment upon trust for the daughter for life, then for the husband for life, then for the children of the marriage; and then, in default of children, for the husband absolutely. T., by his will, made in 1874, bequeathed 2,800*l.* upon trust for his daughter for life for her separate use without power of anticipation, and after her death for her children by any marriage; and in default of children, the fund fell into the residue of T.'s estate, and went to his sons. T. died in 1874, and his wife in 1877.—Held, that parol evidence was admissible to rebut the equitable presumption that the gift by will was in satisfaction of the obligation under the covenant. *Tussaud v. Tussaud*, 47 Law J. Rep. Chanc. 849; Law Rep. 9 Ch. D. 363.

Held also (reversing the Master of the Rolls), that there were such substantial differences between the provisions of the settlement and of the will, that the presumption against double portions was rebutted. *Ibid.*

POSSESSION.

*Bill of sale, under.* [See BILL OF SALE, 39-44.]

*Equitable assignment of goods: right to claim possession.* [See EQUITABLE ASSIGNMENT, 1.]

*Execution: possession money.* [See BANKRUPTCY, B 21.]

*Mortgagee in: rights and duties of.* [See MORTGAGE, 9-14.]

*Part performance: Statute of Frauds.* [See SPECIFIC PERFORMANCE, 12.]

*Title by.* [See LANDS CLAUSES ACT, 32, 33; LIMITATIONS, STATUTE OF, 1-3.]

POSSESSION MONEY.

[See BANKRUPTCY, B 21.]

POST-NUPTIAL SETTLEMENT.

[See VOLUNTARY SETTLEMENT.]

POST OFFICE.

[Further provisions relating to Post Office Money Orders: 43 & 44 Vict. c. 33.]

*Posting letter.* [See CONTRACT, 21.]

*Use of name.* [See COPYRIGHT, 2.]

POUND.

*Impounding animals without food or water.* [See ANIMALS, 2.]

POUNDAGE.

[See SHERIFF, 4-9.]

POWER.

(A) CREATION OF: POWER OR TRUST FOR SALE.

(B) OBJECTS AND SCOPE OF.

(a) *Whether exclusive.*

(b) *Whether testamentary only, or not.*

(c) *Legal personal representatives of objects: power in nature of trust.*

(d) *Power to appoint life interest: impossible condition.*

(C) EXECUTION OF POWER.

(a) *Of general power: construction of will.*

(b) *Of special power: will: "beneficial power."*

(D) APPOINTMENT, CONSTRUCTION AND EFFECT OF.

(a) *Excessive appointment.*

(1) *Insufficiency of funds.*

(2) *Appointment to persons not objects of power.*

(3) *Funds falling into appointed residue.*

(b) *Exclusive or illusory appointment.*

(c) *Fraud on power.*

(E) POWER OF LEASING.

(F) POWER OF SALE.

(a) *Partition effected under.*

(b) *By whom exercisable.*

(A) CREATION OF: POWER OR TRUST FOR SALE.

1.—F. H. was a proprietor of a newspaper. By his will he gave all his real and personal estate, including the proprietorship of the newspaper, to his eldest son and two others, as trustees, upon trust to carry on the trade during the life of his wife, and for that purpose to set apart annually, as a reserve fund, one-fourth of the profits, and to divide the remainder in equal sixth parts between his wife and five children. He then proceeded as follows:—"And in case any of my children shall survive my wife, and die before he or she shall have received his or her share of the trust estate, and without leaving lawful issue, then I give such share equally between my surviving children and the lawful issue of my deceased child, such issue taking their, his or her parent's share only, equally amongst them if more than one. And from and after the decease of my said wife (or during her life, if she and the majority of my children and my trustees shall think it proper and expedient so to do), at the sole discretion of my trustees, to sell and absolutely dispose of all my real and personal estate, and my trade or profession, and the goodwill thereof, and to

divide the proceeds thereof among my said wife and children, and their lawful issue, if the division be made in the lifetime of my said wife, but if the division be made after her death, then amongst my children and their lawful issue only. I hereby further declare my will to be that in case, under the clause hereinbefore contained, it shall be agreed, or my trustees shall decide, to sell my stock-in-trade and proprietorship of the newspaper, and my sons, or any of them, shall by writing offer to purchase and carry on the same, the trustees or trustee of my will may, and they are hereby authorised and requested to sell the same to them at 500% less than the market price of such trade or profession":—Held (reversing the decision of the Lords Justices of Appeal), that these words created, not a mere power of sale, but an absolute trust for sale, subject to a discretion in the trustees as to the manner and time in which the sale should be carried out. *Minors v. Battison* (H.L.), 46 Law J. Rep. Chanc. 2; Law Rep. 1 App. Cas. 428.

Two of the trustees, during the life of the widow, filed a bill for administration of the estate, and for an enquiry whether it would be fit and proper, and for the benefit of all parties, that the business should be carried on:—Held, that by so doing they had surrendered to the Court their discretion to postpone the sale, if such discretion ever existed. *Ibid.*

## (B) OBJECTS AND SCOPE OF.

### (a) *Whether exclusive.*

2.—Testatrix bequeathed a fund in trust for a daughter for life, and after her death to pay and transfer the same "to and amongst my other children or their issue in such parts, shares and proportions, manner and form, as my said daughter shall by deed or will appoint":—Held (affirming the decision of Jessel, M.R., Law Rep. 4 Ch. D. 61), that this gave an exclusive power. *In re Veale's Trusts* (App.), 46 Law J. Rep. Chanc. 799; Law Rep. 5 Ch. D. 623.

3.—A settlement dated in 1857, contained an absolute trust for sale and conversion of the husband's property, and investment of the proceeds, which were to be held in trust for the husband and wife successively for life, and after the decease of the survivor, in trust "for such child or children of the said intended marriage, and if more than one, in such shares and in such manner and form, and to vest at such time or times, and to be subject to such powers and restrictions," as the husband and wife by deed, or the survivor, by deed or will, should appoint. The husband having died in 1870, the wife by deed in 1871 appointed the whole of the trust funds brought into settlement by the husband to the eldest child of the marriage:—Held, that the power to appoint amongst children was exclusive, and the appointment of 1871 valid. *Chamberlain v. Napier*, 49 Law J. Rep. Chanc. 628; Law Rep. 15 Ch. D. 614.

### (b) *Whether testamentary only, or not.*

4.—Devise and bequest to the testator's widow for the term of her natural life, "and to be distributed to the testator's family at her decease as she might think proper":—Held, that the power of distribution was not testamentary only, but was exercisable by deed, and that, under the word "family," an illegitimate child whom the testator had treated and recognised as a child, was included as an object of the power. *Fresland v. Pearson* (36 Law J. Rep. Chanc. 374; Law Rep. 3 Eq. 658) disapproved of. *Humble v. Bowman*, 47 Law J. Rep. Chanc. 62.

5.—Gift to a daughter for life, "the whole principal at her death to be divided amongst her children, if she has any, in such proportions as she shall think proper, and if she dies without leaving children," then over. The daughter died, leaving one child her surviving:—Held, first, to confer a general and not merely a testamentary power of appointment on the daughter; second, in the absence of appointment, and notwithstanding the words "without leaving children," to create vested interests in the children on their birth, subject only to being divested by an exercise of the power. *In re Jackson's Will*, 49 Law J. Rep. Chanc. 82; Law Rep. 13 Ch. D. 189.

### (c) *Legal personal representatives of objects: power in nature of trust.*

6.—Settlement of a fund after the death of A. and B., for such descendants of C. as B. should by will appoint.—Held, to create a power in the nature of a trust for descendants of C. living at B.'s death, entitling such descendants in equal shares in default of appointment. And held, that an appointment to the legal personal representatives of descendants dying before the death of the donee of the power was unauthorised. *In re Susanni's Trusts*, 47 Law J. Rep. Chanc. 65.

### (d) *Power to appoint life interest: impossible condition.*

7.—The testator gave his trustees power, if his daughter should marry with their consent, to give her husband a life interest in her fortune, in the event of his surviving her. She married, in the testator's lifetime, with his consent, and had recently died. The trustees had died without having exercised the power:—Held, that the husband was entitled to a life interest in her fortune. *Tweeddale v. Tweeddale*, 47 Law J. Rep. Chanc. 530; Law Rep. 7 Ch. D. 633.

## (C) EXECUTION OF POWER.

### (a) *Of general power: construction of will.*

8.—By an ante-nuptial settlement power was reserved to the wife, in events which happened, to dispose of the trust fund "upon such trusts and for such person or persons as, not-



withstanding coverture, she should by will appoint;" and in default of appointment the moneys were to be held upon trust for two persons therein mentioned. By her will, made shortly after her marriage, she, "in execution of the said power so reserved as aforesaid," after giving pecuniary legacies, and directing that her funeral expenses and the expenses of proving her will should be paid by her trustees out of her trust property, bequeathed all the residue of her personal estate whatsoever to a person by whose death in her lifetime the bequest lapsed. Her husband took out administration *de bonis non*, and claimed to be entitled to the residue, which was paid into Court, and also claimed by the persons entitled in default of appointment under the settlement:—Held, that the testatrix had treated the whole fund as her own, and had validly exercised the power of appointment contained in the settlement, and that the fund in Court belonged to her husband as administrator. *In re Pinde's Settlement Trusts*, 48 Law J. Rep. Chanc. 741; Law Rep. 12 Ch. D. 667.

9.—By a separation deed executed on the 10th of April, 1861, A. reserved to himself a general power of appointment by will over one-third of his property, and settled the remaining two-thirds on usual trusts for his wife and children. His will, executed six months previously, contained a general devise and bequest of all his property to trustees upon usual trusts for his wife and children:—Held, that the will was a good execution of the power, and that the settlement could not be looked at for the purpose of construing the will. *In re Ruding's Settlement* (41 Law J. Rep. Chanc. 665; Law Rep. 14 Eq. 266) disapproved of. *Boyes v. Cook* (App.), 49 Law J. Rep. Chanc. 350; Law Rep. 14 Ch. D. 53.

10.—A testator had a general power of appointment over the reversion in fee of settled real estate, which the trustees had power to sell with his consent. During his lifetime, and with his consent, part of the real estate was sold, and another part contracted to be sold, leaving some of the real estate unsold. Subsequently he made his will, whereby, after reciting that the real estate was subject to such uses as he should appoint, he directed that the same should remain to the use of trustees for a term of 500 years, and subject thereto to the use of A. and his heirs. And subject and without prejudice to the appointment already made, he gave all the real and personal estate of or to which he was seised or possessed, or over which he had a power of appointment, to B., absolutely:—Held, that the proceeds of sale of real estate passed to B. under the residuary gift, and not to A. under the appointment. *Gale v. Gale* (31 Beav. 349) followed. *Blake v. Blake*, 49 Law J. Rep. Chanc. 393; Law Rep. 15 Ch. D. 481.

11.—Land was settled to the use, in events which happened, of such person or persons as A. B. should by will appoint. The settlement

contained a power to the trustees, with the consent of A. B., to sell the land, the proceeds to be laid out in the purchase of other land to be settled to the same uses, and in the meantime to be invested in Government or real securities, and the income of such investment to be paid to the persons to whom the rents of the purchased land would be payable, were such purchase then actually made. The land was subsequently sold, and the proceeds invested in Consols, in which state they remained at the death of A. B. By her will A. B. gave legacies to the amount of 30,000*l.*, and bequeathed "all the residue of" her "personal estate and effects whatsoever" to two persons absolutely. Her own personal estate did not exceed 6,000*l.*:—Held, that the residuary gift operated with respect to the Consols as an exercise of A. B.'s general power of appointment, and consequently that they passed to her residuary legatees. *Chandler v. Pocock*, 49 Law J. Rep. Chanc. 442; Law Rep. 15 Ch. D. 491.

12.—H., by his will, dated in 1826, gave his mother, E., a general power of appointment over certain real estate, and provided that in case she died without a will her property should go over to C. E., by her will in 1853, executed the power in the following terms: "As to and concerning all the real estate whatsoever and wheresoever of or to which I or any person or persons in trust for me am, is or are seised or in any way entitled, or over which I have (either under or by virtue of the will of my deceased son or any codicil thereto or otherwise howsoever) or over which I shall have any power to dispose, . . . I give, devise, limit, direct and appoint the same unto and to the use of (trustees) their heirs and assigns, in trust for (G.) his heirs and assigns for ever." G. predeceased the testatrix by two days:—Held (by Malins, V.C.), that the appointee having died in the lifetime of the appointor the appointment wholly failed, and that the property went over to C. under the original will, and did not form part of the general estate of E. *In re Van Hagen. Sperling v. Rockfort*, 49 Law J. Rep. Chanc. 705. Held (on appeal), that the property remained vested in the trustees as part of the general estate of the testatrix, subject to a resulting trust for her heir-at-law (if any). See 50 Law J. Rep. Chanc. 1; Law Rep. 16 Ch. D. 18.

13.—A testator voluntarily settled 1,000*l.* due to him from D., his son-in-law, and other personalty, on such trusts as he should appoint by deed or will, and subject thereto in trust for his daughters and their children, and then made certain provisions for securing the debt of 1,000*l.* Afterwards by will he bequeathed his personal residue on somewhat different trusts for his daughters and their issue. By a codicil he indebted that D. was indebted to him in further sums besides the 1,000*l.*, and that under the settlement or will, or one of them, his daughter, D.'s wife, and her children,

would be entitled to a certain share of the property comprised in the said settlement and of and in all other his estate and effects, and declared that such shares under the said settlement or will, or either of them, should be taken to be satisfied out of the moneys owing to him from D. other than the 1,000*l.*:—Held (affirming the decision of Bacon, V.C., 49 Law J. Rep. Chanc. 205), that the residuary bequest in the will was an effectual execution of the power of appointment reserved in the settlement. Per the Court of Appeal.—When property has been settled by the testator upon others, in default of appointment under a power reserved to himself, it does not require any indication by him of an intention to defeat his settlement in order to hold a general gift in his will which can be satisfied by other property to be an execution of his power. *In re Clarke. Maddock v. Marks* (App.), 49 Law J. Rep. Chanc. 586; Law Rep. 14 Ch. D. 442.

(b) *Of special power: will: "beneficial power."*

14.—A testator, having a power of appointment among children, gave his residue and all property over which he might have any beneficial power of disposition upon trusts partly without the scope of his power:—Held, that the power was not exercised. *Ames v. Cadogan. Ames v. Taylor*, 48 Law J. Rep. Chanc. 762; Law Rep. 12 Ch. D. 368.

*Exercise of, by infant: different classes of powers.* [See INFANT, 21.]

(D) APPOINTMENT, CONSTRUCTION AND EFFECT OF.

(a) *Excessive appointment.*

(1) *Insufficiency of funds.*

15.—The testator having power to appoint 10,000*l.* among his children, and having exercised the power by appointing 3,000*l.* to one child, appointed by will 10,000*l.* among all his children *nominatim*, being 3,000*l.* in excess of the power. One of the children, to whom 4,000*l.* was thus appointed, having died in the testator's lifetime, so that his appointed share lapsed,—Held, that the deficiency of the other shares should be made up out of the lapsed share. *Eales v. Drake*, 45 Law J. Rep. Chanc. 51; Law Rep. 1 Ch. D. 217.

A life interest determinable on bankruptcy or alienation is capable of being brought into hotchpot. *Ibid.*

16.—The donee of a special power to appoint (subject to a life interest) a sum of 3,000*l.*, raiseable out of the proceeds of two policies and of certain real property, made three appointments by successive deeds of 1,000*l.*, described as part of the 3,000*l.*, in favour of three objects of the power. The property available eventually, owing to the insolvency of the insurance office, fell short of 3,000*l.*:—Held, that the appointees took according to priority of

appointment, and not rateable portions of the fund. *Stokes v. Bridgman*, 47 Law J. Rep. Chanc. 759.

The principle of *Page v. Leapingwell* (18 Ves. 463) is only applicable to gifts by the same instrument or by instruments which for the purpose of construction are to be treated as one. *Ibid.*

Held also, that the sums appointed were not to be answered rateably by the different properties from which the 3,000*l.* was raiseable, but that each 1,000*l.* in its entirety was charged upon the aggregate fund. *Ibid.*

(2) *Appointment to persons not objects of power.*

17.—An appointment to take effect at a future period is not void *in toto* because it may include, or in the event turns out to include, strangers as well as objects of the power; but it fails only as to those appointees who are not objects. *Harvey v. Stracey* (1 Drew. 73; 22 Law J. Rep. Chanc. 28) followed. *In re Farncombe's Trusts*, 47 Law J. Rep. Chanc. 328; Law Rep. 9 Ch. D. 652.

A lady having a power to appoint among her issue living at the date of the appointment, by deed appointed to the children of her daughter in equal shares on their attaining twenty-one. The daughter had three children at that date, and three born afterwards:—Held, that each of the children living at the date of appointment would, on attaining twenty-one, take one-sixth of the property *plus* an accruing share of the sixth appointed or purported to be appointed to any other child who might die under twenty-one. *Ibid.*

18.—The testatrix, in exercise of a power of appointment, gave personal property to two persons as joint tenants, only one of whom was an object of the power:—Held, that the intention of the testatrix prevailed over the rules of joint tenancy, and that the object of the power took a moiety of the fund, and the other moiety went as in default of appointment. *In re Kerr's Trusts*, 46 Law J. Rep. Chanc. 287; Law Rep. 4 Ch. D. 600.

(3) *Funds falling into appointed residue.*

19.—The donee of an exclusive power of appointment among her children appointed 1,200*l.* to her son for life, with remainder to his children, and appointed the residue of the fund to two of her daughters:—Held, that the appointment to the son's children being excessive and therefore bad, the 1,200*l.* on the son's death was not unappointed, but fell into the appointed residue. *In re Meredith's Trusts*, Law Rep. 3 Ch. D. 767.

(b) *Exclusive or illusory appointment.*

20.—A power was given in a marriage settlement to appoint between or amongst all and every the child and children of the marriage. An irrevocable appointment was made by deed

unto and amongst the three children of the marriage, provided they survived the appointor, and the survivors and survivor equally, and if only one survived, then to that one only:—Held, that such an appointment, in the case of a child who predeceased the appointor, was a valid exercise of the power, both of itself and also under the Illusory Appointments Acts (11 Geo. 4, and 1 Will 4. c. 46). *Minchin v. Minchin* (7 Ir. Chanc. Rep. 267) dissented from. *In re Capon's Trusts*, 48 Law J. Rep. Chanc. 355; Law Rep. 10 Ch. D. 484.

*Appointment by donee of a general testamentary power: executor of donee the proper person to receive and distribute appointed fund.* [See TRUSTEE RELIEF ACT, 1.]

(c) *Fraud on power.*

21.—Under a marriage settlement A. had power to appoint 6,000*l.* among his three children, and there was a limitation to the children in default of appointment. He borrowed the 6,000*l.* on security of a freehold estate, and subsequently by deed of even date conveyed the freehold estate to uses in favour of his eldest son and his children, with an ultimate limitation to himself in fee. By a deed of even date A. appointed the 6,000*l.* to the same son, and the deed contained a release by A. and by the eldest son and the surviving trustee of the settlement of the 6,000*l.* mortgage debt, and a conveyance of the freehold estate freed from the mortgage to the uses of the deed of even date:—Held, that the arrangement by which the 6,000*l.* was released and the ultimate remainder reserved to A. did not invalidate the appointment, as A. had no intention of thereby deriving any advantage for himself. *Topham v. The Duke of Portland* (39 Law J. Rep. Chanc. 269; Law Rep. 5 Ch. D. 40); and *In re Marsden's Trusts* (4 Drewr. 594) distinguished. *Roach v. Troad* (App.), Law Rep. 3 Ch. D. 427.

22.—Where a father, who had a limited power of appointment over a fund by will only, among his children, made a will by which he appointed a sum of 5,000*l.* to his son J., and the remainder among his other sons, and a few weeks afterwards executed a bond binding himself that his son J. should receive, either out of his own property or out of the fund subject to the power, the sum of 5,000*l.* at the least, and subsequently died without revoking his will:—Held (affirming the decision of the Master of the Rolls), that the appointment was good. *Palmer v. Locke* (App.), 50 Law J. Rep. Chanc. 113; Law Rep. 15 Ch. D. 294.

*Coffin v. Cooper* (2 Dr. & Sm. 365; 34 Law J. Rep. Chanc. 692) followed. *Ibid.*

Per Brett, L.J. (*dubitante* Cotton, L.J.).—A bond or covenant by the donee of a limited testamentary power that he will exercise it in a particular way is wholly void. *Ibid.*

*Forfeiture clause: public policy: remoteness.* [See REMOTENESS, 14.]

(E) POWER OF LEASING.

23.—A lease comprising different properties held upon different trusts cannot be properly granted unless under very special circumstances. *Tolson v. Sheard* (App.), 46 Law J. Rep. Chanc. 815; Law Rep. 5 Ch. D. 19.

An agreement by trustees of two properties held on different trusts for a mining lease of both at a rent of so much per acre worked,—Held, a breach of trust, and specific performance at the suit of the trustees refused. *Ibid.*

(F) POWER OF SALE.

(a) *Partition effected under.*

24.—A partition between two or more persons may be effected through a power of sale and exchange. *In re Frith*, 45 Law J. Rep. Chanc. 780; Law Rep. 3 Ch. D. 618.

By a marriage settlement, an undivided moiety of lands was vested in trustees, who were thereby empowered to sell, dispose of, and convey the same, or any part thereof, by way of sale, for such a price in money, or by way of exchange for such equivalent in other lands, as they should deem reasonable; and for that purpose to revoke the old and to limit new uses of the same. In pursuance of an agreement for partition, the trustees, in exercise of the aforesaid power, revoked the uses of an undivided moiety of one part of the lands, and appointed the same to the use of the owners of the other undivided moiety in consideration of an undivided moiety of the other parts or part of the lands being conveyed to the trustees of the settlement:—Held, that a valid partition of the estate was thereby effected; and semble, that a partition between any number of owners of undivided shares of real estate may be effected under similar powers of sale and exchange. *Ibid.*

(b) *By whom exercisable.*

25.—A testator, after stating his desire that a farm should be carried on during his wife's life for the maintenance, support and benefit of her and all his children, and that upon her death all his property should be equally divided among all his said children, and after directing children by a former marriage to bring portions into hotchpot "so as to form one common fund," appointed his wife and A. and B. executrix, executors and trustees, and authorised them to sell, mortgage or let any part of his estate. He then directed the farm to be carried on for the maintenance of his wife and children, and subject thereto all his estate to be in trust for his children in equal shares:—Held, that upon the widow's death A. and B. had power to sell and convey the real estate without the concurrence of the children. *In re Cooke's Contract*, Law Rep. 4 Ch. D. 454.

26.—Real and personal estate was limited to trustees, their heirs, executors and administrators upon trust to sell. The last surviving

trustee devised this trust estate to two persons who contracted to sell the real estate:—Held, that they could make a good title. *Cooke v. Cranford* (13 Sim. 91; 13 Law J. Rep. Chanc. 406) dissented from. *In re Osborne and Rowlett*, 49 Law J. Rep. Chanc. 310; Law Rep. 13 Ch. D. 774.

[See, however, TRUST, D 4.]

27.—Sir T. N. devised his estates to trustees, in trust for A. for life, then for B. for life, and then for C. in tail, with a power of sale and enfranchisement with the consent of the person for the time being entitled as beneficial tenant for life; and directed that no re-purchase or re-investment should be made while there should be any person entitled as beneficial tenant for life or tenant in tail in possession, and of the age of twenty-one years, without the previous consent of such person. A. and B. were dead, and C. was an infant:—Held, that the trustees could during the minority of C. exercise the power of sale and enfranchisement without consent, and make a good title. *In re Sir Thomas Neave and Messrs. Chapman & Wren. The Vendor and Purchaser Act, 1874*, 49 Law J. Rep. Chanc. 642.

*Settlement: discretion to settle.* [See TRUST, A 8.]

[And see MORTGAGE.]

## PRACTICE.

[N.B.—For convenience of reference this title is arranged alphabetically throughout, minor headings being indicated by small black type.]

- (A) ACCOUNTS AND ENQUIRIES.
  - (a) Preliminary, order for.
  - (b) Examination on accounts.
  - (c) Fees.
- (B) APPEALS AND REHEARINGS.
  - (a) Appeal, when sustainable.
    - (1) Jurisdiction and constitution of Court of Appeal.
    - (2) Appeals from inferior Courts.
    - (3) From Judge in chambers.
    - (4) Appeal for costs.
    - (5) Matter in discretion of Judge.
    - (6) Raising new case.
  - (b) Notice of appeal.
  - (c) Time for appealing.
    - (1) Interlocutory or final judgment or order.
    - (2) Order of Judge or Master at chambers.
    - (3) Extension of time.
    - (4) Appeal out of time: costs of affidavits.
  - (d) Setting down.
  - (e) Leave to adduce new evidence.
  - (f) Stay of proceedings pending.
- (C) APPEARANCE AND DEFAULT OF APPEARANCE.
- (D) CHARGING ORDER.
- (E) COMPROMISE.
- (F) CONSOLIDATION OF ACTIONS.

- (G) DISCONTINUANCE.
- (H) DISMISSAL OF ACTION.
- (I) ENROLMENT.
- (K) EVIDENCE.

- (a) Affidavits.
  - (1) Swearing and filing of.
  - (2) Office copies of.
  - (3) Consent to take evidence by affidavit.
  - (4) Admissibility of, on hearing.
  - (5) Cross-examination on.
  - (6) Affidavits in reply.
- (b) Admission of further evidence at hearing.
- (c) Examination of witness before examiner.
- (d) Witnesses abroad: delay.
- (e) Further evidence after evidence closed: counter-claim.
- (f) Examination of judgment debtor.
- (L) EXECUTION.
  - (a) Attachment.
  - (b) Rule to sheriff to pay money levied: notice of motion.
  - (c) Stay of.
  - (d) Judgment to be dealt with as Court shall direct.
- (M) FURTHER CONSIDERATION.
  - (a) Reservation of.
  - (b) Appeal from order made on.
  - (c) Evidence on.
- (N) INFORMATION.
- (O) INTERLOCUTORY ORDERS.
- (P) INTERROGATORIES.
  - (a) Right to discovery.
  - (b) Tendency to criminate.
  - (c) Before statement of defence.
  - (d) Mode of objecting to interrogatories or answer.
  - (e) Striking out: irrelevancy.
  - (f) Schedule to answer: printing.
- (Q) JOINDER OF CAUSES OF ACTION.
  - (a) Action by executor.
  - (b) Action for recovery of land.
- (R) JUDGMENT DECREE OR ORDER.
  - (a) Signing judgment under Order XL. rule 1.
  - (b) Setting aside.
  - (c) Discharging or varying judgment by consent.
  - (d) Interest on judgment for costs.
  - (e) Form of: declaration as to contingent rights: enquiries.
  - (f) Form of: evidence taken as read.
  - (g) Indorsement of, on title-deed.
- (S) MOTIONS.
  - (a) Motion for judgment.
  - (b) Arbitration: rule to shew cause.
  - (c) Notice of motion.
- (T) NEW TRIAL.
  - (a) Motion for, how to be made.
  - (b) Time for moving, &c.
  - (c) Jurisdiction to enter final judgment.
  - (d) Inadequacy of damages.
- (U) PARTIES.
  - (a) Joinder of.
    - (1) Alternative relief: different causes

- of action against different defendants.*
- (2) *Absent parties, service on.*
  - (3) *Joint and several liability.*
  - (4) *Action against firm.*
  - (5) *Suit to restrain nuisance: community of interest.*
  - (6) *Husband and wife and their representatives.*
  - (7) *Right of equitable tenant for life to defend action of ejectment.*
  - (8) *Actions by and against trustees or executors.*
  - (9) *In other cases.*
- (b) *Substituting or adding parties under Rules of Court.*
- (c) *Change of interest.*
- (1) *Death.*
  - (2) *Bankruptcy.*
  - (3) *Lunacy.*
- (V) *PAYMENT INTO COURT.*
- (a) *By the defendant in satisfaction of the plaintiff's claim.*
  - (b) *Order for, on admission of party.*
- W) *PLEADING.*
- (a) *Generally.*
- (1) *Pleading matters arising pending action.*
  - (2) *Agreement, how to be pleaded.*
  - (3) *Proliz, embarrassing, or irrelevant pleadings.*
  - (4) *General or evasive denial or allegation.*
  - (5) *Admissions: orders on.*
- (b) *Amendment of pleadings.*
- (1) *Of statement of claim after delivery of defence.*
  - (2) *Of defence.*
  - (3) *Change of nature of action.*
  - (4) *At hearing.*
- (c) *Particular pleadings.*
- (1) *Statement of claim.*
    - (i) *Alternative or inconsistent relief.*
    - (ii) *Charging wilful default.*
    - (iii) *Action for recovery of land.*
  - (2) *Demurrer.*
    - (i) *To claim in representative character.*
    - (ii) *Time for demurring.*
    - (iii) *Pleading as well as demurring.*
    - (iv) *Multifariousness.*
  - (3) *Defences.*
    - (i) *Plea to jurisdiction.*
    - (ii) *Pleading Statute of Frauds.*
    - (iii) *Pleading Statute of Limitations.*
    - (iv) *Set-off.*
    - (v) *Special defences.*
  - (4) *Counter-claim.*
    - (i) *Subject-matter and form of.*
    - (ii) *Motion for judgment on, in default of further pleading.*
    - (iii) *Parties to: who may be, and rights of.*
- (iv) *Embarrassing, when.*
  - (v) *Costs of.*
  - (5) *Third party: notice to.*
  - (6) *Reply.*
  - (d) *Close of pleadings.*
- (X) *PRO CONFESSO: TAKING BILL.*
- (Y) *REFERENCE.*
- (a) *Official referee.*
  - (b) *Special referee.*
- (Z) *SALES UNDER DIRECTION OF COURT.*
- (a) *At what stage ordered.*
  - (b) *Conduct of.*
- (AA) *SEQUESTRATION.*
- (BB) *SERVICE.*
- (a) *Substituted.*
  - (b) *Out of jurisdiction.*
- (CC) *SHORT CAUSE.*
- (DD) *SPECIAL CASE.*
- (EE) *STAYING PROCEEDINGS.*
- (a) *F frivolous or vexatious action.*
  - (b) *Multiplicity of proceedings.*
- (FF) *STOP ORDER.*
- (GG) *TRANSFER OF ACTIONS.*
- (a) *From one division to another.*
  - (b) *From one Judge of Chancery Division to another.*
  - (c) *To or from inferior Courts.*
- (HH) *TRIAL.*
- (a) *Place of trial.*
  - (b) *Notice of trial.*
  - (c) *Issues or questions of law or fact.*
  - (d) *Trial by jury: right to.*
  - (e) *Mode of trial.*
    - (1) *Hearing counsel, &c.*
    - (2) *Where notice given to third party.*
    - (3) *Hearing in camera.*
    - (4) *Jury cases in Chancery Division: new trial.*
    - (5) *Verdict on several issues.*
- (II) *WRIT OF SUMMONS.*
- (a) *Indorsement of.*
  - (b) *Writ specially indorsed.*
    - (1) *Form of indorsement.*
    - (2) *Demurrer to.*
    - (3) *Where corporation plaintiff.*
    - (4) *Order for particulars.*
    - (5) *Leave to defend.*
    - (6) *Service of.*
    - (7) *Application to sign final judgment.*
  - (c) *Renewal of.*
- 
- Abatement.** [See *infra* C 7, H 1, U 4, 30-37.]
- (A) *ACCOUNTS AND ENQUIRIES.*
- (a) *Preliminary, order for.*
- 1.—Where a defendant who was agent for trustees of a trust estate admitted that he was liable to account, and that he had in his possession securities belonging to the trust estate, the Court on motion by the trustees, notice of which was given to the defendant, made an order directing him to account and to hand over the securities. *Rumsey v. Reade*, 45 Law J. Rep. Chanc. 489; Law Rep. 1 Ch. D. 643.
- 2.—Order for taking of accounts made on

interlocutory application of the plaintiffs, the defendant not appearing. *Turquand v. Wilson*, 45 Law J. Rep. Chanc. 104; Law Rep. 1 Ch. D. 85.

3.—The defendant in an action for an account of rents and profits delivered a defence and a counter-claim to set off money due to him from the plaintiff under an award. In his reply the plaintiff simply joined issue generally, and the defendant treating the counter-claim as admitted, moved under Order XXXIII. and Order XL. rules 10, 11, for an account on the footing of the counter-claim, or, in the alternative, that the reply might be struck out or amended as embarrassing under Order XXVII. rule 1, and also as not complying with Order XIX.—Held, that the case was not one for an account under Order XXXIII., and that no order could be made on the counter-claim before the principal claim of the defendant was dealt with. *Rolfe v. Maclaren*, Law Rep. 3 Ch. D. 106.

*In action for necessities.* [See ADMIRALTY, 42.]

*Trial of subsequent issues.* [See MORTGAGE, 49.]

(b) *Examination on accounts.*

4.—An accounting party subpoenaed for examination cannot refuse to be sworn because he has not received sufficient notice of the points on which he is to be examined, but after being sworn he may object to answer for this reason. *Meyrick v. James*, 46 Law J. Rep. Chanc. 38.

5.—A person desiring to cross-examine upon an account must specify the particular items of the account upon which he wishes to cross-examine. This rule applies as well to a plaintiff who has brought in an account in order to enforce a charge as to an ordinary accounting party. *Bates v. Eley*, 45 Law J. Rep. Chanc. 270; Law Rep. 1 Ch. D. 473.

(c) *Fees.*

6.—The per-centage on taking accounts imposed by the order as to Court fees of the 28th of October, 1875, is not payable on accounts begun to be taken before the commencement of the Judicature Acts. Where payable it is in substitution for the old certificate and other fees. *Meredith v. Treffry* (App.), 45 Law J. Rep. Chanc. 162.

7.—Where a testator appointed two persons his executors, and the same persons, with one other, trustees of his real and personal estate, and the usual decree for the administration having been made, the Chief Clerk required separate accounts to be taken of the receipts and payments of the executors, and of the receipts and payments of the trustees.—Held (affirming the decision of Fry, J.), that the accounts of the executors and trustees were rightly taken separately; that the per-centage for Court fees was payable both on the gross receipts of the executors and on the gross

receipts of the trustees; and that, first, the residue handed over to the trustees by the executors; secondly, temporary loans advanced to them by their bankers; and thirdly, sums transferred from the trustees' deposit account at their bankers to their drawing account were all properly included in the trustees' receipts. *Armitage v. Elnorthy* (App.), Law Rep. 13 Ch. D. 91.

*Discovery: right to account before hearing.* [See P 6 *infra*.]

*Adding parties.* [See U 17-29 *infra*.]

*Admiralty.* [See ADMIRALTY, 21-63.]

*Admissions.*

*Order for accounts, &c., on admissions in pleadings.* [See A 1, 3 *supra*; W 16-18 *infra*.]

*Payment into Court on admission of party.* [See V 4-6 *infra*.]

*Adjournment.*

*Costs of day.* [See COSTS, 93.]

*Advancing appeal.* [See B 68, 70 *infra*.]

*Alternative relief.* [See U 2, W 35, 36 *infra*.]

*Affidavit.* [See K 1-18 *infra*.]

*As to documents.* [See PRODUCTION OF DOCUMENTS, 14-21.]

*Amendment.*

*Hearing, at.* [See W 27-34 *infra*.]

*Notice of appeal, of.* [See B 23 *infra*.]

*Pleadings, of.* [See W 20-34 *infra*.]

*Writ, of.* [See W 26 *infra*.]

*Answer.*

*To interrogatories.* [See P *infra*.]

(B) APPEALS AND REHEARINGS.

(a) *Appeal when sustainable.*

(1) *Jurisdiction and constitution of Court of Appeal.*

1.—Judges of the Chancery Division have no jurisdiction to rehear the decisions of themselves or their predecessors. *In re The Saint Nazaire Company* (App.), Law Rep. 12 Ch. D. 88.

2.—Where after a trial by jury, and judgment entered pursuant to the finding of the jury, it is desired to set aside that judgment, the application must be made to a Divisional Court and not to the Court of Appeal. Such an application is really an application to set aside the verdict, and for a new trial within Order XXXIX. rule 1, and does not come within the provisions of Order XL. rule 4. *Davies v. Felix* (App.), 48 Law J. Rep. C.P. 3; Law Rep. 4 C.P. D. 32.

3.—A Judge of the High Court of Justice is not disqualified from sitting on an appeal from a divisional Court composed of other Judges of the division of the High Court of which he is a member. *Fisher v. The Val de*

*Travers Asphalt Paving Company* (App.), 45 Law J. Rep. C.P. 135; Law Rep. 1 C.P. D. 259.

4.—After final judgment has been pronounced by the Court of Appeal it is not competent to the Court to rehear the appeal on the ground of the discovery of fresh facts. The proper course is for the party complaining to commence an original action impeaching the decree. And semble, where the decree is impeached on the ground of fraud, such an action may be commenced without leave of the Court. *Flower v. Lloyd* (App.), 46 Law J. Rep. Chanc. 838; Law Rep. 6 Ch. D. 297.

[And see No. 12 infra.]

5.—A Court of Appeal should be careful in overruling decisions which, not being manifestly erroneous, have stood unchallenged for a long period, and which, from their nature and the effect which they may reasonably be supposed to have had in matters affecting rights of property, may be held to have become part of the recognised established law of the land. *Pugh v. The Golden Valley Railroad Company* (App.), 49 Law J. Rep. Chanc. 721; Law Rep. 15 Ch. D. 330.

*Consideration of the circumstances under which the Court of Appeal may not be bound by its previous decision.* [See COMPANY, D 18.]

*From arbitrator under European Arbitration Amendment Act, 1875.* [See COMPANY, G 3, H 73.]

*From compulsory order of reference.* [See ARBITRATION, 9.]

*From findings on issues of fact: cause heard by Probate Court without jury.* [See PROBATE, 32.]

*From Judge of Probate Division.* [See PROBATE, 33.]

*From order giving part of demand not an appeal from a refusal.* [See SETTLEMENT, 19.]

*Quarter sessions, jurisdiction to hear case stated by.* [See RATES, 25.]

*Scotch appeal: appeal from High Court of Justiciary in Edinburgh.* [See SCOTCH LAW, 1.]

*Reference after award and judgment on special case.* [See ARBITRATION, 17.]

#### (2) Appeals from inferior courts.

6.—An appeal will lie from the decision of a Divisional Court on appeal from a County Court, if special leave be given, under section 45 of the Judicature Act, 1873, notwithstanding section 20 of the Appellate Jurisdiction Act, 1876, and section 14 of the County Courts Act. *Crush v. Turner* (App.), 47 Law J. Rep. Exch. 639; Law Rep. 3 Ex. D. 303.

7.—Section 6 of 38 & 39 Vict. c. 50 (the County Courts Act, 1875) enacts: "In any cause, suit or proceeding, other than a proceeding in bankruptcy, tried or heard in any County Court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction or

decision of the Judge, at any time within eight days after the same shall have been made or given, to appeal against such ruling, order, direction or decision, by motion to the Court to which such appeal lies, instead of by special case, &c."—Held, that the words "right of appeal" are not limited to cases where the party appealing has a statutory right of appeal, but extend to cases where the Judge has given leave to appeal under section 13 of 30 & 31 Vict. c. 142. *Turner v. The Great Western Railway Company*, 46 Law J. Rep. Q.B. 226; Law Rep. 2 Q.B. D. 125.

8.—An appellant to a Divisional Court who fails to prosecute his appeal there, and against whom judgment is there given, cannot afterwards appeal from that judgment to the Court of Appeal. *Walker v. Budden* (App.), 49 Law J. Rep. Q.B. 159; Law Rep. 5 Q.B. D. 267. [And see INTERPLEADER, 5-7; LORD MAYOR'S COURT, 5, 6; POOR LAW, 17.]

#### (3) From Judge in chambers.

9.—Doubts thrown on the propriety of the practice of the Court of Appeal in Chancery in refusing to hear an appeal from an order in chambers, though made by the Judge himself, without an application to the Judge in Court to discharge the order. *In re Lewis Munro & Company; ex parte The Republic of Paraguay*, 45 Law J. Rep. Chanc. 62.

10.—An appeal direct from chambers allowed against a refusal to order security for costs to be given by a plaintiff company who had made amendments raising a fresh case likely to require a mass of additional evidence. *The Northampton Coal, Iron and Waggon Company v. The Midland Waggon Company* (App.), Law Rep. 7 Ch. D. 500.

11.—Where A., B. and C. were placed on the list of contributories of a company in which they had agreed to take shares, but the whole of a sum of money paid as calls was credited to A., and B. appealed generally,—Held, that he was a contributory in respect of one-third of the shares, but was entitled to credit in respect of one-third of the calls, and that the Court of Appeal could order such credit to be given by B., although no notice of appeal had been served on A. *In re The Duchess of Westminster Silver Lead Mining Company* (App.), Law Rep. 10 Ch. D. 307.

*Attachment: third party: summary decision of issue.* [See ATTACHMENT, 9.]

#### (4) Appeal for costs.

12.—E. having been joined as a third party in an action appealed against the order joining him, and his appeal was dismissed with costs. At the trial he obtained judgment dismissing him from the action, with costs against the party who obtained the order joining him, and on appeal that judgment was affirmed with costs. On taxation the Master refused to allow E. his costs of the interlocutory proceedings by which he was joined as a party to the action.

On an application to the Court of Appeal for E.'s costs of the interlocutory proceedings.—Held, that the Court of Appeal had no power to alter the judgment they had delivered on the appeal from the interlocutory proceedings, so as to give E. his costs; nor to vary their final judgment in the action. *Beynon v. Godden* (App.), 48 Law J. Rep. Exch. 80; Law Rep. 4 Ex. D. 246.

13.—The case of a trustee ordered to pay costs personally forms in general no exception to the rule that an appeal will not be allowed for costs only. *In re Hoskins' Trusts* (App.), 46 Law J. Rep. Chanc. 817; Law Rep. 6 Ch. D. 281.

14.—The charges and expenses of a trustee directed to be paid out of a fund in Court are not "costs of and incident to a proceeding in the High Court," within Order LV.; neither is the order directing their payment an order "as to costs only" within the 49th section of the Judicature Act, 1873. Consequently, such an order is appealable without the consent of the Judge who made it. *In re Chennell; Jones v. Chennell* (App.), 47 Law J. Rep. Chanc. 583; Law Rep. 8 Ch. D. 492.

15.—C. was mortgagee of a reversionary interest in which he was about to foreclose the equity of redemption. He entered, through his solicitor D., into negotiations with G. and with F. for sale of the reversion. In the end D. closed with F. G. alleged that D. had agreed to sell to him, and brought an action for specific performance, to restrain C. from assigning to F., and in the alternative for damages for breach of the agreement entered into with him. An interim injunction was granted, subject to the usual undertaking as to damages. D. was made a defendant in the action. The Vice-Chancellor Malins dismissed the action with costs as against F., but, on the ground of D.'s improper conduct, without costs against C. and D., and he refused to direct any enquiry as to damages. C. and D. appealed on the questions of the enquiry and of costs, and G. entered a cross appeal for damages.—Held, that the enquiry as to damages ought to have been allowed, but in this case the measure of damages could only be the interest of money at five per cent. during the time C. had been kept out of it, less any interest he had made. Held also, that the appeal on the enquiry as to damages was a matter wholly collateral, and that as the rest of the appeal was merely an appeal for costs, they were not allowed by the Judicature Act to vary the order as to costs made in the Court below. *Graham v. Campbell* (App.), 47 Law J. Rep. Chanc. 593; Law Rep. 7 Ch. D. 490.

16.—Upon a motion to commit the defendant for breach of an injunction, the Court prefacing its order by an expression of opinion that the defendant had committed a breach of the injunction, made no other order than that he should pay the costs of the motion.—Held, that an appeal from this order was not an appeal for costs only within the 49th section of the Judicature Act, 1873. *Witt v. Corcoran*

(App.), 45 Law J. Rep. Chanc. 608; Law Rep. 2 Ch. D. 69.

17.—An order for a new trial obtained by the defendants was, by the Court of Appeal, confirmed conditionally on the defendants paying the costs of the first trial.—Held, that an appeal by the defendants against the confirming order was not within the rule which prohibits appeals as to costs only. *The Managers of the Metropolitan Asylums District v. Hill* (H.L.), 49 Law J. Rep. Q.B. 745; Law Rep. 5 App. Cas. 582.

#### (5) Matter in discretion of Judge.

18.—An appeal from the dismissal of a motion to commit for contempt will not lie, as such a motion is a matter within the discretion of the Judge. *Ashworth v. Outram*, Law Rep. 5 Ch. D. 943.

[And see CHARITY, 26; COSTS, 47; B 67, P 11, W 4, 6, 10, 16, HH 14 infra.]

#### (6) Raising new case.

19.—An appellant is not entitled to raise upon his appeal a new case inconsistent with the case originally raised by him, even though the evidence taken in the Court below supports such new case. *Ex parte Reddish; in re Walton* (App.), Law Rep. 5 Ch. D. 882.

*Criminal matters in.* [See CRIMINAL LAW, 1-3; ELEMENTARY EDUCATION ACTS, 5; GAMING, 1.]

#### (b) Notice of appeal.

20.—Notice of appeal, served on an official liquidator by a person ordered to pay money in a winding up, as follows: "Take notice, that it is the intention of A. B. to prosecute an appeal from an order made in this matter by His Honour the Vice-Warden of the Stannaries, on the 29th of May, 1878, whereby the said A. B. was ordered," &c.:—Held, sufficient, and the appeal ordered to be set down. *In re The West Jewell Tin Mining Company; Little's Case* (App.), Law Rep. 8 Ch. D. 806.

21.—Where no petition of appeal from a decree has been presented before the Judicature Act came into operation, the new practice must be adopted. *Bartlam v. Yates* (App.), Law Rep. 1 Ch. D. 13.

22.—Notice of appeal having been duly given but the appeal set down irregularly, the appellant withdrew the notice and gave a fresh notice, offering to pay any costs occasioned by the service of the first notice, and the appeal was then properly set down. The second notice was held good, the first having been abandoned. *Norton v. The London and North Western Railway Company* (App.), Law Rep. 11 Ch. D. 118.

23.—The Court can permit a notice of appeal to be amended, as to date or otherwise, without special circumstances. *In re The Stockton Iron Furnace Company* (App.), 48 Law J. Rep. Chanc. 417; Law Rep. 10 Ch. D. 335.

*Discontinuance of action, effect of.* [See G 4 infra.]



(c) *Time for appealing.*(1) *Interlocutory or final judgment or order.*

24.—The defendants, who, on notice of trial, had given counter-notice that they desired to have the issues of fact tried before a Judge and jury, and had, in a cross suit, given notice of trial before a Judge and jury, applied to have issues directed for such trial under Order XXXVI. rule 29. The original suit was for specific performance, in answer to which misrepresentation was set up, and this defence was met by allegations of delay and acquiescence. Hall, V.C., held that, having regard to the nature of the case, issues could not conveniently be directed till the trial before himself without a jury, and that then, if he thought fit, he might, under Order XXXVI. rule 26, direct the trial of such issues without a jury, and he accordingly refused the application. An appeal was brought more than fourteen days after the refusal, but less than fourteen after the order was passed and entered:—Held, by the Court of Appeal, that the appeal was too late, as the time must be reckoned, under Order LVIII. rule 15, from the refusal, though the order involved special directions as to costs. *Swindell v. The Birmingham Syndicate; The Birmingham Syndicate v. Swindell* (App.), 45 Law J. Rep. Chanc. 756; Law Rep. 3 Ch. D. 127.

The Court is unwilling to extend the time for appeal against an order on a point of practice. *Ibid.*

25.—When, on motion for judgment, under Order XL. rule 11, upon the admission of fact in the pleadings, an order is made which, though interlocutory, amounts to final judgment, so that no further proceedings in the action are necessary, such order is appealable within a year. *The Attorney-General v. The Great Eastern Railway Company* (App.), 48 Law J. Rep. Chanc. 428.

26.—Where an interlocutory order has been made, in part granting and in part refusing an application, the time for appealing from so much of the order as refuses the application runs from the date of the refusal, and not from the time of the order being perfected. *Trail v. Jackson* (App.), 46 Law J. Rep. Chanc. 16; Law Rep. 4 Ch. D. 7.

27.—Under Order LVIII. rules 9, 15, an appeal from an order made upon a petition under the Trustee Relief Act must be brought within twenty-one days. *In re Baillie's Trusts* (App.), 46 Law J. Rep. Chanc. 330; Law Rep. 4 Ch. D. 785.

28.—A summons to vary the Chief Clerk's certificate was adjourned into Court and directed to come on with the hearing of the cause on further consideration. At the hearing on further consideration one order was made refusing to vary the certificate and disposing of the cause:—Held, that the refusal to vary the certificate was distinct from the order on further consideration, and being an interlocutory order could not be appealed from after

twenty-one days from the making of it. *Cummins v. Herron* (App.), 46 Law J. Rep. Chanc. 423; Law Rep. 4 Ch. D. 787.

29.—By the decree in an interpleader suit instituted by a sheriff, an enquiry was directed as to the validity of a certain settlement. The Chief Clerk certified against its validity. On further consideration, and a motion to vary the certificate, it was declared that the settlement was valid, and the certificate was varied accordingly; and a sum of money paid into Court by the trustees under the decree to prevent the sale of the goods comprised in the settlement was ordered to be repaid to them:—Held, that an appeal from this order was an appeal from an interlocutory order, and must, therefore, be brought within twenty-one days after the date of the order. Held also, that Order LVIII. rule 14, did not apply. The meaning of that rule is merely that an interlocutory order which incidentally involves a decision on the question at issue in the cause, and which has not been appealed from, shall not interfere with the power of the Court of Appeal upon an appeal from the final order. An interlocutory order in the nature of a finding or verdict is conclusive if the time for appealing from it has expired. *White v. Witt* (App.), 46 Law J. Rep. Chanc. 560; Law Rep. 5 Ch. D. 589.

30.—An order giving the plaintiff leave to sign final judgment under Order XIV. rule 1, is an interlocutory order, and an appeal from such order must therefore be brought to the Court of Appeal within twenty-one days. *The Standard Discount Company v. Otard de la Grange* (App.), 47 Law J. Rep. C.P. 3; Law Rep. 3 C.P. D. 67.

31.—Although interpleader issues partake in some measure of the character of actions, and the findings upon them substantially determine the questions between the parties to such issues, they are not strictly actions, but are more analogous to enquiries directed in the course of actions. Consequently an order made upon an interpleader issue is an interlocutory order, and must be appealed from within twenty-one days. *McAndrew v. Barker* (App.), 47 Law J. Rep. Chanc. 340; Law Rep. 7 Ch. D. 701.

32.—An order absolute for a new trial is an interlocutory order, an appeal from which must be brought within twenty-one days from the date thereof, under Order LVIII. rule 15. *Highton v. Treherne* (App.), 48 Law J. Rep. Exch. 167.

Where a party failed to appeal from such interlocutory order within twenty-one days under the mistaken belief that such order was final, and that appeal might be brought at any time within twelve months,—Held, that such mistake was not a circumstance which would justify the Court in enlarging the time for appealing after the expiration of the twenty-one days under Order LVII. rule 6. *Ibid.*

33.—An appeal by a partially successful applicant from an interlocutory order is an appeal from a refusal, and must be brought within twenty-one days from the time of the order being pronounced. *Bordan v. The Birmingham*

*Small Arms Company* (App.), 47 Law J. Rep. Chanc. 96; Law Rep. 7 Ch. D. 24.

[See No. 39 infra.]

34.—Two suits, being a foreclosure suit and a cross suit to set aside the security, were set down, one on motion for decree, the other on replication filed before the Judicature Act came into force. On the 1st of April, 1876, one decree was made in both suits, dismissing one suit with costs, and ordering foreclosure in the other suit. This order was entered on the 16th of June, 1876. On the 29th of May, 1877, notice of appeal was given for the 15th of June following:—Held, that the appeal in the suit which was dismissed with costs, was an appeal from the “refusal of an application,” and not having been brought within a year from the date of such refusal was out of time. A special application to enlarge the time was refused on the ground that a mere mistake or misunderstanding of the meaning of the rules is not such a special circumstance as will induce the Court to give the special leave which is required to extend the time. *The International Financial Society (Lim.) v. The City of Moscow Gas Company (Lim.)*, and *The City of Moscow Gas Company (Lim.) v. The International Financial Society (Lim.)* (App.), 47 Law J. Rep. Chanc. 258; Law Rep. 7 Ch. D. 24.

35.—An action came on for trial before the Master of the Rolls on the 6th of December, 1877. No particular issue of fact was directed to be tried before the hearing of the action, but there being a question of fact in dispute between the parties, the Judge, on the 6th of December, heard evidence and gave a verdict in favour of the plaintiff, finding as facts that he was entitled to the right of way claimed by him, and that the defendant had obstructed that right. No order, however, was drawn up on that occasion. On the 28th of January, 1878, the plaintiff moved for judgment upon such findings, and the Judge granted a mandatory injunction against the defendant. The final judgment of the 28th of January was drawn up, and recited the findings of the Court on the 6th of December. On the 2nd of April, 1878, the defendant appealed against the judgment of the 28th of January:—Held, that the appeal, so far as it sought to impugn the findings of the Court, was out of time, the verdict upon such findings being an interlocutory order, the time for appealing against which is limited to twenty-one days, and the fact that the verdict was recorded in a document which recorded also the final judgment made no difference. *Krehl v. Burrell* (App.), 48 Law J. Rep. Chanc. 252; Law Rep. 11 Ch. D. 146.

There may well be in substance two orders, while in form there is but one. *Ibid.*

The case where a Judge has not tried and definitely found a verdict upon a distinct issue of fact between the litigants is unprovided for by the Judicature Acts and rules, and consequently under the jurisdiction of the Court of Chancery retained by section 23 of the Judicature Act,

1873, an appeal upon fact as well as at law can still be brought at any time within a year. *Sugden v. Lord St. Leonards* (45 Law J. Rep. P. D. & A. 49) distinguished. *Ibid.*

36.—The rule laid down in *Krehl v. Burrell* (No. 35 ante), that when in an action in the Chancery Division tried by a Judge without a jury, distinct issues of fact are settled at the commencement of the trial, then the Judge's verdict on those issues of fact, whether his judgment on the whole case follows immediately on such verdict or at an interval of time, is an interlocutory order which must be appealed from within twenty-one days, does not apply where distinct issues of fact have not been settled at the commencement of the trial, although the Judge may base his judgment on a finding on the facts. In the latter case the finding on the facts and the judgment can be appealed from within a year. *Lowe v. Lowe* (App.), 48 Law J. Rep. Chanc. 383; Law Rep. 10 Ch. D. 432.

37.—An order deciding the rights of parties under a mortgage deed made in the winding-up of a company was held not an interlocutory order, and a fourteen days' notice of appeal was held necessary. *In re The Stockton Iron Furnace Company* (App.), 48 Law J. Rep. Chanc. 417; Law Rep. 10 Ch. D. 335.

38.—A judgment on a question arising in an action, and stated in a special case for the opinion of the Court by the arbitrator to whom the action has been referred, is an interlocutory judgment, and must be appealed from within twenty-one days. *Collins v. The Vestry of Paddington* (App.), 49 Law J. Rep. Q.B. 264; Law Rep. 5 Q.B. D. 368.

39.—An appeal from an order giving part of a demand is not an appeal from a refusal. *In re Mitchell's Trusts*, 48 Law J. Rep. Chanc. 50; Law Rep. 9 Ch. D. 5.

40.—After administration action brought an executrix carried on the testator's trade with the assets, and incurred a drade debt. The creditor brought an action, and obtained judgment and execution, under which he seized some of the testator's assets. On interpleader by the sheriff, the proceeds of the sale were paid into Court in the administration action, and the creditor took out a summons in that action, claiming the proceeds of the sale, but his claim was rejected:—Held, that the order, although finally determining the rights of the parties, was an interlocutory order under Rules of Court, 1875, Order LVIII. rule 15, so that an appeal must be brought within twenty-one days. Enlargement of time refused. The memorandum as to Practice of the 10th of November, 1875, explained. *Physey v. Physey* (App.), Law Rep. 12 Ch. D. 305.

*From order on petition under Trustee Relief Act.* [See TRUSTEE RELIEF ACT, 9.]

*From order under Vendor and Purchaser Act.* [See VENDOR AND PURCHASER, 35, and 57 infra.]

*From order to answer interrogatories.* [See P 6 infra.]

*From winding-up order.* [See B 61 infra.]

(2) *Order of Judge or Master at chambers.*

41.—When the last of the eight days, limited by order LIV. rule 6 of the Judicature Act, 1875, for appealing from a decision at chambers expires on a Sunday, the appellant has the following Monday for making the appeal. *Taylor v. Jones*, 45 Law J. Rep. C.P. 110; Law Rep. 1 C.P. D. 87.

42.—Order LIV. rule 6 of the Judicature Act, 1875, which enacts that an appeal to the Court from a decision at chambers shall be made within eight days is peremptory, and there is no appeal after the expiration of such time, though the vacation intervene, unless the Court under Order LVII. rule 6, enlarge the time. *Crom v. Samuel*, 46 Law J. Rep. C.P. 1; Law Rep. 2 C.P. D. 21.

43.—Notice of motion of appeal from decision in chambers having been given on the eighth day after the decision:—Held, too late, under Order LIV. rule 6, since the notice must be given so that the motion can be heard within eight days after the decision appealed against. *Fow v. Wallis*, Law Rep. 2 C.P. D. 45.

44.—Under Order LIV. rule 6, an appeal from an order of a Judge in chambers after the expiration of eight days is too late, although such order was made in the long vacation, and no Divisional Court has sat during the eight days succeeding the date of the order. *Crom v. Samuel* (46 Law J. Rep. C.P. 1; Law Rep. 2 C.P. D. 21; No. 42 supra) approved. *Runtz v. Sheffield* (App.), 48 Law J. Rep. Exch. 385; Law Rep. 4 Ex. D. 150.

45.—Although no time is limited by the Judicature Act or the rules of Court, within which an application should be made to rehear before the Judge in Court an order made by the Judge in chambers, yet the principle of Order LVIII. rule 15, applies by analogy to such cases. Therefore, as a general rule, an application to rehear before a Judge in Court an order made by the Judge in chambers, should be made within twenty-one days from the time at which the order is signed, entered, or otherwise perfected. *Dickson v. Harrison* (App.), 47 Law J. Rep. Chanc. 761; Law Rep. 9 Ch. D. 243.

Where the Judge has, on rehearing in Court, refused to discharge or vary the order, such refusal is the subject of an appeal and the whole matter may be decided on such appeal. *Ibid.*

46.—Rule 4, Order LIV. when interpreted by comparison with rule 6 of the same Order, requires that an appeal summons from a Master to a Judge at chambers should not only be taken out within four days, but also made returnable within four days. *Bell v. The North Staffordshire Railway Company*, 48 Law J. Rep. Q.B. 513; Law Rep. 4 Q.B. D. 205.

47.—An order was made in chambers on the 20th of June, and on the 24th of June the de-

fendant gave notice of appeal to a Divisional Court for Saturday, the 28th. The Court sat on the 26th to hear motions, and was sitting on the 28th, but not for the purpose of hearing motions. The defendant brought forward his motion on the 30th, being the next day on which the Court sat to hear motions:—Held, affirming the Queen's Bench Division, that the appeal motion was out of time, since a Court to which an application to enlarge the time could be made had been sitting within the eight days. *Stirling v. Du Barry* (App.), Law Rep. 5 Q.B. D. 65.

(3) *Extension of time.*

48.—In an action, pending when the Judicature Acts came into operation, leave was given to appeal from an order on demurrer, the issues of fact not having been tried, and the time for appealing was extended. *Fitzgerald v. Dawson* (App.), 45 Law J. Rep. Exch. 152.

49.—After the time for appealing has expired the Court will not give special leave to appeal upon an *ex parte* application. *Evennett v. Lawrence* (App.), 46 Law J. Rep. Chanc. 119; Law Rep. 4 Ch. D. 139.

50.—A proper notice of appeal was given for the 18th of February, but, through the mistake of the solicitor's clerk, the appeal was not set down till the 19th of February. The appeal came on to be heard on the 20th of February:—Held, that the appeal, not having been set down till after the day for which notice had been given, was out of time. Also, that the mistake of the solicitor's clerk as to the meaning of the rule was no ground for extending the time for appealing. *In re Mansel. Rhodes v. Jenkins* (App.), 47 Law J. Rep. Chanc. 870; Law Rep. 7 Ch. D. 711.

51.—After the expiration of the time allowed by Order LVIII. rule 15, for appealing from a final decree, the Court will not, without special circumstances, enlarge the time for appealing. The mere fact that the Court of Appeal has in a subsequent case thrown doubt upon the correctness of the decision, is not a sufficient ground. *Craig v. Phillips* (App.), 47 Law J. Rep. Chanc. 239; Law Rep. 7 Ch. D. 249.

52.—T. had been placed on the list of contributories of the company under an order of the Judge of the Stannaries Court. On the last day, limited by Order LVIII. rule 15, for appealing, T.'s solicitor gave a proper notice of appeal. Four days afterwards T.'s solicitor, thinking that the notice of appeal was irregular, withdrew it, and two days after gave another notice of appeal. The respondent having objected that the appeal was out of time,—Held, that the above circumstances, and the fact that the respondent had never really been without notice of a *bona fide* intention to appeal, constituted special circumstances entitling the appellant to an extension of the time for appealing. *In re The Ambrose Lake Tin and Copper Company (Lim.)*; *Clarke's Case*; *Taylor's Case* (App.), 47 Law J. Rep. Chanc. 696; Law Rep. 8 Ch. D. 643.

53.—The Court or a Judge has power under Order LIV. rule 4, and Order LVII. rule 6, to enlarge the time for appealing against an order of a Master made under Order XXIX. rule 1, dismissing an action for want of prosecution, even after such order has taken effect and the action has become dismissed, and when, as decided by *Whistler v. Hancock* (47 Law J. Rep. Q.B. 152; Law Rep. 3 Q.B. D. 83; H 7 *infra*), there is no power to enlarge the time for doing anything in such action. *Burke v. Rooney*. *Same v. Same*, 48 Law J. Rep. C.P. 601; Law Rep. 4 C.P. D. 226.

54.—Although the appeal from a Master's decision must be by summons returnable on a day within four days from such decision in order to comply with Order LIV. rule 4, yet on the hearing of the appeal (even though after such time and without any express summons for the purpose), the Court or a Judge has power under Order LVII. rule 6 to enlarge the time for appealing. *Gibbons v. The London Financial Association*, 48 Law J. Rep. C.P. 514; Law Rep. 4 C.P. D. 63.

55.—The plaintiff moved for an extension of time for appealing from an interlocutory order of the Queen's Bench Division, and relied on an affidavit stating that immediately after the order was made, which was on the 1st of April, 1879, the plaintiff's solicitor wrote to the defendants' solicitor, giving notice of the plaintiff's intention to appeal; that on the 8th of April the defendants' solicitor sent a copy of the order to the plaintiff's solicitor, who, though it was doubted whether the order was interlocutory or final, at once prepared to set down the appeal as from an interlocutory order, but believed that he had twenty-one days from the 8th of April, within which to set it down; that on the 18th of April the plaintiff's solicitor had an attack of illness which prevented him from attending to business until the 25th, when he saw his client, who instructed him to set down the appeal at once; that, finding it was too late to set down the appeal as from an interlocutory order, the plaintiff's solicitor, acting under counsel's advice, gave notice of appeal on the 12th of May, and set down the appeal as one from a final order. The Court of Appeal upon these facts refused to extend the time for appealing. *Collins v. The Vestry of Paddington* (App.), 49 Law J. Rep. Q.B. 612; Law Rep. 5 Q.B. D. 368.

Per Baggallay, L.J., and Thesiger, L.J. (Bramwell, L.J., dissenting).—An extension of time for appealing is an indulgence which ought not to be granted, except upon strong special grounds, after an action has been tried and judgment given upon the merits. *Ibid.*

Per Bramwell, L.J.—An extension of time should be granted *ex debito justitiæ* in all cases where the application is necessitated through some *bona fide* mistake, error or carelessness, and no damage has been done to the opposite party which cannot be repaired by payment of costs or otherwise. *Ibid.*

56.—The time for appealing from an order

of a Judge in chambers expired in the long vacation, during which no Divisional Court was sitting:—Held, that the time ought to have been enlarged almost as of course, though execution had been levied under the order. The defendant applied to a Judge for an enlargement of time, which was refused. He then appealed against the order to a Divisional Court. By consent the appeal was treated as being also an appeal from the refusal to enlarge the time. The Divisional Court dismissed the appeal on the merits. An appeal to the Court of Appeal was dismissed, on the ground that there was no appeal from the order refusing to enlarge the time:—Held, that the Court of Appeal were bound to treat the question of time as open, it having been treated as open in the Court below. *Wallingford v. The Mutual Society* (H.L.), 60 Law J. Rep. C.P. 49; Law Rep. 5 App. Cas. 685.

57.—The time for appealing from an order under the Vendor and Purchaser Act, 1874, s. 9, is twenty-one days. *In re Blyth and Young* (App.), Law Rep. 13 Ch. D. 416.

Mere communication by an unsuccessful party to his opponent of an intention to appeal is not sufficient notice of appeal; nor, in the absence of other special circumstances, is it ground for an extension of time for appealing. *Ibid.*

Where a respondent, after the time for appealing has expired, knowingly allows his opponent to incur expense in preparing for the appeal, without warning him of his intention to object to the appeal being heard, such respondent may be deprived of his costs. *Ibid.*

The grounds for allowing an extension of time for appeal considered. *Ibid.*

*Special circumstances, what are.* [See B 34 *supra*.]

58.—A person aggrieved by an order of adjudication will be allowed to appeal against it, although more than twenty-one days have elapsed since the date of it, if he did not know, until his rights were attacked, of the act of bankruptcy which affected his rights, and if, when attacked, he comes promptly to the Court for relief. *In re Tucker*; *ex parte Tucker* (App.), 48 Law J. Rep. Bankr. 118; Law Rep. 12 Ch. D. 308.

[And see VENDOR AND PURCHASER, 36; BANKRUPTCY, M 5, 13, 14, 18, 19.]

#### (4) Appeal out of time: costs of affidavits.

59.—When a respondent to an appeal intends to take the objection that it is out of time, he ought to communicate his objection at once to the other side. When an appeal is dismissed on the ground that it is out of time, the respondent will not be allowed the costs of affidavits filed by him after the appeal was set down. *In re Jones*; *ex parte Fardon's Vinegar Company* (App.), 49 Law J. Rep. Bankr. 74; Law Rep. 14 Ch. D. 285.

*Computation of time.* [See BANKRUPTCY, M 10, 11.]

(d) *Setting down.*

60.—An appeal from the refusal of an interlocutory motion may be set down without production of the order appealed from, or a copy of it. Order LVIII. rule 8 does not apply to such a case. *Smith v. Grindley; Smith v. Charrington* (App.), Law Rep. 3 Ch. D. 80.

61.—An appeal must be set down for hearing before the day named in the notice of motion, or, if the Court is not then sitting, before the next day of its sitting. *In re The National Funds Assurance Company* (App.), 46 Law J. Rep. Chanc. 183; Law Rep. 4 Ch. D. 305.

An appeal from a winding-up order must be brought within twenty-one days from the making of the order. *Ibid.*

62.—Where, owing to the respondent's delay in drawing up an order, the appellant is unable to produce an office copy of it, the respondent will not be permitted to take the objection that the appeal is set down too late. *In re Harker. Goodbarne v. Fothergill* (App.), Law Rep. 10 Ch. D. 613.

63.—A rule *nisi* to reverse a judgment of an inferior Court was obtained on the 5th of November, calling upon the opposite party to shew cause at the expiration of eight days, or so soon after as the case could be heard. The rule was not set down at the Crown Office for hearing, in the list, under Order LVIII. rule 19, of appeals from inferior Courts before the day named in the rule nor until the following 3rd of February:—Held, that the appellant had lost his right to be heard. *Dunovan v. Brown*, 48 Law J. Rep. Exch. 456; Law Rep. 4 Ex. D. 148.

(e) *Leave to adduce new evidence.*

64.—In order to obtain the leave of the Court of Appeal to introduce new evidence on the hearing of an appeal, it is not necessary to give a formal notice of motion. The proper course is to give notice to the other side of the intention to ask at the hearing of the appeal for leave to introduce the new evidence. Such a notice may be given without any leave from the Court. *Hastie v. Hastie* (App.), 45 Law J. Rep. Chanc. 288; Law Rep. 2 Ch. D. 304.

65.—Where a party wishes to examine fresh witnesses at the hearing of an appeal he must apply for leave by motion previously to the hearing of the appeal. *Hastie v. Hastie* (see last case) only applies to affidavits and documentary evidence. *Dicks v. Brooks* (App.), Law Rep. 13 Ch. D. 652.

*Admission of new evidence: winding up.* [See COMPANY, D 74; H 77.]

(f) *Stay of proceedings pending.*

66.—Upon an appeal being brought, an original application to the Court of Appeal for a stay of execution upon the decision appealed from is a motion of which notice must be given to the other side, and which cannot be made *ex parte*. *The Emma Mining Company v. Lewis*

& Son (App.), 48 Law J. Rep. C.P. 504; Law Rep. 4 C.P. D. 396.

67.—The renewal before the Court of Appeal of an application, under Order LVIII, to stay proceedings pending an appeal, after a similar application has been made to the Court below and refused, is not an appeal, and does not therefore come within the ordinary rule as to an appeal from an exercise of discretion. *Cooper v. Cooper* (App.), 45 Law J. Rep. Chanc. 667; Law Rep. 2 Ch. D. 492.

The costs of an application to stay proceedings pending an appeal must be paid by the applicant. *Ibid.*

68.—On application to the Court of Appeal by way of original motion under Order LVIII. rule 17, to advance an appeal and to stay proceedings pending the appeal, the Court refused to advance the appeal, and held that they had no jurisdiction to entertain the rest of the motion, except by way of appeal from the Court below. The observations of Mellish, L.J., in *Cooper v. Cooper* (see last case) explained. *The Attorney-General v. The Swansea Improvements and Tramways Company* (App.), 48 Law J. Rep. Chanc. 72; Law Rep. 9 Ch. D. 46.

69.—When an action is dismissed in the first instance, and the plaintiff appeals and is desirous of keeping things *in statu quo* pending the hearing of the appeal, he must apply for relief to the Court of Appeal, and not to the Court appealed from; and relief will be granted in a proper case. *Wilson v. Church* (App.), 48 Law J. Rep. Chanc. 690; Law Rep. 11 Eq. 576.

70.—Where notice had been given of appeal from a judgment restraining infringement of a patent and directing an account of profits made by such infringement, proceedings under the account were stayed and the appeal advanced. *Adair v. Young* (App.), Law Rep. 11 Ch. D. 136.

*Application, to what Court to be made.* [See ADMIRALTY, 25.]

*Ecclesiastical cases, practice in.* [See CHURCH AND CLERGY, 35.]

*Staying payment of costs pending.* [See COSTS, 50, 69.]

*Costs of appeal.* [See COSTS, 47–55.]

— *security for.* [See COSTS, 68–72; BANKRUPTCY, M 21.]

*House of Lords, to; practice on.* [See HOUSE OF LORDS.]

## (C) APPEARANCE AND DEFAULT OF APPEARANCE.

1.—A notice of motion is a document within the meaning of Order XIX. rule 6, that may be served on a defendant who has failed to appear by filing the same with the proper officer. *Morton v. Miller* (App.), 45 Law J. Rep. Chanc. 613; Law Rep. 3 Ch. D. 516; and *Dymond v. Croft* (No. 1), 45 Law J. Rep. Chanc. 612.

2.—Notice was given of a motion to rescind a Judge's order. The party giving the notice failed to appear. The other party having ap-

peared, the Court ordered that they should be paid their costs of appearance. *Berry v. The Exchange Trading Company*, 45 Law J. Rep. Q.B. 224; Law Rep. 1 Q.B. D. 77.

8.—A defendant not appearing and proceeded against under Order XIII. rule 9, is not to be taken to have dispensed with the delivery of a statement of claim. *Minton v. Metcalfe*, 46 Law J. Rep. Chanc. 584.

4.—A writ was issued out of a district registry against a defendant resident out of the district. The defendant entered an appearance in London, but failed to give notice to the plaintiff under Order XII. rule 6a:—Held, that the appearance was not complete, and that the plaintiff was entitled to sign judgment. *Smith v. Dobbin* (App.), 47 Law J. Rep. Exch. 65; Law Rep. 3 Ex. D. 338.

The writ was indorsed "This writ was issued by T. W. G., of Hereford, whose address for service is T. W. G., care of T. W. & Son, 11 Bedford Row, W.C.":—Held, a sufficient indorsement under Order IV. rule 3a. *Ibid.*

5.—Where the defendant does not appear at the trial, to obtain judgment the plaintiff must prove that notice of trial has been given. *Cockshott v. The London General Cab Company*, 47 Law J. Rep. Chanc. 126.

6.—In default of appearance by a party at the trial, judgment will be given against him without requiring evidence of notice of trial. *James v. Cron*, 47 Law J. Rep. Chanc. 200; Law Rep. 7 Ch. D. 410.

7.—The plaintiff having become bankrupt, and no notice to the trustee in bankruptcy having been shewn, the Court refused to give judgment for the defendant, and ordered the action to be struck out. *Eldridge v. Burgess*, 47 Law J. Rep. Chanc. 342; Law Rep. 7 Ch. D. 411.

8.—When, through a mere mistake or slip, either party to an action does not appear on its being called on for trial, and judgment is given in default of appearance, and an application to restore the action is made within due time, it is a matter of course to restore the action on the applicant paying all the costs of the day. And *semble*—In such a case an affidavit that the applicant has a good cause of action or defence (as the case may be) is unnecessary. *Burgoin v. Taylor* (App.), 47 Law J. Rep. Chanc. 542; Law Rep. 9 Ch. D. 1.

9.—Judgment dismissing an action for default of appearance by the plaintiff was set aside on the terms of the plaintiff paying the costs of the previous trial and the motion to set aside judgment. *Cockle v. Joyce*; *Wright v. Clifford*, 47 Law J. Rep. Chanc. 543; Law Rep. 7 Ch. D. 56.

10.—On the bankruptcy of a defendant to an action ripe for trial an order continuing the action against the trustee in bankruptcy was duly served on the trustee. The trustee did not appear:—Held, not to be necessary to file the pleadings against him under Order XIX. rule 6. *Chorlton v. Dickie*, 49 Law J. Rep. Chanc. 40; Law Rep. 13 Ch. D. 160.

In default of appearance by such a trustee at the trial judgment will be given without evidence of notice of trial having been served on the bankrupt. *Cockshott v. The London General Cab Company* (47 Law J. Rep. Chanc. 126; No. 5 supra) not followed. *Ibid.*

11.—Where a statement of claim is served personally on a defendant with copy of writ, and the defendant subsequently does not appear in the action, it is not necessary that the statement of claim should be also filed in order to obtain judgment by default against such defendant. *Renshaw v. Renshaw*, 49 Law J. Rep. Chanc. 127.

*Default in, in foreclosure action.* [See MORTGAGE, 43.]

*Judgment in default of appearance.* [See *infra* R 1; S 1, 5; U 36.]

*Third party, by: discovery by third party.* [See PRODUCTION OF DOCUMENTS, 26.]

*Under protest in Admiralty action.* [See ADMIRALTY, 1, 2.]

*Waiver of irregularity in order for trial.* [See BANKRUPTCY, M 36.]

*Attachment.* [See ATTACHMENT; L 1–3 *infra*.]  
*Against sheriff for not returning writ.* [See SHERIFF, 2.]

*Costs of.* [See COSTS, 42.]

*Default in filing affidavit as to documents.* [See PRODUCTION, 21.]

*Refusal to produce will.* [See PROBATE, 29.]

*Chambers, proceedings at.*

*Appeals from orders made at.* [See B 9–11, 41–47, 54 *supra*.]

*Jurisdiction: transfer of action.* [See GG 3 *infra*.]

*Reference to, to settle lease.* [See LEASE, 6.]

*Vesting order in: jurisdiction.* [See TRUSTEE ACTS, 18.]

*Change of parties.* [See U 17–37 *infra*.]

#### (D) CHARGING ORDER.

1.—The plaintiff's bill having been dismissed with costs, an order *nisi* charging railway shares belonging to the plaintiff with the amount of the defendant's costs when taxed was made before taxation. *Burns v. Irving*, 46 Law J. Rep. Chanc. 423; Law Rep. 3 Ch. D. 291.

2.—A charging order cannot be made in respect of a decree for an account, the amount due under which has not been ascertained. *Jones v. Williams* (8 Mee. & W. 349; 10 Law J. Rep. Exch. 253) followed. Similarly, a charging order cannot be made in respect of costs ordered to be taxed and paid until after taxation. *Burns v. Irving* (see last case) not followed. A decree was made in the suit of *W. v. T.*, declaring that the plaintiff was entitled to one-fifth share in the proceeds of sale of certain engravings, and directing an account and payment of the

amount due, and directing the taxation of the costs, and payment thereof to the plaintiff. A part of such proceeds of sale had been paid into Court in the suit of *H. v. T.* The plaintiff petitioned for a charging order on the funds in Court in *H. v. T.* for the amount found due and the costs, unless the defendant should shew cause to the contrary within seven days from the service of the order. The petition was not served on any one. The Vice-Chancellor made the order asked for:—Held (on appeal), that the amount due upon the account not having been ascertained, nor the costs taxed, the charging order had been improperly obtained, and must be discharged. *Widgery v. Tepper. Hall v. Tepper* (App.), 48 Law J. Rep. Chanc. 367; Law Rep. 6 Ch. D. 364.

Held also, that, without prejudice to independent proceedings, the Court could not grant a stop order upon a fund in Court in another suit, until the plaintiff had shewn his right to the funds in that suit. *Ibid.*

3.—Judgment was given for a sum of money to be paid by the defendant to the plaintiff, payment to be made in three months in order to give the defendant opportunity for appealing:—Held, that a charging order on the defendant's shares could properly be obtained before the expiration of three months. *Bagnall v. Carlton*, 47 Law J. Rep. Chanc. 51; Law Rep. 6 Ch. D. 130.

4.—An order obtained *ex parte* under 1 & 2 Vict. c. 110. ss. 14, 15, charging stock standing in the name of a judgment debtor, cannot be made absolute when it appears that the judgment debtor was dead at the date of the original order. *Finney v. Hinde*, 48 Law J. Rep. Q.B. 275; Law Rep. 4 Q.B. D. 102.

#### Commission.

*To take evidence abroad.* [See EVIDENCE, 32.]

#### (E) COMPROMISE.

1.—A compromise on behalf of infants is to be obtained upon petition, supported by an affidavit of a solicitor that counsel's opinion has been given that the compromise is for the benefit of the infants. *Gray v. Paul*, 46 Law J. Rep. Chanc. 818.

2.—Under section 24 of the Judicature Act, 1873, an agreement between the parties to an action to stay proceedings upon terms can be enforced in the action. *Eden v. Naish*, 47 Law J. Rep. Chanc. 325; Law Rep. 7 Ch. D. 781.

3.—Consent to a compromise of an action fairly come to in open Court, after the plaintiff's case was opened, cannot be withdrawn even before the order is passed. *Davis v. Davis*, 49 Law J. Rep. Chanc. 241; Law Rep. 13 Ch. D. 861.

#### Consent.

*Withdrawal of.* [See E 3 supra; COUNSEL, 2; E 3-5 infra.]

#### (F) CONSOLIDATION OF ACTIONS.

1.—An order was made for the consolidation

of two actions for the administration of A.'s estate, to both of which W. was a defendant, as being beneficially interested. At the date of the order A.'s sole executrix was dead intestate. Administration to the estate of A. had been since granted to J., and administration to the estate of A.'s executrix to W. On an *ex parte* application by plaintiff to make J. and her husband new defendants, and W. a defendant in his representative character to the consolidated action, the Court, under Rules of Court, 1875, Order XVI. rule 15, made a conditional order that J. and his wife should be made defendants without service of any writ, and that W. should be made a defendant in his representative character without further indorsement on any writ. *In re Wortley; Culley v. Wortley; Harvard v. Storey*, 46 Law J. Rep. Chanc. 182; Law Rep. 4 Ch. D. 180.

2.—When a number of actions are consolidated, and one of them is ordered to be tried as a test action, the judgment in such action will not bind the parties in all the other actions, unless it has been tried out on its merits upon evidence. Where, therefore, one of seventy-eight actions by different plaintiffs against the same defendants was ordered to be tried as a test action to decide the rights of the plaintiffs in all the other actions, and the plaintiff in the test action, when it came on for trial, declined to proceed, and judgment was then given for the defendants,—Held, that, notwithstanding Order XLII. rule 6, there had been no trial of the test action on the merits, and that the Judge had jurisdiction to substitute another of the actions as a test action. *Amos v. Chadwick* (App.), 47 Law J. Rep. Chanc. 871; Law Rep. 9 Ch. D. 459.

In an action thus made a test action the plaintiff, in the absence of agreement, has no right to be indemnified against costs by the other plaintiffs. *Ibid.*

3.—An action was brought and a decree made in the Chancery Division for administration of the personal estate of A., and for an enquiry whether his moiety of certain real estate had become assets of his partnership business carried on with B. B., the surviving partner, brought an action for winding up the partnership in another branch of the Chancery Division:—Held, that B.'s action ought to be transferred to the Judge before whom the action for administration was pending. *Davis v. Davis*, 48 Law J. Rep. Chanc. 40.

*Salvage actions.* [See ADMIRALTY, 32.]

*Transfer of actions.* [See GG infra.]

#### Contempt.

*Appeal from dismissal of motion to commit for contempt.* [See B 18 infra.]

*Breach of injunction: telegram.* [See BANKRUPTCY, M 23; TELEGRAPH, 3.]

#### Costs.

*Generally.* [See COSTS.]

*Administration action, of.* [See ADMINISTRATION, 42-55.]

*Admiralty actions, of.* [See ADMIRALTY, 45-63.]

*Appeal for.* [See B 12-18 supra.]

*Bill of.* [See SOLICITOR, 25-28.]

*Lands Clauses Act, of proceedings under.* [See LANDS CLAUSES ACT, 28, 36-40.]

*Solicitor's lien for.* [See SOLICITOR, 29-48.]

*Specific performance action, of.* [See SPECIFIC PERFORMANCE, 26.]

*Trustee Acts, under.* [See TRUSTEE ACTS, 19, 20.]

*Partition action, of.* [See PARTITION, 24.]

*Partnership action, of.* [See PARTNERSHIP, 28, 29.]

**Counterclaim.** [See W 56-74 infra.]

**Creditor's action.**

*Indorsement of writ.* [See ADMINISTRATION, 33-35.]

**Cross-examination.**

*On accounts.* [See A 5 supra.]

*Relevancy of.* [See K 15 infra.]

**Damages.** [See DAMAGES.]

*Counter-claim for.* [See W 50, 58, 60.]

**Default.**

*Affidavit of documents, in filing.* [See PRODUCTION OF DOCUMENTS, 20, 21.]

*Appearance, of.* [See C 1-11 supra.]

*Pleading, of: notice of motion for judgment.* [See S 1, 2, 5; W 63 infra.]

**Defence.** [See W 44-55 infra.]

**Delivery of goods.**

*Order for.* [See O 2 infra.]

**Demurrer.** [See W 38-43 infra.]

**Disclaiming defendants.**

*Foreclosure action.* [See MORTGAGE, 44.]

#### (G) DISCONTINUANCE.

1.—Where a plaintiff, upon obtaining an injunction, has given the usual undertaking to abide by any order the Court may make as to damages, such undertaking remains in force, notwithstanding the plaintiff has discontinued his action under Order XXIII. rule 1; and may be enforced against the plaintiff, upon motion, within a reasonable time after the discontinuance of the action. *Newcomen v. Coulson*, 47 Law J. Rep. Chanc. 429; Law Rep. 7 Ch. D. 764.

2.—An order was made in a number of similar actions brought against the same defendants, extending the time for delivery of statement of claim till after the trial of the present action, on the undertaking of the various plaintiffs that that action should as against them be a test action. At the trial the plaintiff was

not prepared to proceed. The Court refusing to allow the action to be discontinued gave judgment for the defendants. *Robinson v. Chadwick*, 47 Law J. Rep. Chanc. 607; Law Rep. 7 Ch. D. 878.

3.—Where an action has been referred to an arbitrator, and the findings of the arbitrator are in favour of the defendant on all the material points, so as to be analogous to a general verdict, a Judge ought not, in the exercise of his discretion, to give leave to the plaintiff to discontinue his action under Order XXIII. rule 1. *Stachelschmidt v. Wilford*, 48 Law J. Rep. Q.B. 348; Law Rep. 4 Q.B. D. 217.

4.—A counter-claim, being part of the original action, is gone when the action has been discontinued, and no further step can be taken on it. *Vavasseur v. Krupp*, Law Rep. 15 Ch. D. 474.

5.—Notice of appeal from the refusal of an injunction was given by a plaintiff, and shortly afterwards the plaintiff's solicitors wrote to the defendants' solicitors withdrawing the notice of appeal. Two days after this the plaintiff's solicitors gave the defendants' solicitors notice of discontinuance of the action. The defendants' solicitors declined to consent to the withdrawal of the appeal except on terms to which the plaintiff's solicitors did not agree, and the appeal came on in its turn:—Held, that the discontinuance of the action put an end to the appeal, and that no order could be made except that it should be struck out of the paper. *Conybeare v. Lewis* (App.), Law Rep. 13 Ch. D. 469.

[And see MORTGAGE, 46.]

**Costs.** [See ADMIRALTY, 52.]

*Notice of, by letter.* [See ADMIRALTY, 27.]

**Discovery.** [See P infra, and PRODUCTION OF DOCUMENTS.]

#### (H) DISMISSAL OF ACTION.

##### (a) For want of prosecution.

1.—Where a plaintiff did not deliver a statement of claim, as required, within the time limited, and then became bankrupt, and the defendant moved *ex parte* to dismiss for want of prosecution, notice of the motion was ordered to be served on the trustee in bankruptcy of the plaintiff. *Wright v. The Swindon, Marlborough and Andover Railway Company*, 46 Law J. Rep. Chanc. 199; Law Rep. 4 Ch. D. 164.

2.—Where the plaintiff, being bound to deliver a statement of claim, failed to do so within the six weeks given by Order XXI. rule 1a, and the defendant moved under Order XXIX. rule 1, to dismiss for want of prosecution, the Court gave the plaintiff one week's further time for paying the costs of the motion. *Higginbottom v. Aynsley*, Law Rep. 3 Ch. D. 288.

3.—On failure by an appellant (ordered so to do) to give security for costs of an appeal, the respondent has a right to have the appeal dismissed for want of prosecution after a reasonable time, although no time was fixed by the



order for the completion of the security. *Vale v. Oppert* (App.), Law Rep. 5 Ch. D. 633.

4.—An appellant was ordered to give security for the costs of his appeal. Nine months elapsed without his doing so, and he gave no explanation of the delay:—Held, that the appeal must be dismissed with costs, including the costs of the respondents' motions for security and to dismiss. *Judd v. Green* (App.), 46 Law J. Rep. Chanc. 257; Law Rep. 4 Ch. D. 784.

5.—The rule in Equity that, where a stay of proceedings has been ordered until the plaintiff give security for costs, and the plaintiff has failed within a reasonable time to give security, the defendant may apply to dismiss the action for want of prosecution, is now of general application to all actions in the High Court of Justice, and a Judge, when so applied to, has a discretionary power to dismiss the action without requiring the defendant to abandon the previous order on the plaintiff to give security for costs. *La Grange v. M'Andrew*, 48 Law J. Rep. Q.B. 315; Law Rep. 4 Q.B. D. 210.

6.—As a general rule, an application by a defendant, under Order XXXVI. rule 4 (a), to dismiss an action for want of prosecution, is properly made by motion in Court. *Evelyn v. Evelyn*, 49 Law J. Rep. Chanc. 18; Law Rep. 13 Ch. D. 138.

7.—Where the time limited by an order dismissing an action for want of prosecution unless statement of claim be delivered within that time, has expired, and the plaintiff has not then delivered his statement of claim, the action is dead, and a master has no jurisdiction upon a subsequent application to grant the plaintiff further time for delivering a statement of claim. *Whistler v. Hancock*, 47 Law J. Rep. Q.B. 162; Law Rep. 3 Q.B. D. 83.

8.—An order was made on the 6th of May, dismissing an action for want of prosecution, unless the plaintiff delivered his statement of claim within fourteen days, which expired on the 20th of May. On the 19th of May the plaintiff took out a summons to extend the time, but the summons was not served on the defendant until the 20th of May, the day on which it was made returnable, when it was agreed in writing between the parties that it should be adjourned till noon the following day. Accordingly, the summons came on for hearing before a Master on the 21st of May, and an order was made extending the time for delivery of the statement of claim:—Held, that the order made on the 6th of May could not be enlarged by the mere consent of the parties, that the action was dead, and that the Master, therefore, had no jurisdiction upon a subsequent application to grant the plaintiff further time for delivering a statement of claim. *King v. Davenport*, 48 Law J. Rep. Q.B. 606; Law Rep. 4 Q.B. D. 402.

*Winding up: claim in, not barred by dismissal of action.* [See COMPANY, H 48.]

**District registry.** [See DISTRICT REGISTRY.]

DIGEST, 1875-1880,

## Divisional court.

*Appeal to, from order at chambers.* [See B 41-47.]

*Application, when to be made to.* [See B 2; T 2-4.]

*Jurisdiction of, to enter final judgment.* [See T 13 infra.]

**Divorce cases, in.** [See DIVORCE, 37-41.]

**Ecclesiastical cases, in.** [See CHURCH AND CLERGY, 29-35.]

## (I) ENROLMENT.

1.—A caveat against the enrolment of an order in chambers is not prosecuted with effect by service within twenty-eight days after it is warned of notice of motion before the Judge in Court to discharge the order. *In re Lewis, Munns & Company; ex parte The Republic of Paraguay*, 45 Law J. Rep. Chanc. 62.

2.—A party who applies for enrolment of a decree within five years under Consolidated Order XXIII. rules 25, 26, is entitled to it as a matter of right, unless the conduct of the applicant has been such as to make it unreasonable that he should be allowed so to do: his right is not affected by mere inactivity on his part, or by the fact that the opposite party has altered his position on the faith of his ownership as established by the decree. *Cope v. Earl de la Warr* (App.), Law Rep. 5 Ch. D. 666.

3.—That an enrolled decree in a former suit may be a bar to the relief sought by a second suit, the objects and purposes of the two suits must be identical, and in that case, before the Court has jurisdiction over the second suit, the enrolment of the decree must be vacated; but where the objects are not the same, there is no such necessity. *Turner v. Tepper*, 46 Law J. Rep. Chanc. 703; Law Rep. 5 Ch. D. 516.

Where in a creditor's suit for the administration of the estate of J. T. a decree was made in the presence of A. declaring that certain property belonged to J. T. beneficially, and that decree was enrolled, the Court held that such enrolment did not render it incumbent on A. to file a bill of review and get the enrolment vacated, before instituting a suit to set aside the sale by which J. T. purported to have become the beneficial owner of the property. *Ibid.* Affirmed on appeal, *Widgery v. Tepper*, 47 Law J. Rep. Chanc. 550; Law Rep. 7 Ch. D. 413.

## (K) EVIDENCE.

### (a) Affidavits.

#### (1) Swearing and filing of.

1.—Affidavits which are intended to be used on appeal should be filed with the officer of the Division of the High Court from which the appeal comes. *Watts v. Watts* (App.), 45 Law J. Rep. Chanc. 658.

2.—Affidavits sworn before one of a firm of country solicitors, who, though not the party's solicitors in the action, were engaged to pre-

pare the evidence, and get up the case for the solicitors on the record,—Held, to be inadmissible in evidence. *The Duke of Northumberland v. Todd*, 47 Law J. Rep. Chanc. 343; Law Rep. 7 Ch. D. 777.

3.—Affidavits in an English suit are properly sworn before a Juge de Paix and certain other officials in Belgium having limited jurisdiction within the district where such affidavits were sworn, and with power to administer oaths there only for certain purposes. *Keran v. Cranford* (App.), 45 Law J. Rep. Chanc. 658; Law Rep. 6 Ch. D. 29.

#### (2) Office copies of.

4.—Office copies of affidavits were dispensed with on the hearing of an appeal, on the ground of expense, and an order was made that the officer having the custody of the original affidavits should attend with them upon the hearing of the appeal. *Stokles v. Norris* (App.), 45 Law J. Rep. C.P. 148.

#### (3) Consent to take evidence by affidavit.

5.—A "consent for taking evidence by affidavit," under Order XXXVIII. rule 1, must be made by formal writing. *The New Westminster Brewery Company v. Hannah*, Law Rep. 1 Ch. D. 278.

6.—In a pending cause, in which replication was not filed nor notice of motion for decree given before the 2nd of November, 1875, the Court has not the power, except with the consent of the parties, to direct that the evidence be taken otherwise than *viva voce*. *Pattison v. Wooler*, Law Rep. 1 Ch. D. 464.

7.—The consent requisite for taking evidence by affidavit under Order XXXVIII. rule 1, may be given by the guardian *ad litem* of an infant defendant. *Knatchbull v. Fowle*, Law Rep. 1 Ch. D. 604.

8.—A motion was made to the Court for leave to take evidence in a suit by affidavit. It was opposed by the defendants, who were trustees, and the Court held that the defendants were entitled to have the evidence taken *viva voce*, but reserved the costs of the motion. On the cause coming on for hearing no witnesses were called and no reason was given for insisting upon the evidence being taken *viva voce*:—Held, that the costs of the motion must be paid by the defendants, the trustees, who had perversely, unreasonably and unjustly refused to adopt the cheaper and more familiar mode of taking evidence. *Patterson v. Wooler*, 45 Law J. Rep. Chanc. 274; Law Rep. 2 Ch. D. 586.

9.—Under the new practice, a guardian *ad litem* may consent on behalf of infants, without the leave of the Court, to evidence being taken by affidavit instead of *viva voce*. *Fryer v. Wiseman*, 45 Law J. Rep. Chanc. 199.

10.—Where an agreement has been come to between the parties to an action, that the evidence at the trial shall be taken by affidavit—the agreement not stating that the evidence

shall be taken by affidavit only—a witness, who is present in Court for the purpose of being cross-examined on his affidavit, may be called by the party on whose behalf he has made the affidavit, and give fresh evidence *viva voce*. *Glossop v. Heston and Isenorth Local Board*, 47 Law J. Rep. Chanc. 536.

11.—When parties agree that the evidence shall be taken by affidavit, and numerous affidavits are filed and the evidence is closed, it is the duty of a Judge in the exercise of his judicial discretion under the 26th rule of Order XXXVI. to direct that the action shall be tried before a Judge without a jury. In such a case an application that the action may be tried before a Judge and jury can only be entertained if the applicant comes to the Court soon after the agreement, and then only upon the terms that he pay, as between solicitor and client, all costs, charges and expenses that have been incurred in taking the evidence by affidavit up to that date. *Brooke v. Wigg* (App.), 47 Law J. Rep. Chanc. 749; Law Rep. 8 Ch. D. 510.

12.—An information to recover passenger duty from a railway company was filed on the equity side of the Exchequer Division, the question in dispute being whether certain trains of the company were cheap trains within the meaning of the Act exempting from passenger duty the fares for the conveyance of passengers at fares not exceeding one penny per mile by cheap trains. On an application by the company to have the evidence taken orally:—Held (reversing the decision of the Exchequer Division), that as it was desirable that in such a case the Court should be able to obtain immediate information and explanations by putting questions to the witnesses, the evidence ought to be taken orally. *The Attorney-General v. The Metropolitan Railway Company* (App.), Law Rep. 5 Ex. D. 218.

#### (4) Admissibility of, on hearing.

13.—That an affidavit as to the words of a conversation and lost document, on an interlocutory application, was made shortly after the facts to be proved took place, is sufficient reason to allow such facts to be proved by affidavit. But the Court has not the power to order facts to be proved by affidavit when the opposite party desires *bona fide* to cross-examine. *The Blackburn Guardians v. Brooks*, 47 Law J. Rep. Chanc. 186; Law Rep. 7 Ch. D. 68.

14.—At the trial of a cause with *viva voce* evidence, the Court admitted in evidence an affidavit filed upon an interlocutory motion which had been ordered to stand over to the hearing, although the deponent was since deceased, and had not been cross-examined. *Elias v. Griffith*, 46 Law J. Rep. Chanc. 806; Law Rep. 8 Ch. D. 521.

15.—In the absence of arrangement, affidavits used on a motion cannot be used at the hearing of the cause except by agreement between the parties. *Perkins v. Slater*, 45 Law J. Rep. Chanc. 224; Law Rep. 1 Ch. D. 83.

(5) *Cross-examination.*

16.—The defendant in an action for a legacy pleaded a set-off by counter-claim, and raised issues not involved in the claim and defence. He was not allowed in cross-examination of a plaintiff to ask questions relevant only to the issues raised upon the counter-claim, but was allowed to recall that plaintiff as his own witness. *In re Woodfine. Thompson v. Woodfine*, 47 Law J. Rep. Chanc. 832.

(6) *Affidavits in reply.*

17.—Affidavits filed on behalf of a plaintiff in reply to the defendant's affidavits may contain matter which is merely confirmatory of the plaintiff's general case, and need not be absolutely restricted to matter cutting down or negating the defendant's evidence. The practice of the Court in this respect has not been altered by Order XXXVIII. rule 3 of the Rules of Court, 1875. *Peacock v. Harper*, 47 Law J. Rep. Chanc. 238; Law Rep. 7 Ch. D. 68.

18.—In an action to restrain the defendants from erecting a urinal in Old Burlington Mews, the statement of claim alleged that the soil of the mews was vested in and was the absolute property of three of the plaintiffs. The statement of defence did not admit this allegation; but alleged that the mews had long been a highway dedicated to the public, and belonged to the parish as one of the public streets thereof. At the trial of the action several witnesses were examined on both sides; and, at the close of the defendants' evidence, the plaintiffs applied for leave to call evidence in reply, to shew that the soil of the mews had not been dedicated to the public:—Held, that, as the plaintiffs were distinctly apprised by the pleadings before the trial of the action what the nature of the defence would be, the application must be refused. *Vernon v. The Vestry of St. James's, Westminster*, 49 Law J. Rep. M.C. 90.

*Striking out scandalous matter.* [See Y 5 *infra*.]

(b) *Admission of further evidence at hearing.*

19.—Where all issues raised on a counter-claim were raised on the claim the plaintiff was not allowed to put in evidence after the defendant's evidence was closed. *Green v. Sevin*, 49 Law J. Rep. Chanc. 166; Law Rep. 13 Ch. D. 589.

20.—In a cause heard on replication, where it is desired to put in evidence filed after the expiration of the time for closing evidence, leave to read such evidence must be applied for previously to the hearing, in order that an opportunity of answering such evidence may be given to the other side; and it is not sufficient to deliver a copy of the evidence to the other side in time for them to answer it. *Smith v. Pilgrim*, Law Rep. 2 Ch. D. 127.

21.—The term "further evidence" in Order LVIII. rule 5, simply means evidence not used on the trial of the action in the Court below,

whether such evidence has already been used in the same or any other cause between the same parties, or is altogether new in itself. Where, therefore, on the hearing of an action on further consideration the Judge refused to allow the plaintiff to read affidavits which had been used on an enquiry in chambers, and were mentioned in the chief clerk's certificate, on the ground that notice to read them had not been given, —Held (on appeal), that the evidence ought not to have been rejected, but that the Judge should have adjourned the hearing, with liberty to the defendant to adduce evidence in reply. Held, also, that the rejection of the evidence was under the circumstances a "special ground" for admitting it on the appeal. *In re Chennell. Jones v. Chennell*, 47 Law J. Rep. Chanc. 583; Law Rep. 8 Ch. D. 492.

22.—In a suit for an injunction to restrain a nuisance caused by chemical manufacture, the plaintiff's counsel applied at the close of his speech for liberty to adduce evidence to explain (as the plaintiff's witnesses had had no opportunity of doing) certain evidence of the defendants' witnesses as to noxious vapours arising from a material (asphalt) stated to be used in the manufacture of varnish made by the plaintiff, and to shew that the word asphalt had a double meaning:—Held (reversing the decision of Bacon, V.C.), that the evidence should be admitted. *Bigsby v. Dickinson* (App.), 46 Law J. Rep. Chanc. 280; Law Rep. 4 Ch. D. 24.

Per James, L.J.—It is never too late to admit evidence to explain an error arising from the double meaning of a word. *Ibid*.

Observations as to the power of the Court to entertain an appeal on a question of fact decided on *viva voce* evidence. *Ibid*.

On the circumstances of the case it was held that the costs of printing the evidence ought to be allowed, and that the cost of taking a transcript for the purpose of printing were included in such costs, but not the cost of taking the shorthand notes themselves. *Ibid*.

*Leave to give further evidence on appeal.* [See B 64, 65 *supra*.]

(c) *Examination of witness before examiner.*

23.—The examination of a witness before the examiner is a private examination at which no person has a right to be present, except the parties and their counsel, solicitors or agents. *In re The Western of Canada Oil, Land and Works Company*, 46 Law J. Rep. Chanc. 683; Law Rep. 6 Ch. D. 109.

The members of a mercantile firm were summoned to attend before the examiner and be examined on behalf of the official liquidator of a limited company, pursuant to the 115th section of the Companies Act, 1862:—Held, that the confidential clerk on commission of the firm, who appeared to be one of the parties principally concerned in the transaction under enquiry, and might have to be called as a witness, was not entitled to be present during the

examination in the capacity of agent of the firm. *Ibid.*

24.—Motion to take off the file the affidavits of a deponent who, after an order to attend before the examiner at his own expense, had not been produced for cross-examination:—Held, irregular, as the affidavits could not be used as evidence except by special leave. *Meyrick v. James*, 46 Law J. Rep. Chanc. 579.

(d) *Evidence: witnesses abroad: delay.*

25.—A cause in the paper for hearing having been ordered to stand over on application on behalf of the plaintiff, who was at Calcutta, sixteen days after he took out a summons to have evidence taken abroad, but the Court, on the ground of such delay and former delay on the plaintiff's part, refused his application with costs. *Stewart v. Gladstone*, 47 Law J. Rep. Chanc. 154; Law Rep. 7 Ch. D. 394.

(e) *Further evidence after evidence closed: counter-claim.*

26.—Where all issues raised on a counter-claim were raised on the claim the plaintiff was not allowed to put in evidence after the defendant's evidence was closed. *Green v. Sevin*, 49 Law J. Rep. Chanc. 166; Law Rep. 13 Ch. D. 589.

(f) *Examination of judgment debtor.*

27.—A judgment creditor having obtained an order under Order XLV. for the examination of his judgment debtor "as to whether any and what debts were due to him," the latter attended before the special examiner, but declined to answer any question other than whether any and what debts were due to him:—Held, that the examination was intended by the order to be a cross-examination of the most stringent character, and that the debtor was bound to answer all questions pertinent or relevant to the subject-matter of the examination. *The Republic of Costa Rica v. Strousberg*, 49 Law J. Rep. Chanc. 701; affirmed on appeal, 50 Law J. Rep. Chanc. 7.

*Partition action, evidence in.* [See PARTITION, 5, 6.]

**Examination.**

*On accounts.* [See A 4, 5 supra.]

**Examiner.**

*Evidence before: who may be present.* [See K 23 supra.]

(L) **EXECUTION.**

(a) *Attachment.*

1.—The issuing of an attachment is one of the matters as to which the old practice may be followed in suits which were pending when the Judicature Acts came into operation (Nov. 2, 1875), down to the time when issue might be joined, or notice of motion for decree given in

such suits. *Goring v. Royds*, 45 Law J. Rep. Chanc. 56; Law Rep. 1 Ch. D. 81.

2.—No writ of attachment ought, in future, to be issued, under either the old or the new practice, without notice to the party to be affected by it. *Dallas v. Glyn*, 46 Law J. Rep. Chanc. 51; Law Rep. 3 Ch. D. 190.

3.—Service of a notice of motion for a writ of attachment upon the solicitor on the record, of the party against whom the attachment is to be issued, is sufficient notice to the party, without personal service. *Browning v. Sabin*, 46 Law J. Rep. Chanc. 728; Law Rep. 5 Ch. D. 571.

[And see ATTACHMENT; DEBTORS ACT, 6; SHERIFF, 2.]

(b) *Rule to sheriff to pay money levied: notice of motion.*

4.—In ruling a sheriff to pay money returned by him as levied on a writ of execution, the proper practice is to give notice of motion to the sheriff under Order LIII. rule 3, and not to move for a rule to shew cause. *Delmar v. Freemantle*, 47 Law J. Rep. Exch. 767; Law Rep. 3 Ex. D. 237.

[And see SHERIFF, 1, 3.]

(c) *Stay of.*

*Pending appeal.* [See B 68-70 supra.]

(d) *Judgment to be dealt with as Court shall direct.*

5.—Where a defendant in Chancery gives judgment in an action at law "to be dealt with as the Court shall direct," the Court has power to allow execution to issue before the case is disposed of on the merits, and will do so under special circumstances. *Hodges v. Fincham* (App.), Law Rep. 1 Ch. D. 9.

*Decree enforced by action.* [See ADMIRALTY, 7; U 29 infra.]

*Judgment in one division not to be enforced without leave of other division.* [See W 62 infra.]

**Fees.**

*Rules of Court, 1875 (Court fees).* [See A 6, 7 supra.]

[And see COSTS.]

*Foreclosure suits, in.* [See MORTGAGE, 40-57.]

(M) **FURTHER CONSIDERATION.**

(a) *Reservation of.*

1.—Further consideration may be reserved on motion, without a hearing, on trial of the cause. *Bennet v. Moore*, 45 Law J. Rep. Chanc. 275; Law Rep. 1 Ch. D. 692.

(b) *Appeal from order made on.*

*Appeal from interlocutory order and order on further consideration, time for.* [See B 28, 29 supra.]

## (c) Evidence on.

*Affidavits used on enquiries in chambers: admission of.* [See K 21 supra.]

*Notice to parties served with decree.* [See ADMINISTRATION, 41.]

## Indorsement.

*Judgment, of, on title-deed.* [See R 9 infra.]

*On writ of summons.* [See II 1-5 infra.]

## (N) INFORMATION.

Where the authority of a relator had been substantially given to the filing of an information in his name, but his absence abroad prevented the filing of his authority in strict compliance with the Chancery Judicature Act,—Held, that such information was properly filed, and a motion to take off the file was refused with costs. *The Attorney-General v. Willshire*, 45 Law J. Rep. Chanc. 53; Law Rep. 1 Ch. D. 89.

*Turning action into information and action.* [See W 26 infra.]

## Injunction.

*Practice in actions for.* [See INJUNCTION, 26-30.]

## (O) INTERLOCUTORY ORDERS.

1.—Under Order LII. rule 2 an order may be made for sale of a horse which for a just and sufficient reason it may be desirable to have sold at once. *Bartholomew v. Freeman*, Law Rep. 3 C.P. D. 316.

2.—In an action for the return of jewellery which A. B., as the agent of the plaintiffs, had left with the defendants, but which the defendants claimed to hold against a debt due to them by the said A. B., who had, as they alleged, deposited it with them as his jewellery and not as the plaintiffs', the Court made an order under Order LII. rule 3, for the delivery up of such jewellery to an officer of the Court to abide the event of the action. *Velati and Company v. Braham and Company*, 46 Law J. Rep. C.P. 415.

3.—In an action for specific performance of an agreement to grant a colliery lease where the lessee had long retained possession, and had worked the coal and then threatened to cease pumping:—Held, that a motion for an injunction to restrain the lessee from ceasing pumping was a proper motion for preservation of the property pending the action under Order LII. rule 3. *Strelley v. Pearson*, 49 Law J. Rep. Chanc. 406; Law Rep. 15 Ch. D. 113.

4.—The Court has jurisdiction to discharge an interlocutory order made by consent, where made under a mistake on one side only. The Court has also a discretion as to enforcing, by attachment, an undertaking given by any party. On a motion for an injunction, an order was made by consent, in pursuance of a previous agreement, embodying certain undertakings by the defendant, which were in part given under a mistake on his part:—Held, that inasmuch as the undertakings had been given

under a mistake, although on one side only, and in pursuance of the previous agreement, the Court would not enforce that portion of the order which had been made by mistake. *Mullins v. Howell*, 48 Law J. Rep. Chanc. 679; Law Rep. 11 Ch. D. 763.

*Time for appealing from.* [See B 24-40 supra.]

*Interpleader, in.* [See INTERPLEADER.]

## (P) INTERROGATORIES.

## (a) Right to discovery.

1.—Interrogatories were administered to the plaintiffs, a corporation, which they elected to answer through their town clerk. The town clerk claimed to be privileged from answering some of the interrogatories, on the ground that he was also solicitor to the plaintiffs in the action, and had received the information asked for in his capacity as solicitor for the purpose of the action:—Held, that the plaintiffs, having elected to put forward their solicitor to answer the interrogatories, could not avail themselves of the privilege which otherwise would have attached to communications made to him in such capacity. *The Mayor and Corporation of Swansea v. Quirk*, 49 Law J. Rep. C.P. 157; Law Rep. 5 C.P. D. 106.

2.—Discovery can now be obtained from an officer of a corporation without making him a party. *Wilson v. Church*, Law Rep. 9 Ch. D. 552.

3.—The plaintiffs by their bill alleged that goods bearing counterfeit trade marks similar to their own trade marks were being sold in large quantities in V. and elsewhere. They also alleged that the defendants, who were shippers at L., had shipped large quantities of these goods to V. They wrote to the defendants, asking for the names and addresses of the persons who had shipped the goods. On receiving no answer they commenced an action for discovery. The defendants demurred:—Held (overruling the demurrer), that the defendants must answer interrogatories within one month. *Orr v. Diaper*, 46 Law J. Rep. Chanc. 41; Law Rep. 4 Ch. D. 92.

4.—To a claim for specific performance of an agreement to sell lands, the defendants pleaded, first, that the agreement was entered into by a house agent, who was not authorised by the defendant to sell; secondly, that since the contract the defendant had notice that the purchasers were trustees of a marriage settlement, and that the property, which was an underlease, might be an improper investment of the trust funds.—Interrogatories by the defendants, directed to establish the case that the investment was a breach of trust, were ordered to be struck out as irrelevant. *Mansfield v. Childerhouse*, 46 Law J. Rep. Chanc. 30; Law Rep. 4 Ch. D. 82.

Semble—An innocent vendor of lands, discovering before completion that the purchasers are trustees, is not concerned to see that the investment is authorised by the trust. *Ibid.*

5.—Under the new procedure either party to an action may obtain discovery, by interrogatories, of all the facts relied on by the opposite party as establishing his case, but not of the evidence of such facts. Where facts so relied on consist of conversations, the general effect of such conversations may be asked for, but not the details. *Eade v. Jacob* (App.), 47 Law J. Rep. Exch. 74; Law Rep. 3 Ex. D. 335.

6.—The defendant entered into an agreement with the plaintiff to employ him at a weekly salary, and to give him a commission on gross profits. In an action by the plaintiff against the defendant for an account and payment of the commission, and for damages for wrongful dismissal, the defendant by his defence justified the dismissal, by alleging in general terms, with one particular instance, numerous acts of misconduct. The plaintiff filed interrogatories, requiring the defendant to specify the particular acts alleged. The defendant declined to answer the interrogatories, on the ground that he should thereby be shewing the plaintiff his brief:—Held (affirming the decision of Bacon, V.C.), that the defendant was bound to answer the interrogatories. *Saunders v. Jones* (App.), 47 Law J. Rep. Chanc. 440; Law Rep. 7 Ch. D. 435.

The plaintiff filed a further interrogatory, asking for the total aggregate amount of the accounts, so that if he did not wish to dispute the amount he might get an order for payment at the hearing. The defendant refused to answer, on the ground that the question in dispute was whether the plaintiff had a right to an account at all:—Held (also affirming the decision of Bacon, V.C.), that as only the total amounts were asked for, the interrogatory was not in this case oppressive, and must be answered. *Ibid.*

Baggallay, L.J., was doubtful whether the appeal was not too late, having regard to Order XXXI. rule 5, on the ground that refusing to answer might come to the same thing as applying to strike out an interrogatory, and was therefore an objection which ought to have been taken within four days. *Ibid.*

7.—A member of a company required to answer interrogatories is not entitled to payment of his costs previously to filing his answer. The proper course in such a case is for the solicitor of the company to prepare the answer and to charge the costs of preparing it in his bill of costs against the company. *Berkeley v. The Standard Investment Company* (App.), 49 Law J. Rep. Chanc. 1; Law Rep. 13 Ch. D. 97.

8.—In an action for execution of the trusts of a voluntary trust deed alleging that "some accounts" shewed that the trusts had not been properly discharged, interrogatories were allowed asking when the plaintiff was told of the execution of the deed and what accounts he had seen, but interrogatories asking whether specified statements in the pleadings were true or false were disallowed. *Johns v. James*, Law Rep. 13 Ch. D. 370.

An interrogatory as to the persons in whose presence conversations were held, was withdrawn on the authority of *Eade v. Jacobs* (No. 5 supra), which case, however, was observed upon by the Court. *Ibid.*

9.—Where in an action for dissolution of partnership in the business of surgeons it was alleged that the defendant "for some time past and since from about" a certain date "so behaved and conducted himself towards the plaintiff in the presence of . . . many of the patients of the partnership," as to make it impossible for the plaintiff to carry on practice with him, an interrogatory by the defendant calling upon the plaintiff to set forth the particulars and circumstances of the occasions on which the defendant had so behaved and conducted himself was allowed, but an interrogatory as to the names of the persons in whose presence the defendant had so behaved and conducted himself was disallowed, and an interrogatory calling upon the plaintiff to set forth accounts was held to be premature and also disallowed. *Lyon v. Tredwell*, Law Rep. 13 Ch. D. 375.

10.—In an action by M. against K., K. delivered a defence and counter-claim, to which M. and I. were defendants. Thereupon I. applied for leave to exhibit interrogatories for the examination of M.:—Held, by Hall, V.C., and by the Court of Appeal, that as I. was not a defendant in the original action, and I. and M. were co-defendants in the counter-claim, they were not opposite parties, and that I. had no right to interrogate M. *Molloy v. Kilby* (App.), Law Rep. 15 Ch. D. 162.

*In action for collision.* [See ADMIRALTY, 37.]

*Trade mark: action: names of consignees.* [See TRADE MARK, 26.]

[And see MORTGAGE, 61; PATENT, 30; SPECIFIC PERFORMANCE, 25.]

#### (b) Tendency to criminate.

11.—When a Judge, in exercising his judicial discretion, proceeds upon a wrong principle, the Court of Appeal will review his decision. The practice of the old Court of Chancery as to discovery is in no wise abolished by the new Orders, but is, if anything, amplified. Therefore, a party interrogated is bound to answer, and the only ground on which an interrogatory can be struck out is that it is objectionable in itself, that is, that the interrogatory could not, if the party interrogated were in the witness-box, be put to him as a question. Where, therefore, a Judge ordered interrogatories exhibited by a plaintiff for the examination of the defendant to be struck out on the ground that, if answered, they might tend to criminate the defendant, —Held (reversing the decision below, 47 Law J. Rep. Chanc. 477), on appeal, that the Judge in exercising his discretion, under Order XXXI. rule 5, had proceeded on a wrong principle, and therefore his decision was open to review. And

held, further, that the defendant was bound to answer, for that his proper course was to refuse in his affidavit to answer any interrogatory in respect of which he claimed privilege. *Fisher v. Owen* (App.), 47 Law J. Rep. Chanc. 681; Law Rep. 8 Ch. D. 645.

12.—Under the Judicature Acts, the right to discovery in the various Divisions of the High Court is regulated by the same rules as previously existed in the Court of Chancery. Interrogatories, therefore, the answers to which may tend to criminate, can no longer be administered, notwithstanding the provisions in the Common Law Procedure Act, 1854, inasmuch as the plaintiff by the rules of equity would not have been entitled to a discovery from the defendant of any matter which would criminate him or tend so to do. *Atherley v. Harrey*, 46 Law J. Rep. Q.B. 518; Law Rep. 2 Q.B. D. 524.

(c) *Before statement of defence.*

13.—Except under very special circumstances, leave will not be given to a defendant, under Order XXXI. rule 1, to interrogate the plaintiff before the statement of defence. *Disney v. Longbourne*, 45 Law J. Rep. Chanc. 532; Law Rep. 2 Ch. D. 704.

Such leave was refused in an action for breach of trust against the executors of the legal personal representative of a deceased trustee, who alleged that they were unable to prepare a defence in consequence of ignorance of the transactions. *Ibid.*

14.—In an action for libel the plaintiff, together with the statement of claim, delivered to the defendant interrogatories relating to the publication. On the application of the defendant, the Judge at chambers, no special reasons being stated by the plaintiff for interrogating at that stage, struck the whole of the interrogatories out under rule 5 of Order XXXI. as not sufficiently material at that stage of the action:—Held (affirming the decision of the Court below), that the Judge's order was a proper exercise of the discretion conferred by that rule. *Mercier v. Cotton* (App.), 46 Law J. Rep. Q.B. 184; Law Rep. 1 Q.B. D. 442.

15.—In the Chancery Division interrogatories may be delivered before statement of defence, the decision in *Mercier v. Cotton* (see last case) applying only to actions in the nature of common law actions. *Harbord v. Monk*, Law Rep. 9 Ch. D. 616.

(d) *Mode of objecting to interrogatories or answer.*

16.—The object of the new rule 5, Order XXXI., in the rules of the Supreme Court, November, 1878, is to compel a party interrogated to make his objections with his answer, except in certain specified cases. It is no longer competent for him, before answer, to apply to have the whole set of interrogatories struck out, on the ground that some of them,

or parts of some of them, are not such as he is bound to answer. *Gay v. Labouchere*, 48 Law J. Rep. Q.B. 279; Law Rep. 4 Q.B. D. 206.

17.—When a party takes out a summons under Order XXXI. rule 5, objecting to answer interrogatories, his summons should state whether the objection goes to the whole of the interrogatories, or to any, and which of them, specifying in the latter case, by their numbers, the particular interrogatories objected to. He may take both objections at the same time. In such a case it is the duty of the Judge to consider the interrogatories, either as a whole, or as the particular interrogatories objected to, as the case may be, and to decide accordingly; and the *onus* is on the party who objects to the interrogatories to shew that they are bad. If the summons merely objects to the interrogatories generally, and the Judge finds, on looking at them, that some are relevant and some irrelevant, he is not bound to go through them, to separate the bad from the good, but is entitled to require the party objecting to point out the particular interrogatories that are objectionable. *Fisher v. Owen* (47 Law J. Rep. Chanc. 681; Law Rep. 8 Ch. D. 645; No. 11 supra) approved. *Allhusen v. Labouchere* (App.), 48 Law J. Rep. Q.B. 34; Law Rep. 3 Q.B. D. 654.

18.—A summons for further answer on the ground of insufficiency must specify in what respect the former answer is insufficient. *Anstey v. The North and South Woolwich Subway Company*, 48 Law J. Rep. Chanc. 776; Law Rep. 11 Ch. D. 439.

19.—Applications for further answer to interrogatories ought to be made at chambers, and not in Court. *Chesterfield v. Black*, Law Rep. 13 Ch. D. 138n.

(e) *Striking out: irrelevancy.*

20.—Claim for 1,732l. 10s., the price of three horses alleged to have been sold by the plaintiffs to the defendant. Defence denying that the horses were sold to the defendant, and further alleging that the prices charged were excessive, and that the horses were ordered by his wife without any authority to pledge his credit for them. Reply, that the horses were necessities suitable to the estate and degree of the wife. Interrogatories were administered to the plaintiffs as follows: 1. State the date when you purchased each of the horses alleged by you to have been sold to the defendant on, &c.; 2. State if you did in fact purchase each or any of the said horses, and were in fact the owner of the same, when, as you allege, you sold them to the defendant; 3. Give the exact amount you paid or had contracted to pay for each of the said horses; 4. If you were not the owners of the said horses or any of them at the date when, as you allege, you sold them to the defendant, state specifically and in detail how and under what circumstances you had each and every of the said horses in your custody, possession or control; 5. State specifically

and in detail the date or dates upon which you received the said horses into your control:—Held, that the 1st and 3rd interrogatories were relevant and material to the issues, and ought to be answered; but that the 2nd, 4th and 5th were inadmissible. *Sheward v. Lord Londale*, Law Rep. 5 C.P. D. 47.

(f) *Schedule to answer: printing.*

21.—The Court would not order a written schedule to a printed answer to be filed, but dispensed with the printing of the answer, including the schedule. *Webb v. Bornford*, 46 Law J. Rep. Chanc. 288.

*In collision action.* [See ADMIRALTY, 37.]

*Interim receiver.* [See RECEIVER, 8, 9.]

*Issues.*

*Trial of.* [See HH, 5-12 *infra*.]

*New trial of.* [See T 6 *infra*.]

(Q) JOINDER OF CAUSES OF ACTION.

(a) *Action by executor.*

1.—Semble, that the provision of Order XVII. rule 5, authorising the joinder of a claim by an executor with a claim by him personally, refers to a case where the plaintiff's personal claim is in respect of the assets of the testator as such. *Johnson v. Burges*, 47 Law J. Rep. Chanc. 552.

(b) *Action for recovery of land.*

2.—The Court will give leave to join an action for recovery of land with an action for administration of personalty where the land and personalty are comprised in the same gift. *Whetstone v. Davis*, 45 Law J. Rep. Chanc. 49; Law Rep. 1 Ch. D. 99.

3.—Leave granted to join with an action for the recovery of land a claim for the delivery up of the deed under which the defendant claimed. *Cook v. Enchmarok*, 45 Law J. Rep. Chanc. 504; Law Rep. 2 Ch. D. 111.

4.—In actions for the recovery of land leave to join another cause of action must be obtained before service of the writ. *In re Pilcher. Pilcher v. Hinds* (App.), 48 Law J. Rep. Chanc. 587; Law Rep. 11 Ch. D. 905.

Quære, whether the Court has jurisdiction after service of the writ to give such leave, if a special case for indulgence be made out. *Ibid*.

Decision of Fry, J. (48 Law J. Rep. Chanc. 512) affirmed. *Ibid*.

5.—An action for a declaration of title to land is not an action "for the recovery of land," within the meaning of Order XVII. rule 2. *Whetstone v. Davis* (45 Law J. Rep. Chanc. 49; Law Rep. 1 Ch. D. 99; No. 2 *supra*) not followed. *Gladhill v. Hunter*, 49 Law J. Rep. Chanc. 333; Law Rep. 14 Ch. D. 492.

"An action for the recovery of land," as mentioned in the Rules of Court, 1875, is the

equivalent of the old action of ejectment, and is one that asks for the possession of land. *Ibid*.

The plaintiffs in a statement of claim asked for a declaration of title to certain land, a declaration that a lease of such land, if made, had been made under a common mistake, a receiver of the rents and profits, an injunction to restrain the defendant receiving the same, an account and payment of certain rents received by the defendant, possession of the lands and costs and further relief:—Held, that the real cause of action was the recovery of the land, and that the other relief asked was only ancillary thereto, and therefore that the various claims could be properly joined under Order XVII. rule 2, without any order for that purpose. *Ibid*.

6.—A foreclosure action is not an action to recover land within Order XVII. rule 2. *Tave v. Slate Company*, Law Rep. 3 Ch. D. 629.

*Joinder of issue.* [See W 88, 90 *infra*.]

*Judge.*

*Disqualification of.* [See B 3 *supra*.]

(R) JUDGMENT DECREE OR ORDER.

(a) *Signing judgment.*

1.—Judgment for default of appearance was signed in an action, commenced under Order XI. rule 1 of the Judicature Act, 1875, against a defendant abroad, without obtaining leave to proceed:—Held, that, although the forms of writ and notice required in such an action by Order II. rule 5, contained the words "in default of your appearing the plaintiff may by leave proceed," the judgment was regular; but, as the forms were misleading, the defendant was, in the circumstances of the case, let in to defend upon terms. *Scott v. The Royal Wax Candle Company*, 45 Law J. Rep. Q.B. 586; Law Rep. 1 Q.B. D. 404.

*Judgment in default of appearance.* [See C *supra*.]

*Writ specially indorsed.* [See II, 14-18 *infra*.]

(b) *Setting aside.*

2.—Where judgment has been suffered by default, lapse of time is not in itself a valid objection to an application to set such judgment aside as irregular, if the defendant has acted *bona fide*, and the lateness of the application has done no irreparable injury to the plaintiff. *Attwood v. Chichester* (App.), 47 Law J. Rep. Q.B. 300; Law Rep. 3 Q.B. D. 722.

*Impeaching decree on ground of fraud.* [See B 4 *supra*.]

*Judgment by default.* [See C 9 *supra*; BB 6 *infra*.]

*Judgment entered by Judge according to finding of jury.* [See B 2 *supra*.]

*Opening foreclosure.* [See MORTGAGE, 52.]



*(c) Discharging or varying judgment by consent.*

3.—Where the counsel and solicitors of a defendant, being aware of all the facts on which an order ought to be made, consented in Court, in the defendant's presence, to an order against him, he was not allowed to withdraw his consent, on the grounds that his advisers mistook their instructions, and had no sufficient authority to bind him. *Holt v. Jesse*, 46 Law J. Rep. Chanc. 254; Law Rep. 3 Ch. D. 177.

4.—After entry of judgment by consent, the Court refused to vary it, on the ground of the defendant's mistake, there having been a fortnight between delivery and entry of the judgment. *The Attorney-General v. Tomline*, Law Rep. 7 Ch. D. 388.

5.—Where after decree a further account was directed by consent, on affidavits disclosing a case of fraud,—Held, that such affidavits were sufficiently in the nature of pleadings to enable the Court subsequently to direct additional accounts founded on the same case of fraud. *Barber v. Mackrell* (App.), Law Rep. 12 Ch. D. 534.

*(d) Interest on judgment for costs.*

6.—Interest on a judgment for costs runs from the date of the Master's certificate of taxation, and not from the time of entering up the judgment. *Schroeder v. Clough*, 46 Law J. Rep. C.P. 365.

*Entry of judgment: official referees.* [See Y 2 *infra*.]

*(e) Form of: declaration as to contingent rights: enquiries.*

7.—A marriage settlement contained trusts giving a life interest in the trust fund to the husband after the death of the wife, but with a clause in defeasance of this gift on the husband's bankruptcy:—Held (varying the order of the Vice-Chancellor of the Palatine Court), that this was a future contingent right with respect to which the Court would not make any declaration. *Kevan v. Crawford* (App.), 46 Law J. Rep. Chanc. 729; Law Rep. 6 Ch. D. 629.

*(f) Form of: evidence taken as read.*

8.—The Singer Manufacturing Company sought to restrain an alleged improper use by the defendants of their trade mark or trade name. They alleged by their bill that they had attained great reputation as makers of sewing machines; that the sewing machines made by them were sold as Singer machines; that the term Singer was used by them and understood by the public as denoting machines of their manufacture, and not any specific principle of construction or mechanical arrangement of parts; that the defendants made and sold machines describing them in price lists and advertisements as Singer machines, whereby pur-

chasers were likely to be and had been misled into the belief that the machines so sold by the defendants were of the plaintiffs' manufacture. The plaintiffs tendered affidavits in support of their allegations. The defendants tendered affidavits, and applied for leave to adduce *viva voce* evidence in reply to the plaintiffs' evidence. The Master of the Rolls held that the plaintiffs' evidence would not, even if uncontradicted or unshaken by cross-examination, entitle him to relief, and that it was unnecessary to consider the defendants' application, and dismissed the bill with costs, without reading the defendants' affidavits. The Court of Appeal affirmed this decision. On appeal to the House of Lords, their Lordships expressed their disapproval of the form of the decree, as calculated, in a case where there may be a rehearing and an appeal, to lead to delay and expense, and they remitted the case to the Chancery Division for the production of the defendants' evidence. *The Singer Manufacturing Company v. Wilson*, 47 Law J. Rep. Chanc. 481; Law Rep. 3 App. Cas. 376.

*Appeal against judgment entered by Judge according to finding of jury.* [See B 2 *supra*.]

*Foreclosure actions, in.* [See MORTGAGE, 50–57.]

*Order absolute for new trial: time for appealing from.* [See B 32 *supra*.]

*Partition action, in.* [See PARTITION, 5, 8.]

*(g) Indorsement of, on title-deed.*

9.—A memorandum of a decree, giving damages instead of an injunction in respect of a nuisance, directed to be indorsed on the plaintiffs' title-deed. *Crawford v. The Hornsea Steam Brick and Tile Company (Lim.)* (App.), 45 Law J. Rep. Chanc. 482.

*Enrolment of decree.* [See I 1–3 *supra*.]

*Just allowances.* [See MORTGAGE, 58, 59.]

*Lien for costs: innocent defendants in trade mark action.* [See TRADE MARK, 27.]

*Lien of Solicitor.* [See SOLICITOR, 29–48.]

*Lis pendens.* [See LIS PENDENS.]

*Married woman.*

*Party to action.* [See U 8–10 *infra*.]

*Master.*

*Appeal from.* [See B 53, 54 *supra*.]

## (S) MOTIONS.

*(a) Motion for judgment.*

1.—Where a defendant in a suit pending on the 1st of November, 1875, had not appeared, and failed to put in an answer,—Held, that the cause should proceed under the new practice, and the bill be treated as a statement of claim, so that the plaintiff might set down the cause on motion for judgment, under Order XXIX. rule 10. *The Provident Permanent Building Society v. Greenhill*, 45 Law J. Rep. Chanc. 272; Law Rep. 1 Ch. D. 625.

2.—In an action against a husband and wife upon their joint and several promissory note a statement of defence was delivered on behalf of both, but raising no defence as respected the husband:—Held, on motion for judgment, that the plaintiffs were entitled to final judgment against the husband under Order XL. rule 11, without waiting for the determination of the case against the wife. *Jenkins v. Davies*, Law Rep. 1 Ch. D. 696.

3.—The Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), and the Rules of December, 1876, have not altered Order XL. rule 10. Therefore the Divisional Court on a motion to set aside a verdict which has been found for the plaintiff, instead of ordering a new trial may give judgment for the defendant, where such Court is satisfied that there is really no evidence to support the verdict, and that it has before it all the materials necessary for finally determining the question in dispute. *Dawn v. Simmins*, 48 Law J. Rep. C.P. 343.

4.—Order XL. rule 10, which gives power to the Court upon a motion for judgment to give judgment on any of the matters in dispute, is applicable to section 17 of the 39 & 40 Vict. c. 59, which provides for all proceedings down to final judgment being, so far as practicable, heard by the Judge before whom the trial took place, and such Judge may, therefore, in the exercise of his discretion, act under such power, by giving judgment on a finding by the jury on one of the questions in a cause, where the jury have been discharged from coming to any finding on the other questions. *The Emma Silver Mining Company v. Lewis*, 48 Law J. Rep. C.P. 267.

5.—Where one defendant had not appeared while the others had delivered defences entitling the plaintiff to judgment,—Held, that the proper course was to move against all the defendants together under Order XXIX. rule 10 and Order XL. rule 11; and that notice of motion had been properly served on the defaulting defendant by being filed under Order XIX. rule 6. *Parsons v. Harris*, Law Rep. 6 Ch. D. 694.

*Demurrer to defence not to be raised by.* [See W 16 *infra*.]

*Motion for judgment on admission in pleadings.* [See PARTITION, 14; W 16, 17 *infra*.]

*On counter-claim in default of further pleadings.* [See W 68 *infra*.]

(b) *Arbitration: rule to shew cause.*

6.—In an arbitration where there was no action, an application to enforce payment of the sum awarded was made in the form of a rule to shew cause, without notice to the other side:—Held, that this mode of proceeding was right. *In re Phillips*, 45 Law J. Rep. Q.B. 136; Law Rep. 1 Q.B. D. 78.

(c) *Notice of motion.*

7.—A notice of motion for judgment in de-

fault of pleading is a document that may be served on a defendant who has not appeared by filing it in accordance with Order XIX. rule 6. *Dymond v. Croft* (No. 1), 45 Law J. Rep. Chanc. 612; and *Morton v. Miller* (App.), 45 Law J. Rep. Chanc. 613; Law Rep. 3 Ch. D. 616.

8.—The plaintiffs gave the defendants notice on the 20th of December, that the Court would be moved on the 22nd, or so soon as counsel might be heard to reinstate the case in the list of demurrers. The defendants attended by their counsel on the 11th and 12th of January, for the purpose of opposing the motion, but none was made:—Held, that the notice of motion was bad as being for a day on which there were no sittings, and as not giving two clear days' notice; and that the defendants ought to have disregarded it and were not entitled to the costs of attending to oppose the motion. *Daubney v. Shuttleworth*, 45 Law J. Rep. Exch. 177; Law Rep. 1 Ex. D. 53.

*Attachment, for writ of, service of.* [See L 3 *supra*.]

*Costs of motion.* [See COSTS, 37, 38.]

*Rule to sheriff to pay money levied, for.* [See L 4 *supra*.]

*Ne exeat regno.* [See NE EXEAT REGNO.]

(T) NEW TRIAL.

(a) *Motion for, how to be made.*

1.—Where a case has been tried by a Judge without a jury, any motion for a new trial, under any circumstances, must be made to the Court of Appeal. *Oastler v. Henderson* (App.), 46 Law J. Rep. Chanc. 607; Law Rep. 2 Q.B. D. 575.

2.—Where an action is commenced in the Chancery Division and sent for trial by jury to one of the Common Law Divisions, a Divisional Court of the latter Division is the proper Court before which to make an application for a new trial. *Hunt v. The City of London Real Property Company* (App.), 47 Law J. Rep. Chanc. 51; Law Rep. 3 Q.B. D. 19; on appeal from the Queen's Bench Division, 46 Law J. Rep. Q.B. 42; Law Rep. 2 Q.B. D. 605.

Where an action is commenced in the Chancery Division and the defendants give notice that they desire to have the action tried before a Judge and jury, there is no necessity for any order by the Judge of the Court in which the action was set down, stating the reason for which it was expedient that the action should not be tried in the Chancery Division. *Ibid*.

3.—Where a plaintiff has been nonsuited at the conclusion of his case, the appeal must be by application to a Divisional Court for a new trial, unless the nonsuit has been entered upon admitted facts. *Etty v. Wilson* (App.), 47 Law J. Rep. Exch. 664; Law Rep. 3 Ex. D. 359.

Where the nonsuit has been entered upon admitted facts,—Semble, that an appeal lies to the Court of Appeal under Order XL. rule 4. *Ibid*,

4.—Where an action brought in the High Court has been sent down for trial to a County Court by a Judge's order under 19 & 20 Vict. c. 108. s. 26, and has been tried by the County Court Judge without a jury, an application for a new trial must be made by motion to a Divisional Court, and not to the Court of Appeal. Order XXXIX. rule 1, does not apply to a trial by a Judge of County Courts. *London v. Raffey* (47 Law J. Rep. Q.B. 16; Law Rep. 3 Q.B. D. 6) approved. *Davis v. Godbehere* (App.), 48 Law J. Rep. Exch. 440; Law Rep. 4 Ex. D. 215.

5.—Where the issue of fact in an action in the Chancery Division had been tried by a jury before a Judge of a Common Law Division, an application for a new trial of the issue was heard by the Judge of the Chancery Division to whose Court the action was attached. *Jenkins v. Morris*, 49 Law J. Rep. Chanc. 392; Law Rep. 14 Ch. D. 674.

6.—An action commenced in the Chancery Division, which has been tried by a jury before one of the Judges of a Common Law Division is thenceforth transferred to the division to which the Judge belongs, and an application for a new trial must therefore be made to a Divisional Court of that division.—But this does not apply to an action in which an issue has been directed by a Judge of the Chancery Division, in which case the action still remains attached to the Chancery Division. *Jones v. Baxter* (App.), Law Rep. 5 Ex. D. 275.

7.—Where a Judge of the Chancery Division does not find a separate verdict on the facts, his judgment may be appealed from, but no new trial can be moved for on the ground of improper rejection of evidence. *Dollman v. Jones* (App.), Law Rep. 12 Ch. D. 553.

8.—In an action tried by a Judge without a jury, the Judge stated that he found certain facts, and then gave judgment for the defendants. The plaintiff moved *ex parte* in the Court of Appeal for a new trial on the ground that the findings were against the weight of evidence:—Held, that the plaintiff ought to have appealed from the judgment, instead of moving for a new trial. *Krehl v. Burrell* (48 Law J. Rep. Chanc. 252; Law Rep. 10 Ch. D. 420) discussed and considered. *Potter v. Cotton* (App.), 49 Law J. Rep. Chanc. 158.

9.—Where at a trial with a jury the Judge directs a finding upon facts which are not in controversy, and thereupon gives judgment for the party in whose favour the finding is entered, the party against whom judgment is given may, if dissatisfied, apply for a new trial, but cannot, in the first instance, appeal. *Yetts v. Foster* (App.), Law Rep. 3 C.P. D. 437.

[And see B 2 *supra*; HH 30 *infra*.]

#### (b) Time for moving, &c.

10.—Where a new trial is granted at the instance of one of several defendants, it must be granted against all parties to the action.

The Court of Appeal has jurisdiction to bring before it a party against whom no rule was moved in the Court below. The four-day rule is not absolute now. *Purnell v. The Great Western Railway Company and Harris* (App.), 45 Law J. Rep. Q.B. 687; Law Rep. 1 Q.B. D. 636.

11.—The four days after trial within which, under Order XXXIX. rule 1, a motion for a new trial must have been made, were four days upon which the Divisional Court was actually sitting. See, however, Rules of December, 1876, Order XXXIX. *Hallums v. Hills* (App.), 46 Law J. Rep. Q.B. 88.

12.—Where an action brought in the High Court has been tried in a County Court, pursuant to a Judge's order, under 19 & 20 Vict. c. 108. s. 26, a motion for a new trial must still be made to the Divisional Court within four days from the day of trial; the old practice as to actions so remitted for trial to a County Court, not being affected by Order XXXIX. rules 1 and 1a of the Judicature Act. *London v. Raffey*, 47 Law J. Rep. Q.B. 16; Law Rep. 3 Q.B. D. 6.

13.—According to the proper interpretation of Order XXXIX. rule 1 (a), as amended by the rules of March, 1879, a party applying for a new trial has the whole of four days within which to move; and if no Divisional Court sits upon the fourth day, his time is then extended to the next sitting of a Divisional Court. *Grant v. Holland*, 49 Law J. Rep. Q.B. 800.

#### (c) Jurisdiction to enter final judgment.

14.—Where a Judge entered judgment for the plaintiffs on special findings of a jury, and the defendants moved in a Divisional Court for a new trial on the ground that the findings were against the weight of evidence,—Held, that the Divisional Court had jurisdiction, under Order XL. rule 10, to enter final judgment for the defendants. *Hamilton and Company v. Johnson and Company* (App.), 49 Law J. Rep. Q.B. 155; Law Rep. 5 Q.B. D. 263.

#### (d) Inadequacy of damages.

15.—A new trial may be granted for inadequacy of damages in an action for personal injuries where the Court is of opinion that from the circumstances of the case the damages are unreasonably small. *Phillips v. The London and South Western Railway Company*, 48 Law J. Rep. Q.B. 693; Law Rep. 5 Q.B. D. 78.

*Appeal from order for new trial, time for.* [See B 32 *supra*.]

*Bankruptcy, practice in.* [See BANKRUPTCY, M 36.]

*Costs of: Order LV.: event.* [See COSTS, 4.]

*New trial on ground of misdirection: Order XXXIX. rule 2, when applicable.* [See MARINE INSURANCE, 19.]

*Rule for, power to enter judgment.* [See S 3 *supra*.]

**Next friend.**

The father of an infant plaintiff, on behalf of whom a stranger has commenced an administration action as next friend, has a right to be appointed next friend instead of such stranger. *Woolf v. Pemberton* (App.), Law Rep. 6 Ch. D. 19.

*Costs of suit by, to set aside agreement.* [See ADMINISTRATION, 47.]

*Liability of, to make affidavit as to documents.* [See PRODUCTION, 19.]

*Liquidation petition, signature of.* [See BANKRUPTCY, M 28.]

**Wonsuit.**

*Appeal from; new trial.* [See T 3 supra.]

**Notice.**

*Appeal, of.* [See B 20-23 supra; PUBLIC HEALTH ACT, 36, 37.]

*Motion, of.* [See C 1; S 7, 8 supra.]

*Trial, of.* [See HH 2-4 infra.]

**Office copies.**

*Affidavits, of, dispensed with on appeal.* [See K 4 supra.]

**Official referee.** [See Y 1-6 infra.]

**Parliamentary deposits.** [See PARLIAMENTARY DEPOSIT.]

**Particulars.** [See II 7 infra, and PATENT, 30, 31.]

**(U) PARTIES.****(a) Joinder of.****(1) Alternative relief: different causes of action against different defendants.**

1.—Relief in the alternative cannot be given upon inconsistent allegations in the same pleadings. And where an action was brought by trustees of a settlement to enforce payment of a sum of money against the representative of a covenanting party, and the said representative, by her defence and counter-claim, averred that according to the true construction of the settlement the sum was not payable, and claimed that if the sum were payable according to the true construction, the settlement might be rectified, making the surviving tenant for life under the settlement a defendant to the counter-claim for that purpose only,—Held, on demurrer by the tenant for life, that she was improperly made a party. *Evans v. Buck*, and *Buck v. Evans*, 46 Law J. Rep. Chanc. 157; Law Rep. 4 Ch. D. 432.

2.—Rule 3 of Order XVI. applies to a case where the plaintiff has different causes of action in respect of the same wrong against two defendants, against whom he seeks relief in the alternative. *Child v. Stenning* (App.), 46 Law J. Rep. Chanc. 523; Law Rep. 5 Ch. D. 695.

The plaintiff sued S. in respect of an alleged trespass upon some land which had been demised to the plaintiff by W., who had covenanted

for quiet enjoyment. By his statement of defence, S. alleged that he had, before the demise to the plaintiff, acquired from W. a right of way over the land demised. The plaintiff then amended his statement of claim, making W. also a defendant, and claiming in the alternative, if the Court should be of opinion that S. was entitled to a right of way as against W. and persons claiming through him, damages against W. for breach of his covenant for quiet enjoyment. W. demurred:—Held (reversing the decision of Hall, V.C.), that rule 3 of Order XVI. authorised the plaintiff to make S. and W. defendants to the same action. *Evans v. Buck* (see last case) explained. *Ibid.*

**(2) Absent parties, service on.**

3.—In an interlocutory application with which some of the parties to the action who had no interest in the application were not served an order *nisi* was made, binding on the absent parties three days after service. *Wilson v. Church*, Law Rep. 9 Ch. D. 552.

**(3) Joint and several liability.**

4.—The plaintiff sued five out of a larger number of persons, joint and several covenantors; before trial two of the five defendants became bankrupt. The plaintiff was allowed to try the action against the remaining three defendants, and the Judge refused to compel them to bring the trustees in bankruptcy before the Court to enforce contribution. *Lloyd v. Dimmack*, 47 Law J. Rep. Chanc. 398; Law Rep. 7 Ch. D. 398.

On a contract for indemnity in respect of covenants in long leases and the hire of waggons, the Court refused to give judgment providing for prospective damage. *Ibid.*

5.—S., indorsee of a bill of exchange, sued the defendant as acceptor, the writ being specially indorsed under the Bills of Exchange Act. The defendant obtained leave to defend on an affidavit denying the acceptance. S. thereupon joined F., the drawer of the bill, as co-plaintiff, and the plaintiffs then delivered a joint statement of claim which alleged that F. sold goods to the defendant in respect of which 90% was due on the 3rd of January; that on that day F. drew, and the defendant accepted, a bill of exchange for 53% 14s., which was dishonoured, and that afterwards another similar bill was given for the same sum with expenses, which F. indorsed to S.; that this last-mentioned bill became due on the 17th of August, but that "the defendant has not paid it, nor has he paid for the said goods in respect whereof the said bills were drawn and accepted":—Held, that this joint claim was embarrassing and must be struck out. *Smith v. Richardson*, 48 Law J. Rep. C.P. 140; Law Rep. 4 C.P. D. 113.

**(4) Action against firm.**

6.—Quære, whether in all cases it is competent to sue a firm under Order XVI. rule 10.

Per James, L.J.—Difficulty may arise in cases where there has been an entire change in the constitution of the firm; e.g. if A. B. C. were partners at the time of action arising, and E. F. G. at the time of action brought. *Ex parte Blain*. In re Savers (App.), Law Rep. 12 Ch. D. 522.

(5) *Suit to restrain nuisance: common interest.*

7.—Where two owners of distinct properties joined as plaintiffs in a suit to restrain a nuisance, it was held a misjoinder; but by consent the Court heard the case as if distinct bills had been filed. *Appleton v. The Chapel Town Paper Company*, 45 Law J. Rep. Chanc. 276.

(6) *Husband and wife and their representatives.*

8.—A husband and wife sued to recover the wife's separate estate. The defendant objected to the form of the action. At the trial the Court, in giving judgment for the wife, directed the pleadings to be amended by making the husband a defendant, and gave the plaintiff no costs of the pleadings subsequent to the objection. *Roberts v. Evans*, 47 Law J. Rep. Chanc. 469; Law Rep. 7 Ch. D. 830.

9.—An order made in an administration suit declared that one-fifth share in certain property belonged to J. W. and his wife in her right. This share was afterwards sold by the husband and wife, and the money paid to and received by the husband, who predeceased his wife. After her death the surviving executors of the husband filed their bill to set aside the sale, on the ground of fraudulent concealment:—Held (affirming the decision of Malins, V.C., 46 Law J. Rep. Chanc. 579; Law Rep. 5 Ch. D. 516), that the sale was a reduction into possession, and that the husband's representatives were the proper persons to institute a suit for setting it aside. *Widgery v. Tepper* (App.), 47 Law J. Rep. Chanc. 550; Law Rep. 7 Ch. D. 413.

10.—A married woman appearing or defending separately from her husband must first obtain special leave under Rules of Court, 1875, Order XVI. rule 8: an order for leave obtained upon a petition of course is irregular. A married woman in receipt of a separate income of 1,500*l.* per annum was not required to give security for costs on obtaining leave to defend separately under Order XVI. rule 8. *Noel v. Noel*, Law Rep. 13 Ch. D. 510.

[And see HUSBAND AND WIFE, 39.]

(7) *Right of equitable tenant for life to defend action of ejectment.*

11.—In an action to administer real and personal estate, cross summonses, for leave to defend at the cost of the estate certain actions of ejectment, were taken out—first, by the plaintiff who was the sole acting trustee (three others named in the bill having disclaimed), and second, by the equitable tenant for life,

who was in possession of the rents under an order of the Court:—Held, that the Court could not refuse the claim of the tenant for life to defend the actions of ejectment. Leave given accordingly, with liberty to use the name of the trustee for that purpose. *Longbourne v. Fisher*, 47 Law J. Rep. Chanc. 379.

(8) *Actions by or against trustees or executors.*

12.—One of several trustees cannot bring an action against a stranger in respect of the trust property. Where there are questions between the different trustees and beneficiaries as to suing strangers, such questions must be tried in a preliminary action to which the stranger is not party. *Luke v. The South Kensington Hotel Company (Lim.)*, 47 Law J. Rep. Chanc. 240; Law Rep. 7 Ch. D. 789.

Three trustees invested trust funds in a second mortgage of a hotel belonging to a company, two of the trustees executed a deed which purported to reduce the amount charged on the property and to give the security of the covenant of a new company for payment of the reduced amount. The third trustee refused to execute the deed, and filed a bill to have the deed declared void and to realise the security. The other trustees refused to join, and were made defendants. The bill was dismissed. *Ibid.*

13.—Three trustees advanced trust moneys on mortgage of land and houses to a builder. The builder had purchased the land from one of the trustees, to whom he was also indebted in respect of other matters, and the money advanced by the trustees was applied by the builder in payment of the price of the land and of the other debts due from him to the trustee from whom he had purchased the land. The security was alleged to be insufficient. A bill was filed by the other trustee against the trustee who had received the money, and a new trustee, seeking to realise the security, and make the trustee who had received the money make good any deficiency:—Held (affirming the decision of Fry, J., 46 Law J. Rep. Chanc. 548; Law Rep. 5 Ch. D. 554), that in the absence of any proof that the money had been wilfully lent on insufficient security, the indirect benefit which the trustee who received the money obtained was too remote to support a bill of this kind, and that it must be dismissed with costs. *Butler v. Butler* (App.), 47 Law J. Rep. Chanc. 77; Law Rep. 7 Ch. D. 116.

14.—A creditor's action (*Bennett v. Samuel*) had been instituted for the administration of A.'s estate in the Court of Vice-Chancellor Malins, A.'s widow, his executrix, being sole defendant. There being reason to believe that the executrix would not defend A.'s estate for the benefit of his creditors against the claim of A.'s son, the plaintiff in the creditor's action obtained an order from the Chief Clerk of the Vice-Chancellor, giving him leave to apply for liberty to intervene in the action of *Samuel v.*

*Samuel* to contest the forfeiture, and the Chief Clerk of the Master of the Rolls, on production of such order, made an order giving him leave. The first order was held to be totally irregular. The duty of the executrix conflicting with her interest, the plaintiff in the creditors' action should have appeared in the name of the executrix, under an order obtained in the creditors' action. The only way in which such order could have been regular would have been by proceeding to add the intervening party as the defendant to the action. *Samuel v. Samuel*, 47 Law J. Rep. Chanc. 716; Law Rep. 12 Ch. D. 162.

15.—The Judicature Act has not altered the former practice of the Chancery Court, which required that for the purpose of general administration of an intestate's estate a general administrator must be before the Court. Where, therefore, A. commenced a suit to administer an intestate's estate, claiming to be the sole next-of-kin of the intestate, and alleging that the intestate's estate had been improperly distributed amongst his illegitimate children,—Held, that an administrator *ad litem* appointed by the Probate Division for the purpose of being made a party to the suit to substantiate the proceedings therein, did not sufficiently represent the intestate's estate for the purposes of the suit. *Dordensmell v. Dordensmell* (App.), 48 Law J. Rep. Chanc. 23; Law Rep. 9 Ch. D. 294.

16.—In an action against an executor, the plaintiff, as administrator of M. W., deceased, who was tenant for life under the testator's will, claimed a declaration that a sum of money, which the defendant had raised for payment of debts by mortgage of part of the testator's estate, and had subsequently paid off out of income received by him during M. W.'s life, was payable out of the *corpus* of the mortgaged estate. The plaintiff also claimed repayment of the money, an account, and, if and so far as necessary, administration of the trusts of the will. The defence was that the defendant had acted on what he believed to be the true construction of the will, and that the question at issue was one of construction, which affected the estate of M. W. and the devisees in remainder, and ought not to be decided in the absence of the latter:—Held, on preliminary objection, that the remaindermen were not necessary parties. And held, on the merits, that the plaintiff's view of the construction was right, and that the defendant must repay the money with costs. *In re Ward. Bennet v. Balls*, 47 Law J. Rep. Chanc. 781.

*Administration action, to.* [See ADMINISTRATION, 1, 2, 31, 32.]

*Breach of trust: action by cestui que trust against representatives of one only of several trustees.* [See TRUST, C 4.]

*Dispensing with legal personal representative: Chancery Amendment Act, 1852 (15 & 16 Vict. c. 86), s. 44.* [See INSURANCE, 5.]

*Foreclosure action: trustees representing cestui que trust.* [See MORTGAGE, 41, 42.]

*Partition action: trust for sale: beneficiaries not necessary parties.* [See PARTITION, 2, 3.]

*Representative action by shareholder: fraud.* [See COMPANY, E 4.]

*Representation of class: 15 & 16 Vict. c. 86, s. 51: Rules of Court, 1875, Order XVI. rr 1, 13.* [See ADMINISTRATION, 32.]

(9) *In other cases.*

*Counter-claim, to.* [See W 64-69 *infra*.]

*Dramatic copyright: action against licensee of one co-owner by other co-owners.* [See COPYRIGHT, 10.]

*Probate action: citation of parties interested.* [See PROBATE, 27.]

*Specific performance: making auctioneer party.* [See SPECIFIC PERFORMANCE, 24.]

(6) *Substituting or adding under Rules of Court, 1875.*

17.—The plaintiff brought an action for specific performance of an agreement to purchase certain premises. The defendants moved, under the new rules, that other persons who claimed to have a charge over the property as residuary legatees under a will, under which a part of the residuary estate had been advanced on mortgage of these premises with notice to the plaintiff, might be made parties to the suit:—Held, that the question whether the plaintiff had a good title to the premises could be "effectually and completely adjudicated upon" without these persons being made parties, and the motion was refused with costs. *Harry v. Dary*, 45 Law J. Rep. Chanc. 697; Law Rep. 2 Ch. D. 721.

18.—The nonjoinder of a necessary plaintiff is no bar to an action, and therefore when a plaintiff is wanting, judgment ought not to be entered for the defendant, but the proper party should be joined under Order XVI rules 13, 17. *Fairclough v. Marshall*, 48 Law J. Rep. Exch. 146; Law Rep. 4 Ex. D. 37.

19.—The plaintiffs having sued on a bill of exchange of which the defendant was acceptor, the defendant stated by way of defence that the bill was accepted by him on behalf of the N. Company in part payment of a ship which was afterwards transferred to the N. Company; that the defendant was induced to accept the said bill by the fraud of the plaintiffs in misrepresenting the seaworthiness of the ship, and that the defendant and the N. Company had a counter-claim over against the plaintiffs for the said fraud and misrepresentation. On an application by the defendant under Order XVI. rule 13, to add the N. Company as the defendants, the Court refused the application, holding that on the above facts the N. Company ought not, on the application of the defendant, to be joined as the co-defendants under Order XVI. rule 13. *Norris v. Beazley*, 46 Law J. Rep. C.P. 169; Law Rep. 2 C.P. D. 80.

20.—In an action for libel which had been brought against the publisher of a newspaper, it appearing after issue closed, in answer to interrogatories, that one A. B. was the sole proprietor of the newspaper, the Court, in the exercise of its discretion, made an order, on the application of the plaintiff, under Order XVI. rule 13 of the Judicature Act, 1875, that A. B. should be added as defendant, the Court imposing the terms that when joined as defendant he should have the same rights as he would have had if the action were then commenced. *Edmond v. Louther*, 45 Law J. Rep. C.P. 417.

21.—The plaintiffs contracted with a vestry to pave a public road with asphalt and to keep the pavement in repair for fifteen years, the pavement when laid to be the property of the vestry. Shortly after the pavement was completed, the defendants, acting under statutory powers, laid down a tramway along the pavement, but so constructed and maintained their tramway as to occasion unnecessary damage to the pavement. It being doubtful whether an action, commenced by the plaintiffs against the defendants on the above facts, was brought in the name of the right plaintiffs, the Court, under Rules of Court, Order XVI. rule 2, ordered the vestry to be added or substituted as the plaintiffs, on the terms that the vestry was to be indemnified by the original plaintiffs for all costs and expenses. *The Val de Travers Asphalt Paving Company (Lim.), v. The London Tramways Company (Lim.)*, 48 Law J. Rep. C.P. 312.

22.—Where an official liquidator of a company, suing upon a guarantee of the defendant equitably assigned to the company, sought to add the assignor's name as the plaintiff without evidence of his consent or tendering him an indemnity, the Court refused to allow the name to be added. *Turquand v. Fearon*, 48 Law J. Rep. Q.B. 341; Law Rep. 4 Q.B. D. 280.

23.—Where a defendant is improperly made a party, the Court will order the name of such defendant to be struck out before the hearing under Order XVI. rule 13, although he may have delivered his statement of defence. *Vallance v. The Birmingham and Midland Land and Investment Company*, Law Rep. 2 Ch. D. 369.

24.—A plaintiff can only be added under Order XVI. rule 2, where there has been a *bona fide* mistake. *Clowes v. Hilliard*, 46 Law J. Rep. Chanc. 271; Law Rep. 4 Ch. D. 413.

25.—A tenant for life sued, as having power to lease, for specific performance of an agreement for a lease. Amendments were allowed, adding the remainder-men as co-plaintiffs, and alleging that the agreement was made on their behalf. *Long v. Crossley*, 49 Law J. Rep. Chanc. 168; Law Rep. 13 Ch. D. 388.

26.—The plaintiff, one of several owners of a ship, sued on behalf of all the parties so interested, under Order XVI. rule 9, of the schedule to 38 & 39 Vict. c. 77. The defendants moved to add the names of the other owners as plaintiffs, under Order XVI. rule 13:—Held, that

the action was within rule 9, and rightly begun in the name of one plaintiff. Secondly, that it was not within rule 13, where the addition of the other parties would be ordered as necessary to enable the Court completely to adjudicate on the questions involved, and the Court would not order their addition merely to give the defendant the extra security for costs which their being plaintiffs would afford. *De Hart v. Stephenson*, 45 Law J. Rep. Q.B. 575; Law Rep. 1 Q.B. D. 313.

27.—A person will not be authorised to defend on behalf of a class of persons having the same interest unless he shews that they are numerous. *Wilson v. Church*, Law Rep. 9 Ch. D. 552.

In a representative action by a plaintiff on behalf of self and other bondholders, a bondholder, the only dissident so far as appeared, was joined as a defendant, but not in a representative character. *Ibid.*

Such applications should in general be made by summons in chambers. *Ibid.*

28.—In April, 1877, the plaintiffs bought from a company in liquidation a patent for an invention which rendered nitro-glycerine insensible to shocks and capable of transport. The plaintiffs sued the defendants for infringement, pleading that the defendants had purchased "lithofracteur" (a substance made in infringement of their patent) from K. & Co. of Cologne, which was delivered to the defendants at the mouth of the Thames, and kept by them either ashore or afloat in British waters, and thence exported. The defendants admitted purchasing lithofracteur prior to April, 1877. At the trial the plaintiffs applied to add the liquidator of the old company as co-plaintiff in respect of acts prior to April, 1877:—Held, that the application must be refused, and the evidence confined to acts since April, 1877. *Nobel's Explosive Company v. Jones & Company*, 49 Law J. Rep. Chanc. 726.

29.—In 1875, the corporation of Birmingham, as the sanitary authority of Birmingham, were restrained by a perpetual injunction from allowing sewage to flow into a river, but the injunction was suspended for five years, to give the borough an opportunity to execute certain works. That period having now expired the plaintiffs desired to enforce the injunction, but in the meantime the B. T. & R. Board had succeeded to the rights and liabilities of the corporation of Birmingham in respect of the sewage. Bacon, V.C., having held that, under Rules of Court, 1875, Order XVI. rule 13, liberty could be given to the plaintiffs to amend their bill by making the B. T. & R. Board parties,—Held (on appeal), that such an amendment could not be made after final decree, and that the decree could only be enforced against the board by an action. *The Attorney-General v. The Corporation of Birmingham (App.)*, Law Rep. 15 Ch. D. 423.

[And see W 31, 34 *infra*.]

*Third party, adding.* [See W 75-85 *infra*.]

(c) *Change of interest.*(1) *Death.*

30.—A sole petitioner, who claimed a fund in Court, having died, an order was made that her personal representatives should carry on the proceedings under the petition. *In re Atkins*, 45 Law J. Rep. Chanc. 117; Law Rep. 1 Ch. D. 82.

31.—The original plaintiff had recovered a verdict in an action against the defendants for statutory fraud. Pending an appeal to the House of Lords, the plaintiff died:—Held, that the administratrix of the plaintiff was entitled to be joined as a party to the action, under Order L. rule 4 of the Rules of Court, 1875. *Twyross v. Grant*, 47 Law J. Rep. C.P. 676. Affirmed on appeal, 48 Law J. Rep. C.P. 1; Law Rep. 4 C.P. D. 40.

32.—Where a sole plaintiff had died insolvent and intestate (so far as was known) the Court, on the application of the sole defendant, who desired to move for dismissal of the action for want of prosecution, made an order appointing a person to represent the estate of the deceased plaintiff. *Wingrove v. Thompson*, Law Rep. 11 Ch. D. 419.

33.—A receiver was appointed in an administration action after the death of the sole defendant, an executrix, pending the appointment of a fresh personal representative of her testator. *Cash v. Parker*, 48 Law J. Rep. Chanc. 691; Law Rep. 12 Ch. D. 293.

(2) *Bankruptcy.*

34.—Although now an action is not abated by the bankruptcy of a sole plaintiff, he can himself take no further steps in it, but the trustee may obtain an order of course to continue it. *Jackson v. The North Eastern Railway Company* (App.), 46 Law J. Rep. Chanc. 723; Law Rep. 5 Ch. D. 844.

35.—A defendant was entitled to a life interest in the subject of the action, determinable on alienation. His affairs were liquidated. His name was struck out by the plaintiffs without authority from the Court. A summons by him for costs was dismissed. *Wymer v. Dodds*, 48 Law J. Rep. Chanc. 568; Law Rep. 11 Ch. D. 436.

36.—On the bankruptcy of a defendant to an action ripe for trial an order continuing the action against the trustee in bankruptcy was duly served on the trustee. The trustee did not appear:—Held, not to be necessary to file the pleadings against him under Order XIX. rule 6. *Choriton v. Dickie*, 49 Law J. Rep. Chanc. 40; Law Rep. 13 Ch. D. 160.

In default of appearance by such a trustee at the trial judgment will be given without evidence of notice of trial having been served on the bankrupt. *Cookshott v. The London General Cab Company* (47 Law J. Rep. Chanc. 126; C 5 supra) not followed. *Ibid.*

*Bankrupt plaintiff: cause of action accruing after bankruptcy.* [See BANKRUPTCY, H 16.]

(3) *Lunacy.*

37.—Where the plaintiff, a person of unsound mind, not so found, suing by a next friend, becomes a lunatic during the progress of the action, and a committee is appointed, the committee may obtain an order, under Order L. rule 4, for leave to continue the action. *In re Green's Estate. Green v. Pratt*, 48 Law J. Rep. Chanc. 681.

*Particulars.* [See II 7 infra; PATENT, 30, 31.]

*Partition actions.*

*Practice in.* [See PARTITION, 1-8.]

*Partnership actions.*

*Practice in.* [See PARTNERSHIP, 27, 28.]

*Patent.*

*Practice in actions in respect of infringement of.* [See PATENT, 29-35.]

*Pauperis: action in forma.*

38.—A chief clerk's certificate was ordered to be delivered out without payment of Court fees, where the plaintiff had obtained leave to sue *in forma pauperis* after the certificate was ready. *Thomas v. Ellis* (App.), Law Rep. 8 Ch. D. 518.

## (V) PAYMENT INTO COURT.

(a) *By defendant, in satisfaction of plaintiff's claim.*

1.—Where a defendant has, before delivering his defence, paid money into Court in satisfaction of the plaintiff's claim, under Order XXX. rule 1, the plaintiff may, on taking the money out in satisfaction, at any subsequent time apply for an order for his costs, notwithstanding his having neglected to give the notice within four days, under rule 4, which would have entitled him absolutely to tax them; and a Judge may, under Order LV., grant such application. *Greaves v. Fleming*, 48 Law J. Rep. Q.B. 335; Law Rep. 4 Q.B. D. 226.

2.—Payment into Court, together with a denial of the right of action, was pleaded in an action for a nuisance:—Held, that in such an action such pleading ought not to be allowed, even if in other actions the case were otherwise. *Spurr v. Hall*, 46 Law J. Rep. Q.B. 693; Law Rep. 2 Q.B. D. 615.

3.—Where a plaintiff claims for distinct pieces of work and labour, alleged in separate paragraphs of the statement of claim, a defendant, who has paid money into Court generally, need not specify in his statement of defence how much is paid in respect of each head of claim. *Paraire v. Loibl* (App.), 49 Law J. Rep. C.P. 481.

*Costs of.* [See COSTS, 39, 40.]

*Embarrassing plea.* [See LIBEL, 18; W 12 infra.]

*Effect of, on executor's right of retainer.* [See EXECUTOR, 4.]



*(b) Order for, on admission of party.*

4.—The non-appearance of a defendant in an administration action, who had been served with notice of a motion to order him to bring money into Court was held a sufficient admission to enable the Court to make such order, though before judgment was given in the action or accounts taken. *Freeman v. Cox*, 47 Law J. Rep. Chanc. 560; Law Rep. 8 Ch. D. 148.

Principle upon which the Court acts extended to include the case where a defendant, although not actually admitting, does not dispute that money is owing from him. *Ibid*.

5.—Where in taking the accounts under a decree in a partnership suit the Court is satisfied that they will result in a certain sum at least being found due from one party to the other, the Court will, without waiting for the chief clerk's certificate, order payment of that sum into Court. *The London Syndicate v. Lord* (App.), 48 Law J. Rep. Chanc. 57; Law Rep. 8 Ch. D. 84.

The chief clerk, with the consent of the parties, referred it to two accountants, one named by each partner, to make out a balance-sheet of undisputed items, and also a list of disputed items. The accountants having agreed upon a balance-sheet shewing that whatever might be the result as to the disputed items, 541*l.* was due from one of the partners,—Held, that this was a sufficient admission by the accounting party to justify the Court in ordering payment of the amount into Court. *Ibid*.

6.—Upon notice of motion by the plaintiff in an action for administration for "a decree or decretal order" according to minutes appended, which amounted to the usual judgment for administration, reserving further consideration,—Held, that an order according to the minutes on admissions in the defence was properly made as upon an ordinary motion, without the cause being set down. *Hetherington v. Longrigg*, 48 Law J. Rep. Chanc. 171; Law Rep. 10 Ch. D. 162.

A statement of defence admitted receipt of 11,674*l.* purchase-moneys of real estate, and between 7,000*l.* and 8,000*l.* personal estate, and shewed a discharge for 12,000*l.* :—Held, that this was not a sufficient admission of 6,674*l.* to found an order for payment into Court. *Ibid*.

*Payment in, under Trustee Relief Act.* [See TRUSTEE RELIEF ACT, 1-5.]

**Payment out of Court.**

*Lands Clauses Act, under.* [See LANDS CLAUSES ACT, 29-40.]

*Trustee Relief Act, under.* [See TRUSTEE RELIEF ACT, 6-8.]

*To tenant in tail.* [See SETTLED ESTATES ACT, 9.]

**Pending litigation.**

*Practice in.* [See B 21; K 6, 20; N; S 1 supra; W 19; GG 1 infra.]

DIGEST, 1875-1880.

**Petition.**

7.—A petition for appointment of new trustees and a vesting order was presented in the names of several co-petitioners and an order made. More than a year afterwards an application was made by persons who had been joined as co-petitioners that the order might be rescinded on the ground that they had in no way authorised the petition, and had only recently heard of it :—Held, that the order could not be rescinded, but should be amended by striking out the names of the applicants as co-petitioners, and treating them as not having been served with the petition. *In re Savage*, Law Rep. 15 Ch. D. 537.

A solicitor acting without authority will in general be ordered to pay the costs. *Ibid*.

*Administration action: equity to a settlement.* [See HUSBAND AND WIFE, 19.]

*Creditor, by, to establish claim.* [See EXECUTOR 21.]

*Death of sole petitioner.* [See U 30 supra.]

*Demurrer: petitioner's counsel to open case.* [See COMPANY, H 16.]

*Demurrable: amendment.* [See BANKRUPTCY, M 37.]

*Petition for advice of court: married woman of unsound mind.* [See TRUSTEE RELIEF ACT, 10.]

[And see LANDS CLAUSES ACT; SETTLED ESTATES ACT; TRUSTEE ACTS; TRUSTEE RELIEF ACT.]

**(W) PLEADING.***(a) Generally.**(1) Pleading matters arising pending action.*

1.—On the 1st of February, 1877, the plaintiff brought an action for the recovery of certain property against a debtor and the trustee of his estate under a composition. On the 2nd of July, 1877, the defendant delivered a statement of defence stating an adjudication in bankruptcy made against the debtor on the 1st of June, 1877, on an act of bankruptcy committed on the 11th of November, 1876, and that the property was then in the order and disposition of the bankrupt with the consent of the plaintiff. Thereupon the plaintiff delivered a confession of the defence and signed judgment for his costs under Order XX. rule 3. On a summons by the trustee to set aside the judgment,—Held, that the adjudication in bankruptcy was a ground of defence which had arisen since action brought, notwithstanding that it related back to an act of bankruptcy committed before action brought, and the summons was dismissed with costs. *Champion v. Formby*, 47 Law J. Rep. Chanc. 395; Law Rep. 7 Ch. D. 373.

[And see No. 59 infra.]

(2) *Agreement, how to be pleaded.*

2.—Semble, whenever in any pleading an agreement is alleged, it is not sufficient generally to aver the existence of an agreement, and to state its effect; but the pleading should state whether the agreement relied on is in writing or by parol, or the result of a series of documents. *Turquand and the Capital and Counties Bank v. Fearon* (App.), 48 Law J. Rep. Q.B. 703; Law Rep. 4 Q.B. D. 280.

(3) *Prolix, embarrassing or irrelevant pleadings.*

3.—The whole of a statement of claim of which parts are unintelligible, parts irrelevant, and other parts contain offensive charges, may be struck out under Order XXVII. rule 1. *Cashin v. Cradock* (App.), Law Rep. 3 Ch. D. 876.

4.—A refusal to strike out pleadings under Order XXVII. rule 1 is an exercise of discretion on the part of the Judge, with which the Court of Appeal is unwilling to interfere, though it may consider the proceedings unnecessarily prolix. *Watson v. Rodwell* (App.), 45 Law J. Rep. Chanc. 744; Law Rep. 3 Ch. D. 380.

A statement of claim should not contain anything corresponding to the charging part of a bill. *Ibid.*

5.—In an action against the defendants, a life assurance company, the statement of the plaintiff's claim shewed that the cause of action was for defrauding the plaintiff of a sum of money which, as it was alleged, the defendants by acting in concert with one H. got the plaintiff to pay for effecting a policy on his life in the defendants' office, on the supposition that if he did so, the said H. would lend the plaintiff the money he wished to borrow without any further security than such policy. The statement alleged that after the policy had been effected H. required the plaintiff to give further securities and to fulfil conditions which he could not perform, and that this was done by H. in concert with the defendants to prevent the loan ever being made to the plaintiff, and was part of the scheme by which the plaintiff was so defrauded. The Court ordered to be struck out of the statement of claim as irrelevant certain paragraphs which went to shew that the transaction with the plaintiff was only one of several others of a similar kind by which other persons were defrauded into paying the defendants for effecting policies under the pretence of a loan by third persons, who were, in fact, as the plaintiff alleged, agents acting in concert with the defendants for that purpose. *Blake v. The Albion Life Assurance Society*, 45 Law J. Rep. C.P. 663.

6.—The Judge has a discretion as to striking out pleadings as embarrassing under Order XXVII. rule 1, and generally speaking no appeal from him will be entertained. *Golding v. The Wharton Saltworks Company* (App.), Law Rep. 1 Q.B. D. 374.

7.—The Court allowed a number of paragraphs in a statement of defence which stated

the existence of various matters which were essential to shew that the agreement on which the action was brought came within the principle on which Courts of Equity have granted relief against catching bargains with heirs or expectants on the life of an ancestor, it not appearing that what was so stated was embarrassing in the sense of not giving notice to the other side what the defendant's case was, or that there was any allegation which could be entirely omitted. *Heap v. Marria*, 46 Law J. Rep. Q.B. 761; Law Rep. 2 Q.B. D. 630.

8.—Statements in pleadings which are not demurrers, but raise only matters of law that might be raised by demurrer, are embarrassing, and may be struck out under Order XXVII. rule 1. *Stokes v. Grant*, Law Rep. 4 C.P. D. 25.

[And see U 5 supra.]

(4) *General or evasive allegation.*

9.—The rules of pleading, that facts not denied are to be taken as admitted, that specific denial of facts is necessary, and that denial of facts must not be evasive, are to be strictly enforced, as having for their object the bringing of parties to definite issues. *Thorp v. Holdsworth*, 45 Law J. Rep. Chanc. 406; Law Rep. 3 Ch. D. 637.

Where in an action for dissolution of partnership the plaintiffs stated a parol agreement to take a lease and carry on a partnership; that, in pursuance of the agreement, the plaintiffs and the defendant took the lease, and draft articles were prepared, to define the terms of the partnership; that, at an interview on a certain day, the articles were approved by the parties, subject to being revised and finally settled; that the draft had not yet been revised, nor had the articles been executed; that although the draft articles were only settled subject to revision, the terms of the arrangement between the plaintiffs and the defendant were definitely agreed upon at the interview; and that the plaintiffs and the defendant subsequently carried on the business; and the defendant, by his statement of defence, admitted the agreement, and merely denied that the terms of the arrangement were definitely agreed upon as alleged.—Held, that the denial was evasive within the meaning of Order XIX. rule 22, and upon motion by the plaintiffs for judgment on admissions of fact in the pleadings, a decree was made for dissolution of the partnership, and an enquiry what were the terms of the arrangement. *Ibid.*

10.—In an action for specific performance of an agreement made by an agent, the statement of defence, after alleging unsoundness of mind in the principal, denied that any agreement had been entered into by a person lawfully authorised, and claimed the benefit of the Statute of Frauds:—Held (affirming the decision of Fry, J., Law Rep. 5 Ch. D. 781), that the defendant had not put in issue the question of the authority of the agent, and was only entitled to adduce

evidence with respect to the unsoundness of mind. *Byrd v. Nunn* (App.), 47 Law J. Rep. Chanc. 1; Law Rep. 7 Ch. D. 284.

An application was then made to amend the statement of defence. A similar application had been refused by Fry, J., and on this ground the Court of Appeal declined to interfere with the discretion of the Court below. *Ibid.*

11.—Specimen of a statement of claim which the Court will order to be struck out under Order XXVII. rule 1, on grounds of prolixity and stating evidence. Quære, whether it is not now sufficient to allege fraud in general terms. *Davy Brothers (Lim.) v. Garrett* (App.), 47 Law J. Rep. Chanc. 218; Law Rep. 7 Ch. D. 473.

[See No. 55 infra.]

12.—There is nothing in the Judicature Acts or Rules to prevent a defendant pleading inconsistent defences. Therefore, in general, a defendant may in his statement of defence deny the right of the plaintiff to sue, and at the same time pay a sum of money into Court under Order XXX. in satisfaction of the plaintiff's claim, since such a course, though raising inconsistent defences, does not necessarily tend to prejudice, embarrass or delay the fair trial of the action within the meaning of Order XXVII. rule 1. *Berdan v. Greenwood* (App.), 47 Law J. Rep. Exch. 628; Law Rep. 3 Ex. D. 251.

Quære, whether in some cases, *e.g.*, actions brought to try a right, or to clear the plaintiff's character, or where fraud is charged, such pleading should be allowed. *Ibid.*

13.—Per Malins, V.C.—A defendant ought not to deny by his defence plain and acknowledged facts which it is not to his advantage or in his power to disprove. *The Lee Conserancy Board v. Button* (App.), Law Rep. 12 Ch. D. 383.

14.—A statement of defence contained various admissions and allegations of fact, and then, by way of counter-claim, the defendant repeated "the several matters hereinbefore stated and admitted," and claimed certain relief. By his reply, after making certain admissions and joining issue on the rest of the statement of defence, "in reply to the statements alleged by way of counter-claim" the plaintiff repeated "the several matters stated in the statement of claim and the admissions hereinbefore made," and said that, "save as stated in the statement of claim or hereinbefore admitted, each of such allegations is untrue:"—Held, that this amounted to an admission of all the statements alleged by way of counter-claim. But leave to amend was given. *Green v. Sevin*, 49 Law J. Rep. Chanc. 166; Law Rep. 13 Ch. D. 589.

15.—Every allegation of fact stated in a pleading not to be admitted must be so stated separately. *Harris v. Gamble*, 47 Law J. Rep. Chanc. 344; Law Rep. 7 Ch. D. 877.

[And see Nos. 82, 89 infra.]

#### (5) Admissions, orders on.

16.—The Court has a discretion whether it will grant relief on a motion under Order XL.

rule 11, on admissions of fact in the pleadings, and the Court of Appeal will not interfere with the exercise of the discretion of the Judge of first instance. *Mellor v. Sidebottom* (App.), 46 Law J. Rep. Chanc. 398; Law Rep. 5 Ch. D. 342.

A demurrer to a defence ought not to be raised by way of motion for judgment under that rule. *Ibid.*

17.—An order equivalent to a judgment may be made on motion under Order XL. rule 11, on admissions in the pleadings. *Gilbert v. Smith* (App.), 45 Law J. Rep. Chanc. 514; Law Rep. 2 Ch. D. 686.

Form of such an order reserving further consideration. *Ibid.*

Form of partition decree to allow sale on further consideration in chambers. *Ibid.*

18.—On a motion to dismiss an action, under Order XL. rule 11, upon the plaintiff's admissions,—Held, that that order does not apply to motions to dismiss. *Linton v. Linton*, 46 Law J. Rep. Chanc. 64; Law Rep. 3 Ch. D. 793 (*nom. Litton v. Litton*).

[And see A 1, 3; V 6 supra; and No. 23 infra.]

#### (b) Amendment of pleadings.

##### (1) Of statement of claim after delivery of defence.

19.—Leave granted to amend bill and go into further evidence in a suit which was at issue before November, 1875. *Roe v. Davies*, Law Rep. 2 Ch. D. 729.

20.—Where the plaintiff delivers an amended statement of claim, the defendant must either deliver a new defence or amend his original defence, and so on *toties quoties*, until the pleadings are closed. *Durling v. Lawrence*, 46 Law J. Rep. Chanc. 808.

21.—Where the plaintiff, after delivery of a statement of defence, has amended his statement of claim, the defendant is not obliged to deliver a new defence, or amend his original defence; but, on the analogy of the old practice in the Court of Chancery and at Common Law, may proceed to trial upon his original defence, in which case the amendments in the statement of claim will be treated as admitted, and the defence stand for an answer as far as it goes. *Durling v. Lawrence* (see last case) disapproved. *Boddy v. Wall*, 47 Law J. Rep. Chanc. 112; Law Rep. 7 Ch. D. 164.

##### (2) Of defence.

22.—Under Order XXVII. rule 1 of the rules of Court, the Court has power to allow a defendant who has put in a joint statement of defence, and who has afterwards been advised that he has other grounds of defence not set out in the joint statement, to put in a separate statement of defence, without filing an affidavit setting out the nature of the new defence intended to be set up, upon such defendant paying to the plaintiff the costs which he has rendered necessary by not having put in his full

defence in the original statement; such costs, however, to include the costs of briefing one counsel only on the part of the plaintiff, and forty shillings for the costs of the other defendants appearing to support the plaintiff. *Cargill v. Bower*, 46 Law J. Rep. Chanc. 175; Law Rep. 4 Ch. D. 78.

23.—In a foreclosure action the statement of claim stated an original mortgage deed, a deed of assignment, and that a sum remained due on the security. The statement of defence stated that the defendants did not admit the correctness of these statements, and required proof thereof. The plaintiff moved for judgment on admissions in pleadings:—Held, that the plaintiff's case on these pleadings must be taken to be admitted, but leave to amend was given. *Butter v. Tragent*, 48 Law J. Rep. Chanc. 791; Law Rep. 12 Ch. D. 758.

24.—Some of several defendants to an action for recovery of land, after the action had been in the paper for trial, having quitted the part of the premises they occupied, were allowed to withdraw their statement of defence on terms of paying into Court mesne profits and paying the costs occasioned by their statement of defence and the costs of the summons for leave to withdraw. *The Real and Personal Advance Company v. McCarthy*, 49 Law J. Rep. Chanc. 615; Law Rep. 14 Ch. D. 188.

#### (3) *Change of nature of action.*

25.—An action was brought against three persons claiming damages in respect of a sale, on the ground of *tort*. One defendant died. The plaintiff obtained an order, allowing amendments, which changed the action to one to set aside a sale, on account of misrepresentation, and also adding the representative of the deceased as defendant:—Held, that the order was properly made under Order XXVII. rule 1, and Order XVI. rule 13. *Ashley v. Taylor*, 48 Law J. Rep. Chanc. 406; Law Rep. 10 Ch. D. 768.

26.—An action may, by amendment of the writ and statement of claim, be turned into an information and action without prejudice to a pending motion in the action, the necessary sanction of the Attorney-General being obtained. *Caldwell v. The Pagham Harbour Reclamation Company*, 45 Law J. Rep. Chanc. 796; Law Rep. 2 Ch. D. 221.

#### (4) *At hearing.*

27.—Leave to amend by introducing new matter was given at the hearing of a cause under Order XXVII. rule 1, in a suit which came on on motion for decree under the old practice. *Budding v. Muddock*, 45 Law J. Rep. Chanc. 213; Law Rep. 1 Ch. D. 42.

28.—A bill as amended asked for an account on the footing of wilful default on instances which were disclosed by the answer, but which were not specifically alleged in the amended bill. The Judge at the hearing allowed the bill to be amended, giving the defendant leave to

answer further, and file fresh affidavits upon the question of default, the plaintiff not being allowed to bring further evidence, and on terms of the plaintiff's paying the costs of the day before amending. *King v. Corke*, 45 Law J. Rep. Chanc. 190; Law Rep. 1 Ch. D. 57.

29.—In an action against an agent for account, the plaintiffs alleged an open account and in general terms falsification. The defendant pleaded settled accounts, and required specific statements of falsification. At the trial the Judge held the accounts were settled, and gave the defendants costs of the trial, but allowed the plaintiffs to amend within fourteen days by stating specific instances of falsification. *Moxley v. Cowie*, 47 Law J. Rep. Chanc. 271.

30.—An allottee of shares brought an action for fraudulent misrepresentation against the directors of his company, and by the indorsement on the writ he claimed indemnity and rescission of his contract to take shares. The company was ordered to be wound up. The plaintiff by his claim asked for indemnity, but not rescission. An application to determine whether the plaintiff was to be a contributory stood over pending this trial:—Held, that the plaintiff could not obtain rescission on the pleadings, and leave to amend was refused. *Cargill v. Bower*, 47 Law J. Rep. Chanc. 649; Law Rep. 4 Ch. D. 78.

31.—Order made at trial to add a person as co-defendant to whom the defendant's interest had been assigned *pendente lite*. *Kino v. Rudkin*, Law Rep. 6 Ch. D. 160.

32.—A plaintiff having in his statement of claim alleged that a defendant had offered and paid a bribe of 500*l.*, and having stated the circumstances, the defendant in his statement of defence denied that he had received that sum, and denied each circumstance, but did not deny that any sum whatever had been given. He had, however, in an affidavit filed before any exception was made to the statement of defence, denied the giving of any bribe:—Held, by Fry, J. (47 Law J. Rep. Chanc. 263; Law Rep. 7 Ch. D. 403), that he had admitted the giving of some bribe, and leave to amend his pleading was refused. On appeal leave to amend was given. The question when and under what circumstances leave to amend should be given discussed. *Tildesley v. Harper* (App.), 48 Law J. Rep. Chanc. 495; Law Rep. 10 Ch. D. 393.

33.—In a foreclosure action the statement of claim stated an original mortgage deed, a deed of assignment, and that a sum remained due on the security. The statement of defence stated that the defendants did not admit the correctness of these statements, and required proof thereof. The plaintiff moved for judgment on admissions in pleadings:—Held, that the plaintiff's case on these pleadings must be taken to be admitted, but leave to amend was given. *Butter v. Tragent*, 48 Law J. Rep. Chanc. 791; Law Rep. 12 Ch. D. 758 (*nom. Rutter v. Tragent*).

34.—In April, 1876, an agreement was entered into between the plaintiffs and the defendant

for the purchase by them of a patent. In January, 1877, the plaintiffs brought an action to have the agreement set aside on the ground of fraud. The defendant, by his defence, denied the fraud; and by way of counter-claim claimed to have the agreement specifically performed. During the progress of the evidence it turned out that, a few days after the date of the agreement, the plaintiffs had transferred all their patent rights to a limited company. Upon the application of the plaintiffs at the trial of the action, the Court allowed the pleadings to be amended, by adding the company as plaintiffs. *Ruston v. Tobin*, 49 Law J. Rep. Chanc. 262.

*Action propounding will: threats preventing execution of other will.* [See PROBATE, 30.]

*Action seeking penalties under Act as to copyright: claim for relief in respect of unlawful sales.* [See COPYRIGHT, 15.]

*Patent: amendment charging defendants with infringement of patent as agents.* [See PATENT, 21.]

[And see U 29 supra.]

#### (c) Particular pleadings.

##### (1) Statement of claim.

##### (i) Alternatives or inconsistent relief.

35.—The plaintiff alleged in his statement of claim that he had been induced by the misrepresentations of the defendant to enter into an agreement for partnership with him. He also alleged that he, the plaintiff, had carried out the agreement on his part, but that the defendant now refused to continue to carry it out on his. He then claimed that the agreement might be declared void, or, in the alternative, that the partnership might be dissolved, and the accounts taken and the assets realised. The defendant moved for an order confining the plaintiff's action to one or other of the causes of action in respect of which he sought relief:—Held (reversing the decision of Bacon, V.C.), that the motion must be refused, as there was nothing inconsistent either in the relief claimed or in the allegations in the statement. *Bagot v. Easton* (App.), 47 Law J. Rep. Chanc. 225; Law Rep. 7 Ch. D. 1.

36.—Relief in the alternative cannot be given upon inconsistent allegations in the same pleadings. And where an action was brought by trustees of a settlement to enforce payment of a sum of money against the representative of a covenanting party, and the said representative, by her defence and counter-claim, averred that, according to the true construction of the settlement, the sum was not payable, and claimed that if the sum were payable according to the true construction, the settlement might be rectified, making the surviving tenant for life under the settlement a defendant to the counter-claim for that purpose only,—Held, on demurrer by the tenant for life, that she was improperly made a party. *Evans v. Buck*, and *Buck v. Evans*, 46

Law J. Rep. Chanc. 157; Law Rep. 4 Ch. D. 732.

[And see U 2 supra, and HH 27 infra.]

##### (ii) Charging wilful default.

*Administration decrees against executor: subsequent action by same plaintiff against same defendants without leave charging wilful default.* [See ADMINISTRATION, 36.]

*Embarrassing: claim by indorsees of bill joined with claim by drawer.* [See U 5 supra.]

##### (iii) Action for recovery of land.

37.—In an action for the recovery of land, where the plaintiff claims by devolution from an alleged predecessor in title, it is not necessary to set out the whole of the plaintiff's title in the statement of claim, but it must state the nature and effect of the documents under which the plaintiff claims, and such material facts in his pedigree as he relies upon to establish his right. *Philipps v. Philipps* (App.), 48 Law J. Rep. Q.B. 135; Law Rep. 4 Q.B. D. 127.

#### (2) Demurrer.

##### (i) To claim in representative character.

38.—When a plaintiff sues in a representative capacity, the statement of claim is to be read for the purposes of demurrer, as if that fact were stated therein. *Johnson v. Burges*, 47 Law J. Rep. Chanc. 552.

39.—Where a general right is fairly contested and established against a representative class, parties not actually parties are still bound by representation, so far as the general right is tried and established. *The Commissioners of Sewers of the City of London v. Gellatly*, 45 Law J. Rep. Chanc. 788; Law Rep. 3 Ch. D. 610.

The plaintiffs filed a statement of claim, seeking to carry out against the defendant a decree establishing a general right of common. The defendant demurred on the grounds, first, that he was no party to the original suit, and therefore not bound by the decree; and secondly, that under an Act of Parliament the plaintiffs were prohibited from taking proceedings (except such as were supplemental to the original suit, the decree in which they sought to enforce), without the leave of a certain body, and that they did not state that they had obtained such leave:—Held, that the defendant was bound by the decree, so far as it established a general right of common. But that (the proceedings being original and not supplemental) the demurrer must be allowed on the second ground, with liberty for the plaintiffs to amend by obtaining leave, and that in case they obtained such leave, the costs of the demurrer should be reserved. *Ibid.*

##### (ii) Time for demurring.

40.—Where a defendant obtained an extension of time for delivery of his defence, it was held he might demur alone within such extended

time. *Hodges v. Hodges*, 45 Law J. Rep. Chanc. 750; Law Rep. 2 Ch. D. 112.

*Raising Statute of Frauds by.* [See 46, 47 *infra*.]

*Raising Statute of Limitations by.* [See 48 *infra*.]

*To writ specially indorsed* [See II 5 *infra*.]

(iii) *Pleading as well as demurring.*

41.—The defendant sold to the plaintiff a business of manufacturing and selling the "Government Carbolic Disinfectants," the process of manufacturing which was a secret in his possession, and covenanted not to carry on the business of a manufacturer or seller of the "Government Carbolic Disinfectants," or of any other article or thing of a disinfectant nature for fourteen years, and not to disclose the secret for the same period. The plaintiff brought this action, alleging that the defendant was infringing those covenants and seeking to restrain him. The defendant delivered a statement of defence, whereby he specifically denied that he was infringing the covenants, and further demurred on the ground that the covenant not to carry on such business was in restraint of trade and too general in its provisions:—Held, that under Order XXVIII. rule 5, the defendant could not, without leave, plead and demur to the same statement. Held also, that, having regard to the subject-matter, the covenant was not too general, and that the demurrer must be overruled. *Hagg v. Darley*, 47 Law J. Rep. Chanc. 567.

42.—The rule that a party cannot demur to a pleading he has pleaded to is no longer in force. A demurrer to "such part of the statement of claim as claims damages alleged to have been sustained, &c.," was held good in form. *Powell v. Jonesbury* (App.), Law Rep. 9 Ch. D. 34.

(iv) *Multifariousness.*

43.—A. having contracted to sell real estate over which he and his wife had a joint power of appointment, and which was settled in default of appointment upon the wife for life with remainder to A. in fee, to a purchaser who had notice of the settlement, died before completion. The wife brought an action against the purchaser asking for a declaratory judgment whether she was obliged to complete, and as to the effect of completion and non-completion, regarding the conversion and devolution of the subject-matter of the contract in reference to A.'s will. A demurrer by the purchaser on the ground that he was not interested in all the questions raised, and that no relief could be given against him, was overruled. *Barker v. Cow*; *Cow v. Barker* (App.), Law Rep. 3 Ch. D. 359.

[And see U 12 *supra*.]

(8) *Defences.*

(i) *Plea to jurisdiction.*

44.—The plaintiffs sued the defendants, both parties having a registered office in England, for certain rents and costs incurred in the construction of railway premises at the station in Buenos Ayres. The defendants, in their statement of defence, stated that both companies were domiciled and carried on business abroad, and that the property was situated in the Argentine Republic, who had, by express provision, power to deal with the plaintiffs' claim:—Held, that the statement of defence was bad, there being no allegation which asserted an exclusive jurisdiction in the Courts of the Republic over the subject-matter of the action, either by law or contract of the parties. *The Buenos Ayres and Ensenada Port Railway Company v. The Great Northern Railway of Buenos Ayres Company (Lim.)*, 46 Law J. Rep. Q.B. 224; Law Rep. 2 Q.B. D. 210.

(ii) *Pleading Statute of Frauds.*

45.—By Order XIX. rule 23, a defence under the Statute of Frauds, or any other special statute, must in all cases be specially pleaded; and such a defence cannot be constructively set up by traversing various allegations in the statement of claim. *Clarke v. Callow* (App.), 46 Law J. Rep. Q.B. 53.

46.—The defence of the Statute of Frauds cannot now be raised by demurrer. *Callow v. King* (App.), 46 Law J. Rep. Chanc. 384; Law Rep. 5 Ch. D. 660.

47.—The rule that the objection of the Statute of Frauds must be taken upon the pleadings is sufficiently complied with if it is taken by demurrer; and if the demurrer is overruled it is not necessary for the defendant to repeat the objection by plea or answer in order to entitle him to avail himself of it at the hearing. So held by James, L.J. *Johansson v. Bonhote* (App.), 45 Law J. Rep. Chanc. 651; Law Rep. 2 Ch. D. 298.

(iii) *Pleading Statute of Limitations.*

48.—The plaintiff by his statement of claim alleged that J. P., who died in 1782, devised estates to R. P. and the heirs of his body, but upon special trust and confidence that in case R. P. should have no issue he would not do or suffer any act in law or otherwise to prevent certain subsequent devises taking effect; that R. P. entered and remained in possession till his death without issue in 1808; that G. H. D., who was entitled under the will of J. P. to an estate for life in remainder thereupon entered and remained in possession till his death in 1840; that H. D. thereupon became entitled to the estates as tenant for life; that H. D. died in 1852, whereupon the plaintiff's father became entitled as tenant in tail in possession; that the defendant entered upon the death of G. H. D. and had ever since remained in possession of the estates, claiming to be entitled under the

wills of B. P. and G. H. D. The plaintiff further stated that the defendant claimed that B. P. acquired the fee simple by virtue of a common recovery, alleged to have been suffered by him in the year 1782. The defendant demurred on the ground that the plaintiff's claim was barred by the recovery, and at the hearing of the demurrer relied also on the Statute of Limitations:—Held, that the defence of the Statute of Limitations is well raised by demurrer in cases which fall within the operation of section 34; since in such cases not merely the right to recover property by action is taken away, but the title to the property itself is transferred. Held also, that a party demurring may rely upon the statute, though not mentioned in the demurrer itself as a ground. Held also, that the words "upon special trust," &c., were a mere invalid prohibition against barring an estate tail, and did not create an express trust, so as to take the case out of the Statute of Limitations. *Darwins v. Lord Penrhyn* (H.L.), 48 Law J. Rep. Chanc. 304; Law Rep. 6 Ch. D. 818.

[And see LIMITATIONS, STATUTE OF, 13.]

(iv) *Set-off.*

49.—In an action on a policy of insurance on a ship's cargo brought by the assignee of such policy in his own name, pursuant to the provisions of 31 & 32 Vict. c. 86, the defendant cannot set off any debt which he could not have set off prior to the passing of that Act. Nor does rule 3 of Order XIX. alter the law in this respect, for a counter-claim is not a defence within the meaning of section 1 of 31 & 32 Vict. c. 86:—So held, reversing the decision of the Common Pleas Division. *Pellas & Company v. The Neptune Marine Insurance Company* (App.), 49 Law J. Rep. C.P. 153; Law Rep. 5 C.P. D. 34.

50.—The plaintiff sued an assignee of a debt for work done under a contract. The defendant delivered a "statement of defence and counter-claim," claiming "by way of set-off and counter-claim" damages for breach of the contract by the assignor in not completing the work within the time agreed on:—Held (on demurrer), that the defendant was entitled to set off or deduct these damages, but that the form of the statement of defence must be amended, inasmuch as it did not shew that the defendant claimed only to set them off and not to recover them. *Young v. Kitchin*, 47 Law J. Rep. Exch. 579; Law Rep. 3 Ex. D. 127.

51.—In an action by A. against B. and C. to make them jointly and severally liable for breaches of trust, B., by his statement of defence and counter-claim, claimed contribution from C. as primarily liable if the breaches were established. This pleading was delivered to C., but no order was made that such delivery should be deemed sufficient notice of B.'s claim. A decree for an account and payment was made against B. and C. jointly, and upon further consideration,—Held, that the delivery of B.'s de-

fence to C. was sufficient notice to the latter of B.'s claim against him within Rules of Court, 1875, Order XVI. rule 17, a substantive order to that effect not being necessary; and that B. was, in consequence, entitled to an enquiry how and in what proportions, as between B. and C., the sums ordered to be paid to A. should be borne and paid. *Butler v. Butler*, 49 Law J. Rep. Chanc. 734; Law Rep. 14 Ch. D. 329.

(v) *Special defences.*

52.—In an action to restrain infringement of copyright the statement of defence alleged undue registration, and that the registration was void by reason of the wrong date of publication having been given:—Held, that the invalidity of the registration pleaded was confined to invalidity by reason of a wrong date, and did not extend to a misstatement of the name of the publisher. *Collette v. Goode*, 47 Law J. Rep. Chanc. 370; Law Rep. 7 Ch. D. 842.

53.—A plea to an action of contract that the plaintiff was suing on his own behalf, whereas he made the contract as agent for a company,—Held, not embarrassing. *Golding v. The Wharton Saltworks Company* (App.), Law Rep. 1 Q.B. D. 374.

54.—Declaration alleging a breach of an agreement therein set forth, and consequent damage to the plaintiffs. Plea that a certain agreement had been come to between the plaintiffs and the defendants after disputes had arisen. The plea did not in terms admit or deny the alleged breach, nor did it in terms state that the agreement pleaded had been accepted by the parties in accord and satisfaction of the causes of action alleged in the declaration:—Held (on demurrer), that such plea was bad, as it could not be assumed that an agreement, the defendants' version of which was set out in the plea, had been accepted in accord and satisfaction. *Barclay v. The Bank of New South Wales* (P.C.), Law Rep. 5 App. Cas. 375.

55.—A general allegation of fraud, however strong the words used, where there is no statement of the circumstances relied on as constituting the alleged fraud, is insufficient even to amount to an averment of fraud of which any Court can take notice. *Wallingford v. The Mutual Society* (H.L.), 50 Law J. Rep. C.P. 49; Law Rep. 5 App. Cas. 686.

*Plea of payment into Court with denial of right of action.* [See V 2; W 12 supra.]

*The abolition of pleas in abatement has not taken away right to insist on co-contractors being joined as defendants.* [See DEBTOR AND CREDITOR, 2.]

*Salvage action: pleading agreement.* [See ADMIRALTY, 20.]

(d) *Counterclaim.*

(1) *Subject-matter and form of.*

56.—A counter-claim against co-defendants was dismissed on the ground that no allegations

of fact were specifically stated to be in support of it. *Crowe v. Barnscott*, 46 Law J. Rep. Chanc. 855; Law Rep. 6 Ch. D. 758.

57.—Although rectification or setting aside of deeds is assigned to the Chancery Division by the Judicature Act, 1873, section 34, sub-section 3, still a right to rectification or to set aside a deed may be set up as an answer to an action in one of the other Divisions, by virtue of section 24, sub-section 2, of that Act, which gives an equitable jurisdiction to such other Division to that extent. *Mostyn v. The West Mostyn Coal and Iron Company (Lim.)*, 45 Law J. Rep. C.P. 401; Law Rep. 1 C.P. D. 145.

A counter-claim, being in the nature of a cross action, may be good although it does not cover the whole of the plaintiff's claim. *Ibid.*

Where in an action for rent due under a lease of coal mines it was shewn in the defence that the plaintiff had no title to part of the mines, and that he knew this when he granted the lease, but that the defendant did not know and had not the means of knowing it, and that the defendant had not entered into possession or done anything to prevent his repudiating the lease, it was held that as equity under such circumstances would set aside the lease, although there had been no actual fraud on the part of the plaintiff, the defendant was entitled to repudiate, and the defence so shewn was a good answer to the action. *Ibid.*

There being a breach of the covenant for title, and the defendant being entitled to some damages for such breach, it was held that he might claim such damages by way of counter-claim to the action for rent, though there had been no eviction, and the want of title related to only a portion of the demised property. *Ibid.*

58.—In answer to a joint claim by two plaintiffs, a defendant may be allowed to set up separate demands by way of counter-claim against each plaintiff. *The Manchester, Sheffield and Lincolnshire Railway Company*, and *The London and North Western Railway Company v. Brooks*, 46 Law J. Rep. Exch. 244; Law Rep. 2 Ex. D. 243.

59.—There cannot be a counter-claim in respect of damages accrued after the date of issue of the writ. *The Original Hartlepool Collieries Company v. Gibb*, 46 Law J. Rep. Chanc. 311; Law Rep. 5 Ch. D. 713.

60.—A pleading was held good as a counter-claim, although it was contained in a paragraph of the statement of defence, numbered consecutively with the others and not headed separately as a counter-claim. *Lees v. Patterson*, Law Rep. 7 Ch. D. 866.

61.—A. brought an action against B. and C., but claimed relief only against C., the interests of A. and B. being the same. C. delivered a counter-claim against A. and B., and B. then delivered a defence, admitting A.'s claim, replying to C.'s counter-claim, and claiming against C. the same relief as in A.'s statement of claim and certain other ancillary relief:—

Held, that B.'s claim against C. ought to be disposed of in the action. *Bagot v. Easton; Easton v. Bagot*, Law Rep. 11 Ch. D. 392.

62.—In a counter-claim a defendant may refer to statements of fact in the pleadings on which he intends to rely, without setting them out again in full. An action was commenced in the Chancery Division to set aside a mortgage. The defendant subsequently commenced an action in the Queen's Bench Division for payment of his mortgage debt, and obtained judgment, which, however, by order of the Judge of that Division, was not to be enforced without the leave of the Judge of the Chancery Division. The defendant counter-claimed in the action in the Chancery Division, for leave to enforce his judgment, or in the alternative for judgment for what was due under his mortgage deed. On motion to exclude the counter-claim,—Held, by analogy to the old practice, in a suit where, on a *prima facie* case being made out, an injunction would, under such practice, have been granted to restrain the defendant proceeding to enforce his judgment, that the order made by the Judge of the Queen's Bench Division was a proper and convenient form of order to make under the present practice. But held, secondly, that, inasmuch as no action could have been brought to enforce the judgment, the counter-claim was wrong, and must be struck out, and that the proper way for the defendant to enforce his judgment was to apply for leave to do so at the trial of the action in the Chancery Division. *The Birmingham Estates Company v. Smith*, 49 Law J. Rep. Chanc. 251; Law Rep. 13 Ch. D. 506.

*Action for wages: damage to ship by negligence of master.* [See ADMIRALTY, 19.]

## (2) Motion for judgment on, in default of further pleading.

63.—An order will not be made upon a counter-claim until the original claim has been dealt with. Therefore, where in answer to a statement of claim a defence and counter-claim had been delivered, and some months after the expiration of the period allowed to the plaintiff for replying, a motion was made "for a decree according to the prayer of the counter-claim," the motion was dismissed. The proper course to adopt in such a case, where there is undue delay on the part of the plaintiff, is to give notice of motion to dismiss the original action for want of prosecution, and for judgment on the counter-claim. *Aitken v. Dunbar*, 46 Law J. Rep. Chanc. 489.

## (3) Parties to.

64.—Counter-claims raised by a defendant against co-defendant are to be delivered to the plaintiff and co-defendant, and formal notice need not be given to the co-defendant. *Shephard v. Beane*, 45 Law J. Rep. Chanc. 429; Law Rep. 2 Ch. D. 223.



65.—A counter-claim must seek relief against the plaintiff, and must not seek relief against other parties which does not relate to the subject-matter of the cause. *Shephard v. Beane* (see last case) observed upon. *Harris v. Gamble*, 46 Law J. Rep. Chanc. 768; Law Rep. 6 Ch. D. 748.

66.—A defence raising a question against co-defendants or third parties in which the plaintiff is not interested, ought not to be entitled "counter-claim." *Furness v. Booth*, 46 Law J. Rep. Chanc. 112; Law Rep. 4 Ch. D. 586.

Delivery of a defence claiming relief against a person already a party to the action is notice within Order XVI. rule 17. *Ibid*.

67.—In an action against a married woman to enforce against her separate estate an alleged debt, the husband was joined as a formal defendant. By their joint statement of defence the husband and wife denied the debt, and by way of counter-claim claimed a debt due to the wife, and also the restitution of four pictures belonging to the husband, but alleged to be retained by the plaintiff against their claim on the wife. On motion to exclude the counter-claim,—Held, that the husband's and wife's claim was properly raised by counter-claim. *Hodson v. Mooki*, 47 Law J. Rep. Chanc. 604; Law Rep. 8 Ch. D. 569.

68.—A defendant may bring in as defendants to his counter-claim, in addition to the plaintiff, all such persons as he could, if he had sued the plaintiff in a cross action, have joined with the plaintiff as defendants to such action, that is to say, all persons against whom he could claim relief along with the plaintiff, whether jointly, severally or in the alternative. *Turner v. The Hednesford Gas Company* (App.), 47 Law J. Rep. Exch. 296; Law Rep. 3 Ex D. 145.

To an action for breach of contract the defendants alleged that, as the plaintiff had not executed the contract as specified by the agreement, they had thereby become entitled to put an end to the contract, and they sought, by way of counter-claim, to recover damages from the plaintiff for the expenses caused by his default. They also made R., who, as surety for the due execution of the contract by the plaintiff, had entered into a bond with the defendants, a defendant to the counter-claim, and they sought to recover the amount of his bond as damages. R. applied to have so much of the counter-claim as related to him struck out:—Held (reversing the decision of the Exchequer Division), that the whole of the counter-claim must be allowed, as it raised a question between the defendants and the plaintiff, along with R. the surety, and that R. was properly served with the counter-claim. *Ibid*.

69.—Where, in an action, a counter-claim is made by a defendant against a plaintiff and a third party, such third party has only a right of reply under Order XXII. rule 8, and cannot himself set up a counter-claim. *Street v. Gover*, 46 Law J. Rep. Q.B. 582; Law Rep. 2 Q.B. D. 498.

#### (4) *Embarrassing, when.*

70.—The plaintiff claimed 10,000*l.* from the defendant S., under a covenant by S., in an instrument under seal, to indemnify the plaintiff in certain events (which happened). S., by his statement of defence, contended that the deed was void for undue influence, and by two counter-claims pleaded, first, that the plaintiff was executor of the will of the father of S., who had joined in the covenant of indemnity, and that the plaintiff ought to have paid himself the 10,000*l.* out of the assets; secondly, that the father of S. had bequeathed 10,000*l.* to E. S. (a fresh party), on a secret trust to pay this 10,000*l.*, which ought to be carried into execution. On motion to take the counter-claims off the file,—Held, that such counter-claims involved new questions and a misjoinder of parties, which could not be permitted, and must be struck out, as tending unduly to embarrass the plaintiff. *Padrick v. Scott*, 45 Law J. Rep. Chanc. 350; Law Rep. 2 Ch. D. 737.

71.—Order XVII. rule 5, which empowers a claim against a person as executor to be joined with a claim against him personally, does not include a counter-claim, and a defendant will not be allowed in an action by a plaintiff in his own right to join a counter-claim against the plaintiff in his representative character as executor or administrator with a counter claim against him personally, especially if it will embarrass the trial of the action. Where, however, such a counter-claim can be amended by striking out so much of it as relates to the claim against the plaintiff in his representative character, the Court, under Order XXII. rule 9, will order it to be so amended instead of ordering it to be struck out altogether. *Macdonald v. Carington*, 48 Law J. Rep. C.P. 178; Law Rep. 4 C.P. D. 28.

72.—The question whether a counter-claim shall be excluded is not so entirely in the discretion of the Judge under Order XIX. rule 3 and Order XXII. rule 9, as to preclude an appeal; but such appeal will only be entertained in a very strong case. *Huggons v. Tweed* (App.), Law Rep. 10 Ch. D. 369.

#### (5) *Costs of.*

73.—Where a counter-claim or set-off is established against a statement of claim, the "balance in favour of the defendant" mentioned in Order XXII. rule 10, is the balance upon the hearing of the action. *Rolfe v. Maclaren*, Law Rep. 3 Ch. D. 106.

74.—An action and a counter-claim to it were each dismissed with costs. The defendants were allowed all the costs except so far as they were increased by the counter-claim. The plaintiff was allowed the amount by which his costs were increased on account of the counter-claim. *Saner v. Bilton*, 48 Law J. Rep. Chanc. 545; Law Rep. 12 Ch. D. 416.

*Costs of.* [See COSTS, 30-33.]

*Discontinuance of action, effect of.* [See G 4 *supra*.]

(c) *Third party, notice to.*

75.—Service of a notice by a defendant on a third party is only for the purpose of binding the third party by the judgment in the action, as between the plaintiff and the defendant. In order to obtain relief against the third party, the defendant must bring an independent action against him. *Treleaven v. Bray* (App.), 45 Law J. Rep. Chanc. 113; Law Rep. 1 Ch. D. 176.

A purchaser filed a bill for specific performance. The defendant by his answer stated that he was desirous of completing the contract, but that he was only equitable owner, the legal estate being outstanding in a trustee for him, who refused to join in conveying to the plaintiff. The defendant moved *ex parte* for leave to serve the trustee with a notice under Order XVI. rule 18, stating the nature of the suit, and that he claimed indemnity against the trustee, and also to compel him to join in the conveyance:—Held (reversing the order of Jessel, M.R.), that, with the consent of the plaintiff, leave might be given to serve the notice. But held, that the defendant could not set up a counter-claim against the trustee. *Ibid.*

76.—A third party may be introduced into an action by adding him as a defendant, under Order XXII. rule 5, under the same circumstances in which a third party notice might have been given to him under Order XVI. rule 17. And the term "notice" in the Judicature Act, 1873, section 24, sub-section 3, includes notice to a defendant by including him in a counter-claim. *Dear v. Snodder*, 46 Law J. Rep. Chanc. 100; Law Rep. 4 Ch. D. 476.

Second mortgagees brought an action against the first mortgagees for accounts and the application of the proceeds of sale of the security. The first mortgagees filed a counter-claim for specific performance against the purchaser and the concurrence of the second mortgagees in the sale on the ground that they had consented to the sale:—Held, a good counter-claim. *Ibid.*

77.—T. entered into a contract with the plaintiff company to take some of their debentures, asserting that he was acting as L.'s agent in the matter, and with his authority. L. repudiated the contract on the ground that T. had no such authority. The plaintiffs having brought an action against L. for a breach of this contract, subsequently obtained leave under Order XVI. rule 6, to join T. as defendant for the purpose of claiming alternative relief against him:—Held, that he was properly so joined. *The Honduras Inter-Oceanic Railway Company (Lim.) v. Lefevre and Tucker* (App.), 46 Law J. Rep. Exch. 391; Law Rep. 2 Ex. D. 301.

78.—The exercise of the power of allowing a defendant to issue a notice to a third party, under Order XVI. rule 18, is a matter of discretion; and where the Court sees that the introduction of a third party will tend to

prejudice and cause additional expense to the plaintiff, leave to issue the notice will not be given. *The Associated Home Company v. Whichcord*, 47 Law J. Rep. Chanc. 652; Law Rep. 8 Ch. D. 447.

After his statement of defence had been delivered, the pleadings closed and the action set down for trial, a defendant took out a summons for leave to issue a notice to a third party:—Held, that the application was made too late, and must, therefore, be refused. *Ibid.*

79.—In an action for money lent the defendant set up a counter-claim, in which he joined one T. as defendant to the counter-claim under Order XXII. rule 5, and alleged a contract between himself and T., and a breach thereof by T.; that the contract had been transferred from T. to the plaintiffs; and that the plaintiffs had broken it. He then claimed damages against the plaintiffs, and, in the alternative, against T.:—Held, that T. was not properly joined as co-defendant to the counter-claim under Order XXII. rule 5, but that the defendant should have applied to have the question determined as against T. under Order XVI. rule 17. *The Central African Trading Company v. Groves*, *Groves v. The Central African Trading Company and Taubman* (App.), 48 Law J. Rep. Exch. 510.

80.—The plaintiffs having sued on a bill of exchange of which the defendant was acceptor, the defendant stated by way of defence that the bill was accepted by him on behalf of the N. Company in part payment of a ship which was afterwards transferred to the N. Company; that the defendant was induced to accept the said bill by the fraud of the plaintiffs in misrepresenting the seaworthiness of the ship, and that the defendant and the N. Company had a counter-claim over against the plaintiffs for the said fraud and misrepresentation. On an application by the defendant under Order XVI. rule 13, to add the N. Company as defendants, the Court refused the application, holding that on the above facts the N. Company ought not, on the application of the defendant, to be joined as co-defendants under Order XVI. rule 13. *Norris v. Beasley*, 46 Law J. Rep. C.P. 169; Law Rep. 2 C.P. D. 80.

81.—The defendants in an action for negligence pleaded that the injury was occasioned not by the negligence of the defendants, but by that of a third party. They then applied to have such third party joined as a second defendant in the action:—Held (reversing the decision of the Exchequer Division), by Cockburn, L.C.J.; Kelly, C.B.; and Bramwell, L.J. (*dissentiente* Brett, L.J.), that the negligence of such third party was not a "question in the action" within the meaning of Order XVI. rule 17, and therefore such third party could not be so joined. *Hornell v. The General Omnibus Company (Lim.)* (App.), 46 Law J. Rep. Exch. 700; Law Rep. 2 Ex. D. 365.

Held also, by Cockburn, L.C.J., Kelly, C.B., and Bramwell, L.J. (*dissentiente* Brett, L.J.),

that the right of a defendant in an action to have a third party joined as a second defendant is limited under rule 18 to cases where the original defendant has a remedy over against such third party. In all other cases the joinder of a second defendant must be on the application or with the consent of the plaintiff under rule 19. *Ibid.*

**82.**—Where the defendant applies for leave to serve a notice under rule 18 of Order XVI, upon a person not a party to the action, it is not necessary for him to shew that his claim against such third person is identical or co-extensive with the plaintiff's claim against himself. If the defendant makes out a *prima facie* case that a substantial question in the action brought against him by the plaintiff will also be involved in the determination of his claim against the third person, he will be entitled to the order, unless the effect of introducing such third person would be to embarrass or delay the plaintiff. *The Swansea Shipping Company (Lim.) v. Duncan, Fox & Company (App.)*, 45 Law J. Rep. Q.B. 638; Law Rep. 1 Q.B. D. 644—overruling the decision below, 45 Law J. Rep. Q.B. 423; Law Rep. 1 Q.B. D. 644.

Where it is *prima facie* shewn that one or more such questions will be the same between the two sets of opponents, it will be no objection to the granting of the order that such question or questions will not, as between both sets of opponents, be co-terminous in all their details and consequences, *e.g.*, in the measure of damages, since the Court or Judge, upon the application for directions under rule 21, has power to limit the mode and extent to which such third person is to be bound or made liable by the decision of such question or questions. *Ibid.*

Though the third person is bound, as to the correctness of the decision upon the question or questions in respect of which such notice is served, yet he can only be made liable on such decision, if, when sued in his turn by the defendant, he fails to distinguish the nature or extent of his own liability to the defendant from that of the defendant to the plaintiff in respect of the subject-matter of such decision. *Ibid.*

Notice to a third person under rule 18 may be served out of the jurisdiction. *Ibid.*

**83.**—In an action on a bill of exchange accepted by the defendant in part payment of a ship sold to him by the plaintiffs, the defendant pleaded that he bought the ship on behalf of and for the N. Company; that the ship was afterwards transferred to them; and that the defendant was induced to make such purchase and to accept the bill by the fraudulent misrepresentation and concealment of the plaintiffs with reference to the sale of the said ship; and he set up by way of counter-claim, a claim against the plaintiffs for damages for the said misrepresentation and concealment. The N. Company having been served by the defendant with notice under Order XVI. rule 18, were allowed by the Court to defend the action

though not to plead any fresh defence, but only to support the existing counter-claim jointly with the defendant by the same solicitor and counsel, and to be jointly liable with the defendant for the costs of the action, and to be entitled to only one set of costs with the defendant as against the plaintiffs. *Norris v. Beazley* (No. 2), 46 Law J. Rep. C.P. 515.

**84.**—In an action against insurance brokers for negligence in effecting certain policies, the defendants obtained an order for leave to serve notice under Order XVI. rule 18 upon L. & Co., whom they had employed to effect one of the policies. The plaintiff having satisfied the Court that he would probably be able at the trial to rely upon admissions as against the defendants which would not be evidence against L. & Co., and also that the case was already set down for trial at the assizes, which would commence in seven or eight days' time,—Held, that the probable effect of the order would be to embarrass and delay the plaintiff, and that it should therefore be rescinded. *Bower v. Hartley* (App.), 46 Law J. Rep. Q.B. 126; Law Rep. 1 Q.B. D. 652.

**85.**—Where the defendants had served notice on a third party under Order XVI. rule 18, the third party was allowed to serve a similar notice on a fourth party. A third party served with notice under Order XVI. rule 18, was allowed to put in a statement of defence to the plaintiff's statement of claim limited to points not raised by the defence of the defendants. *Witham v. Vane*, 49 Law J. Rep. Chanc. 242.

*Claim for indemnity: notice to third party.*  
[See ADMIRALTY, 8, 38; HH 28 *infra*.]

*Discovery from third party.* [See PRODUCTION, 26.]

#### (f) Reply.

**86.**—Where a plaintiff desires to state facts by way of confession and avoidance of the defence, he should do so in his reply, and not by amendment of the statement of claim. A plaintiff may both traverse and avoid by his reply. *Earp v. Henderson* (45 Law J. Rep. Chanc. 738; No. 90 *infra*) observed upon. *Hall v. Ere* (App.), 46 Law J. Rep. Chanc. 145; Law Rep. 4 Ch. D. 341.

**87.**—The High Court of Justice has jurisdiction to try the question whether the registration of liquidation resolutions has been obtained by fraud. Reply alleging fraud to a defence setting up liquidation held good on demurrer. *Eyre v. Smith*, Law Rep. 2 Q.B. D. 435.

**88.**—A reply joining issue generally will not be struck out or amended either under Order XXVII. rule 1 or Order LIX., because it does not deal specifically with the allegations of a counter-claim. *Rolfe v. Maolaren*, Law Rep. 3 Ch. D. 106.

**89.**—A reference in a pleading to an independent document as containing the facts which the pleader relies on, is not a proper

pleading of such facts, and is embarrassing within the meaning of Order XXVII. rule 1. Semble, it is embarrassing and improper to raise by reply fresh claims for relief distinct from that sought by the statement of claim. A reply improper in the above respects, and also containing matter of mere evidence and argument, was ordered to be struck out, with liberty to deliver a fresh reply. The rule (Order XIX. rule 20) requiring denials by pleading to be specific, is inapplicable to a reply except as to facts alleged by way of counter-claim. *Williamson v. The London and North Western Railway Company*, 48 Law J. Rep. Chanc. 559; Law Rep. 12 Ch. D. 787.

90.—Where a plaintiff put in a reply which first joined issue, and afterwards proceeded to state new facts, it was held that the form of pleading was erroneous, and that the proper course would have been to introduce the new facts by amending the statement of claim. *Earp v. Henderson*, 45 Law J. Rep. Chanc. 738; Law Rep. 3 Ch. D. 254.

After the plaintiff had put in his reply stating the new facts the defendant did not deliver any subsequent pleading, but four months after took out a summons for special leave to join issue on these facts. The Court held that the defendant could not, under the circumstances, be deemed to have admitted the facts, and allowed the summons. *Ibid.*

The greater part of the sum claimed by the plaintiff was paid into Court by the defendant, but as the plaintiff continued his action for the balance and failed, it was held that he was not entitled to costs up to the time of payment into Court, but must pay all the costs of the action. *Ibid.*

91.—The defendants having repeated, by way of counter-claim, paragraphs 1 to 13 of their statement of defence, the plaintiffs by their reply (paragraph 1) joined issue upon the statement of defence, and (paragraph 2) pleaded as follows: "With respect to the statements contained in the defendants' counter-claim, the plaintiffs join issue upon paragraphs 1 to 13 inclusive, of the statement of defence therein repeated and relied on as if the same were repeated verbatim." Upon a motion by the defendants to strike out paragraph 2 of the reply,—Held, that the plaintiffs were not at liberty merely to join issue upon the counter-claim, but must deal specifically with the statements contained in it. *Rolfe v. MacLaren* (Law Rep. 3 Ch. D. 106; No. 88 supra) not followed upon that point. *Benbow & Sons v. Low, Son & Haydon*, 49 Law J. Rep. Chanc. 259; Law Rep. 13 Ch. D. 553.

*Fraudulent representation as to effect of release.*  
[See FRAUD, 5.]

#### (g) Close of pleadings.

92.—In an action where there are several defendants, and one defendant has delivered his defence, and the time for the plaintiff's de-

livering his reply to such defence has expired, and where the plaintiff, without the knowledge of such defendant, has agreed, in writing, with the other defendants to extend the time for the delivery of their defences, the defendant who has delivered his defence is not entitled to move to dismiss the action against him for want of prosecution, as the pleadings cannot be said to have been closed within the meaning of Order XXXVI., rules 4, 4a. A defendant's proper course under such circumstances is to write to the plaintiff's solicitor, and enquire what the position of the action is as regards the other defendants, and state that he intends to move to dismiss. A plaintiff may consent, in writing, to extend the time for a defendant to deliver his defence, under Order XXII., rule 1, without drawing up an order for the purpose. *Ambrose v. Evelyn*, 48 Law J. Rep. Chanc. 686; Law Rep. 11 Ch. D. 759.

[And see HH 3 infra.]

#### Preservation of property.

*Order for.* [See O 2 supra.]

*Privileged communications.* [See PRODUCTION OF DOCUMENTS, 1-13.]

#### Probate.

*Jurisdiction and practice in.* [See PROBATE.]

#### (X) PRO CONFESSO, TAKING BILL.

In a suit pending on the 2nd of November, 1875, the defendant, being infirm, could not put in an answer nor be attached for contempt. Leave was given to proceed to take the bill *pro confesso* under the old practice. *Culley v. Buttifant*, 45 Law J. Rep. Chanc. 200; Law Rep. 1 Ch. D. 84.

*Production of documents.* [See PRODUCTION OF DOCUMENTS.]

#### Prohibition.

*Jurisdiction to grant.* [See PROHIBITION.]

#### Prospective damage.

*Judgment for.* [See U 4 supra.]

#### Quo warranto.

*Writ of.* [See QUO WARRANTO.]

#### Receiver.

*Appointment and powers of.* [See RECEIVER.]

#### Recovery of land.

*Action for, foreclosure action is not.* [See MORTGAGE, 40.]

*Action for: statement of claim: setting out title.* [See W 37 supra.]

*Joinder of action for, with other cause of action.* [See Q 2-6 supra.]

*Right of equitable tenant for life to defend.* [See U 11 supra.]

#### Redemption suits.

*Practice in.* [See MORTGAGE, 58-62.]

*Rehearing.* [See B 1, 4.]

*By referee.* [See Y 7 infra.]

**Renewal of writ.** [See II, 19-21 *infra*.]

**Reply.** [See W 86-91 *supra*.]

**Affidavits in.** [See K 17, 18 *supra*.]

**Representative action.** [See ADMINISTRATION, 82-84; COMPANY, F 4; W 38, 39 *supra*; LIBEL, 19.]

## (Y) REFERENCE.

### (a) Official referee.

1.—Where a plaintiff gave notice of trial on the 2nd of November, 1875, and took out a summons on the 8th of February, 1876, for trial before an official referee,—Held, that the application was too late under Order XXXVI. rule 5. In such a summons the name of the proposed referee should not be mentioned. *Lascelles v. Butt*, Law Rep. 2 Ch. D. 588.

2.—The Court or a Judge has no power under the Judicature Act, 1873, ss. 56 and 57, to refer the whole action for trial to an official or special referee. Under section 57 the Court may, by consent, refer any question or issue of fact in an action to an official or special referee for trial, but their power of compulsory reference for trial under that section is confined to questions or issues in an action requiring prolonged examination of documents or local investigation, or questions of account, and any other matters so involved with such issues as to be incapable of being tried separately. *Longman v. East*; *Pontifex v. Secorn*; *Mellin v. Monico* (App.), 47 Law J. Rep. C.P. 211; Law Rep. 3 C.P. D. 142.

A referee under the Judicature Acts to whom the issues in an action are referred for trial has no power to order judgment to be entered. His findings should be separate on each of the issues submitted to him; but, *semble*, that he may by consent of the parties find generally for the plaintiff or for the defendant. *Ibid*.

The old forms of orders of reference under the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), are inapplicable to references under the Judicature Acts. *Ibid*.

Where a reference had been ordered to an official referee, and the order of reference was drawn up in the form known as the "Long Order," under the Common Law Procedure Act, 1854, and the parties with knowledge of the terms of the order appeared before the referee, who gave his award,—Held, that the referee must be taken to have sat as arbitrator by consent, and that his award was binding on the parties, neither of whom could obtain a new trial. *Ibid*.

The "Rules of the Supreme Court" have not enlarged, and, per Bramwell, L.J., could not enlarge, the powers of reference to official or special referees conferred by the statute. *Ibid*.

3.—A motion founded on the findings of an official referee in a cause sent down to be tried before him must be made on affidavits; it is not sufficient to refer to notes taken at the trial of the findings of the referee. *Stubble v. Boyle*

(App. Div.), 46 Law J. Rep. Q.B. 136; Law Rep. 2 Q.B. D. 124.

4.—The official referees being officers of the Court, the suitors have a right in matters referred to them to take the opinion of the Judge himself, and orders enforcing discovery or production of documents should generally be made by the Judge in person. *In re Leigh's Estate*. *Rovcliffe v. Leigh*, 46 Law J. Rep. Chanc. 60; Law Rep. 6 Ch. D. 256.

5.—Section 57 of the Judicature Act, 1873, does not give the Court jurisdiction, without the consent of both the parties, to refer an action involving charges of fraud to be tried before a referee. *Leigh v. Brooks* (App.), 46 Law J. Rep. Chanc. 344; Law Rep. 5 Ch. D. 592.

6.—Where there is a question of account which can be referred compulsorily under section 57 of the Judicature Act, 1873, the Court has power to order all the other issues in the action to be also referred. Rule 5 of Order XXXVI. does not apply to cases within section 57 of the Judicature Act, 1873; so that a summons to refer the issues in an action compulsorily under that section need not be taken out within four days from service of notice of trial. In an action on a builder's bill consisting of many items, each of which, it appeared probable from the pleadings, would be separately disputed:—Held (reversing the decision of the Queen's Bench Division), that the matter was one "requiring a prolonged examination of accounts," within section 57 of the Judicature Act, 1873, and might, therefore, be compulsorily referred to an official referee. *Ward v. Pilley* (App.), 49 Law J. Rep. Q.B. 705; Law Rep. 5 Q.B. D. 427.

### (b) Special referee.

7.—Where the amount of damages in an action has been referred to a special referee, the Judge may accept the report of such referee either wholly or partially, or if dissatisfied with it, may wholly disregard it, or remit it back for amendment, but he cannot vary or alter it. *The Dunkirk Colliery Company v. Lever* (App.), Law Rep. 9 Ch. D. 20.

Where in such case the Master of the Rolls being dissatisfied with the principle adopted by the referee had assessed the damages himself, using the shorthand notes of the evidence before the referee, the Court of Appeal reversed his decision, and remitted the case to the referee to rehear the matter, with liberty to report specially on facts. *Ibid*.

Per Bramwell, L.J.—The referee should pronounce his decision and not give his reasons. *Ibid*.

### Replevin.

*Judgment by default final not interlocutory.*

[See REPLEVIN.]

### Retainer.

*Of solicitor.* [See SOLICITOR, 27, 28.]

**Rule.**

*To pay money awarded.* [See S 6 supra.]

*To show cause in action.* [See L 4 supra.]

**(Z) SALES UNDER DIRECTION OF COURT.****(a) At what stage ordered.**

1.—In an action to enforce a charge on real estate, the plaintiff is, under ordinary circumstances, entitled to an order for sale before the trial on shewing a case upon which such an order would be made at the trial. *Davis v. Ashwin*, 47 Law J. Rep. Chanc. 70.

2.—In a suit to render the estate of a deceased trustee of a will liable for certain breaches of trust, a decree was made declaring the liability of the estate to make good what should be found due in respect of such breaches of trust, and directing accounts and enquiries. Before the Chief Clerk had made his certificate, but it having appeared in the course of taking the accounts and enquiries that the estate was liable for a considerable amount which the personal estate was insufficient to satisfy, the *cestuis que trust* applied by petition, under s. 55 of 15 & 16 Vict. c. 86, for the sale of certain real estate belonging to the deceased trustee, a mortgage on which had been redeemed by the existing trustee of the will:—Held, that the Court had jurisdiction to order the sale, and that it was in accordance with the practice of the Court in such a case, when once it had been ascertained that the real estate would have to be resorted to, to make an order for the sale of the real estate without waiting for further consideration. *Bell v. Turner*, 45 Law J. Rep. Chanc. 681; Law Rep. 2 Ch. D. 409.

*Administration action: debts whether to be raised by sale or mortgage.* [See ADMINISTRATION, 40.]

*Foreclosure action: interlocutory order for sale.* [See MORTGAGE, 45.]

**(b) Conduct of.**

3.—Where an order for sale has been made by the Court, no party to the cause, not having the conduct of the sale, is entitled to interfere, and the Court will accordingly, where the conduct has been given to independent solicitors, and the parties to the cause have liberty to bid, grant an injunction to restrain any such party from advertising the sale, or in any way interfering with the conduct thereof. *Dean v. Wilson*, 48 Law J. Rep. Chanc. 148; Law Rep. 10 Ch. D. 186.

4.—Rule 7 of the rules of the Supreme Court, March, 1879, provides that whenever the trusts of any will are being administered, and a sale is ordered of any property vested in the trustees of such will with power of sale, the conduct of such sale shall be given to such trustees, unless the Judge shall otherwise direct. A., one of the trustees of, and the tenant for life under, a will, brought an action against the other three

trustees for the administration of the trusts of the will. A sale having been ordered of certain property vested in the trustees, with power of sale:—Held, that, according to the true construction of the above rule, the conduct of the sale must be given to the three trustees, and not to the plaintiff. *In re Gardner. Gardner v. Beaumont*, 48 Law J. Rep. Chanc. 644.

*Settled Estates Acts, under.* [See SETTLED ESTATES ACTS, 4-6; 10.]

*Partition Act, under.* [See PARTITION, 9-23.]

**Scandal.**

5.—Per Fry, J.—The Court has power to strike out scandalous matter from an affidavit or to order the person who has filed it to pay the costs of it on the application of any person even a stranger to the action, or *mero motu*. *Cracknell v. Janson* (App.), Law Rep. 11 Ch. D. 1.

**Scire facias.**

*Against shareholder.* [See COMPANY, F.]

*Security for costs.* [See COSTS, 58-76.]

**(AA) SEQUESTRATION.**

1.—A writ of sequestration against the estate and effects of a receiver or other person disobeying an order of Court may issue under Order XLII. rules 2, 20, and Order XLVII. without the leave of the Court. *Sprunt v. Pugh*, Law Rep. 7 Ch. D. 567.

2.—The pension of a retired County Court Judge under 15 & 16 Vict. c. 54. s. 15, being a reward for past services only is liable to seizure under the writ of sequestration. Order at instance of judgment debtor to restrain the retired Judge from receiving the payments and empowering the sequestrators to receive the same. *Willcock v. Terrell* (App.), Law Rep. 3 Ex. D. 323.

*Receiver in lieu of sequestration, motion for.* [See RECEIVER, 11.]

**(BB) SERVICE.****(a) Substituted.**

1.—In an action brought under the Summary Procedure on Bills of Exchange Act the plaintiff in order to enter final judgment must by the effect of Order II. rule 6 of the Judicature Act, 1875, and section 1 of the Bills of Exchange Act, file an affidavit of personal service, or an order for leave to proceed under the Common Law Procedure Act, 1852, and service on a partnership under Order IX. rule 6, is insufficient, nor can another form of service be substituted under Order IX. rule 2. *Pollock v. Campbell*, 45 Law J. Rep. Exch. 199; Law Rep. 1 Ex. 50.

2.—To enable service of a writ of summons to be made under Order IX. rule 6a. (rule 4 of June, 1876), upon the defendant's manager, it is not necessary that the defendant himself

should be within the jurisdiction. It is enough if he, carrying on business in the name of a firm, has a place of business within the jurisdiction, under the control or management of some person. *O'Neil v. Clason*, 46 Law J. Rep. Exch. 191.

3.—Where a defendant was absconding, notice in lieu of service of a writ, and subsequently notice of motion for judgment, was allowed to be effected by delivery at the absconding defendant's office, and advertisement in two newspapers. *Cook v. Dey*, 45 Law J. Rep. Chanc. 611; Law Rep. 2 Ch. D. 218.

4.—Service of an order to answer interrogatories upon the solicitor of a party is under Order XXXI. rule 21, sufficient service to found an application for attachment.—So held, where the party in default had in fact notice of the order. *In re Mulcaister. Dalton v. Nanson*, 47 Law J. Rep. Chanc. 609.

5.—The Supreme Court Procedure Law, 1872 (Jamaica), by section 19 provides, "that in any action against a person residing out of Jamaica, it shall be lawful for the Court or a Judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction or in respect of a breach of contract made within the jurisdiction, and that such person carries on in Jamaica any trade or business, and that he has no known agent in Jamaica authorised to bring actions . . . to order that the service of the writ and all subsequent proceedings may be made on any servant or agent in Jamaica engaged in carrying on for such person such . . . trade or business." The appellants were a company conveying mails and passengers to and from Great Britain to the West Indies. The company was domiciled in London but had a superintendent in Jamaica:—Held, that the appellants were a "person" within the meaning of the above section, and that they carried on a business in Jamaica. Secondly, that an order directing service on their superintendent in Jamaica was correct. *The Royal Mail Steam Packet Company v. Braham*, 46 Law J. Rep. P.C. 67; Law Rep. 2 App. Cas. 381.

6.—An order for substituted service, under Order IX. rule 2, is not absolutely final and conclusive, but it is competent to the Court to set aside the judgment regularly signed after such order. This is, however, a matter of discretion, and a defendant will not be let in to defend as of right merely because he was ignorant of the fact that process had been issued against him. *Watt v. Barnett*, 47 Law J. Rep. Q.B. 329; Law Rep. 3 Q.B. D. 183, 363.

Where such ignorance appeared upon affidavits which also alleged that the defendant had a good defence upon the merits, the Court set aside the judgment upon the terms of the defendant giving security for the amount of the judgment and costs. *Ibid.*

7.—The object of Order IX. rule 2 of the Judicature Act, 1875, is to prevent delay where prompt personal service cannot be effected, but it presupposes a defendant or defendants upon

whom personal service might effectually be made. *Sloman v. The Governor of New Zealand* (App.), 46 Law J. Rep. C.P. 185; Law Rep. 1 C.P. D. 563.

Where the persons made the defendants to an action were a colonial government not incorporated, an order for substituted service upon their usual solicitor in this country was refused. *Ibid.*

8.—In an action against an absconding defendant to recover possession of leasehold houses, the defendant having given the tenants notice to pay their rents to him, service of the writ was directed to be effected by leaving a copy at each of the houses and advertising in the *Times* and *London Gazette*. The ordinary eight days' time runs in such a case from service of the copy of the writ and issue of the advertisements. Form of order. *Crane v. Jullion*, Law Rep. 2 Ch. D. 220.

*Winding-up petition*, of. [See COMPANY, H 72.]

*Debtor's summons*, of. [See BANKRUPTCY, M. 40.]

*Partnership: Bills of Exchange Act*. [See BILL OF EXCHANGE, 28.]

#### (b) Out of jurisdiction.

9.—The jurisdiction of the Queen does not extend from the coast beyond low water-mark unless it has been so extended by an Act of Parliament, and, therefore, Order XI. rule 1 of the Judicature Act, which provides for the service of a writ of summons out of the jurisdiction where the act for which damages are sought to be recovered was done within the jurisdiction, does not authorise such service where the action was for the death of a person through the negligent management of the defendants' vessel at sea, though within three miles of the coast of England. *Harris v. The Owners of the Franconia*, 46 Law J. Rep. C.P. 363; Law Rep. 2 C.P. D. 173.

10.—The question of the service of a writ out of the jurisdiction is finally determined when leave to serve it is given under Order XI., subject to any application by the defendant to rescind the leave and to the right of appeal, and cannot be raised in the statement of defence. *Preston v. Lamont*, 45 Law J. Rep. Exch. 797; Law Rep. 1 Ex. D. 361.

11.—To entitle a plaintiff to service of writ out of the jurisdiction for "any act, deed, will or thing affecting such land, stock or property" under Order XI. rule 1 of the Judicature Act, 1875, it is not sufficient that such land, stock or property, should be affected incidentally; and therefore service of a writ out of the jurisdiction will not be granted to a plaintiff in an action for slander of title of a ship. *Cassidy v. Arnott*, 46 Law J. Rep. C.P. 3; Law Rep. 2 C.P. D. 24.

12.—An application for leave to serve a writ of summons on a defendant out of the jurisdiction must be supported by an affidavit of

merits, shewing that there is a cause of action which arose in England.—So held, by James, L.J., and Bramwell, L.J.; Baggallay, L.J., dissenting. Decision of Malins, V.C., reversed. *The Great Australian Gold Mining Company v. Martin* (App.), 46 Law J. Rep. Chanc. 289; Law Rep. 5 Ch. D. 1.

13.—The plaintiff and the defendant being resident in Scotland, an application for leave to serve the writ in an intended action on the defendant, and for an interim injunction to restrain him from dealing with a ship then within the jurisdiction, in alleged breach of the terms of a charter-party made between the plaintiff and the defendant, was refused; the Judge being of opinion that he had jurisdiction, but that he ought not to exercise it, inasmuch as the plaintiff would have as complete and effectual a remedy by application to the Scotch Courts. *Ex parte M'Phail*, 48 Law J. Rep. Chanc. 415; Law Rep. 12 Ch. D. 632.

14.—Where leave to serve a defendant resident out of the jurisdiction was obtained upon an affidavit which did not disclose all the facts necessary to enable the Judge to estimate the comparative cost and convenience of proceeding in this country or in the place of the defendant's residence, upon the motion of the defendant, shewing facts which if disclosed by the plaintiff upon his application would have prevented the leave from being granted, the writ was set aside, and the plaintiff ordered to pay the defendant's costs occasioned by its issuing. *Tottenham v. Barry*, 48 Law J. Rep. Chanc. 641; Law Rep. 12 Ch. D. 797.

15.—The order granting leave under Order II. rule 4 (Judicature Act, 1875), to issue a writ of summons in an intended action for service on a defendant out of the jurisdiction, should, to avoid the expense and delay of separate applications, also provide, when required, for the service of interrogatories and the issuing of an injunction; and the affidavit in support of the application for the above purposes should be entitled in the matter of the Judicature Acts as well as in the intended action. *Young v. Brassey*, 45 Law J. Rep. Chanc. 142; Law Rep. 1 Ch. D. 277.

16.—Under the Judicature Rules, where the defendant in an action in the Chancery Division is a foreigner, out of the jurisdiction, notice of the writ of summons, and not the writ itself, must be served on him. Service of the writ itself is not sufficient. *In re Howard. Padley v. Camphausen*, 48 Law J. Rep. Chanc. 364; Law Rep. 10 Ch. D. 550.

17.—Leave may be given under Order II. rule 4 to issue a writ of summons against a foreign corporation, but service of notice of the writ only, and not of the writ itself, can be allowed under Order XI. rule 1. *Westman v. Snickerfabrik*, 45 Law J. Rep. Exch. 327; Law Rep. 1 Ex. D. 237.

18.—A foreign corporation was served abroad, under Order XI. rule 1 of the Judicature Act, 1875, with notice of a writ against it:—Held,

that a foreign corporation, as well as other foreign persons, might, under that Order, be sued. *Scott v. The Royal Was Candle Company*, 45 Law J. Rep. Q.B. 586; Law Rep. 1 Q.B. D. 404.

19.—Leave given to serve out of the jurisdiction a summons taken out by the liquidator of a company under the Companies Act, 1862, ss. 100, 165, and time allowed the parties for appearance as upon service of a bill in a suit. *In re The British Imperial Corporation*, Law Rep. 5 Ch. D. 749.

20.—Where leave is given to issue a writ for service out of the jurisdiction, the words "by leave of the Court or a Judge," which occur in Forms 2 and 3 in Rules of Court, 1875, Appendix A, part 1, may be omitted from the writ and notice so as to enable the plaintiff to proceed in default of appearance without further leave. *Scott v. The Royal Was Candle Company* (45 Law J. Rep. Q.B. 586; Law Rep. 1 Q.B. D. 404; No. 18 supra) followed. *Bacon v. Turner*, Law Rep. 3 Ch. D. 275 (but see now Order XI. rule 3a, rule 2 of June, 1876, amending the above forms of writ and notice).

21.—In an action to administer the trusts of a Scotch settlement where all the trustees and all the property were Scotch and only the plaintiff resided in England:—Held, that such an action ought to be brought in Scotland, and that, therefore, the Court, even if it had the jurisdiction so to do, ought not to allow service of the writ in Scotland. *Cresswell v. Parker* (App.), Law Rep. 11 Ch. D. 601.

22.—In 1877 an agreement was entered into in India between the plaintiff, M., and a firm of N. & Co., for the working of certain mining rights in Madras as a joint adventure, under which the plaintiff was to receive one-third of the profits. The property of N. & Co. became vested under an Indian liquidation in trustees resident in India. In 1879 an agreement was entered into in London by H. as agent for the trustees of N. & Co. for the sale of the mining rights to a Scotch company, but such agreement ignored altogether the rights of the plaintiff under the agreement of 1877. The plaintiff thereupon brought his action against N. & Co., their trustees, M., H. and the Scotch company, for an account of the profits of the mining adventure, a declaration that N. & Co. were liable to him as trustees for one-third of the profits, and an injunction to restrain all the defendants from carrying into effect the agreement of 1879. The plaintiff then, under Order XI. rule 1 of the Rules of Court, 1875, obtained an order giving him leave to serve the writ on the Scotch company in Scotland. On motion by the Scotch company to discharge this order,—Held, that the order was rightly made under the rule, first, because the agreement of 1879 was a contract which was "sought to be affected" by the action, and which was entered into within the jurisdiction; and, secondly, because that agreement constituted "a breach within the juris-



diction" of a contract made elsewhere. *Harris v. Fleming*, 49 Law J. Rep. Chanc. 52; Law Rep. 13 Ch. D. 208.

23.—Where leave had been obtained to serve notice of the writ in lieu of service on the defendant, a Syrian, resident at Beyrout, the Court held that an affidavit of service in the form in use in the common law divisions (by which the deponent simply states that he has personally served the defendant "with a notice in writing, a true copy of which is hereunto annexed") was sufficient. *Bustros v. Bustros*, 49 Law J. Rep. Chanc. 396; Law Rep. 14 Ch. D. 849.

24.—The first mortgagee of a ship, with a power to collect the freight, brought an action against the second mortgagee of the ship (whose mortgage included an assignment of the freight), and others, claiming an account and payment out of the freight of the amount he had paid for the wages of the crew and the wages and disbursements of the master. The freight was in the hands of R. & Co., foreigners, resident abroad, to whom it had been paid as the agents of the second mortgagee, and who claimed to retain it in satisfaction of a debt due to them from their principal. The plaintiff sought to make R. & Co. defendants to his action:—Held, that, as no contract existed or had existed between the plaintiff and R. & Co., Order XI. rule 1 did not apply; and that the equity (if any) of the plaintiff against R. & Co. was a right to contribution, in respect of which they should be sued in the ordinary way. *McStephens v. Carnegie* (App.), 49 Law J. Rep. Chanc. 397.

25.—In order to obtain leave to serve a defendant in Scotland, it is not enough to shew the amount of the claim, that the contract was made and the breach of it occurred in London, that the plaintiff and also the agent of the defendant (who signed the contract) reside in London, that all the plaintiff's witnesses reside in London, and that it would be more convenient and less expensive to try the action in London than in Scotland. The affidavits should go on to shew in what respect, regard being had to the facilities for trying the cause in the neighbourhood of the defendant's residence, it would be cheaper and more convenient to try in London. *Woods v. McInnes*, Law Rep. 4 C.P. D. 67.

[And see PROBATE, 28.]

*Amended writ: Admiralty action in rem.* [See ADMIRALTY, 26.]

*Attachment: personal service.* [See ATTACHMENT, 15-17.]

*Company in Scotland.* [See COMPANY, H 71.]

*Company residing in this country.* [See INCOME TAX, 6.]

*Interlocutory application: persons having no interest.* [See U 3 supra.]

*Notice to third party under rule 18.* [See W 82 supra.]

DIGEST, 1875-1880.

## Setting down.

*Appeal.* [See B 60-63 supra.]

*Cause on motion for judgment: old practice: default in answering.* [See S 1 supra.]

*Cause: order, according to minutes on admissions.* [See V 6 supra.]

## (CC) SHORT CAUSE.

Opinion of the Court expressed that, where a cause is to be heard short, no statement of claim is necessary. *Green v. Coleby*, 45 Law J. Rep. Chanc. 303; Law Rep. 1 Ch. D. 693.

## Shorthand writer's notes.

*Cost of.* [See BANKRUPTCY, P 10; COSTS, 98-100; K 22 supra.]

*Signing judgment.* [See R 1 supra; II 14-18 infra.]

*Solicitor, changing.* [See SOLICITOR, 26.]

## (DD) SPECIAL CASE.

1.—The Court declined on Special Case to decide whether persons not *in esse* would be entitled in certain events which might never happen, being of opinion that it would be injurious to the parties to have that decision until the events should happen. In such a case the Court is not bound to decide upon a fictitious interest created expressly in order to obtain a decision. *Bright v. Tyndall*, Law Rep. 4 Ch. D. 189.

2.—Under section 19 of the Judicature Act, 1873, an appeal will lie to the Court of Appeal from a decision of a Divisional Court on a Special Case submitted by an arbitrator appointed under the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), s. 25. *Biddor v. The North Staffordshire Railway Company* (App.), 48 Law J. Rep. Q.B. 248; Law Rep. 4 Q.B. D. 412.

*Motion instead of: appeal from County Court.* [See B 7 supra.]

## Special examiner.

*Taking down depositions.* [See WAY, 1.]

## Specific performance.

*Practice in actions for.* [See SPECIFIC PERFORMANCE, 24-27.]

## (EE) STAYING PROCEEDINGS.

### (a) Frivolous or vexatious action.

1.—Where after decree the plaintiff is found to have no title, the proceedings may be stayed on the application of a person served with notice of the decree. *Houseman v. Houseman* (App.), Law Rep. 1 Ch. D. 535.

2.—Under the provisions of the Superannuation Act, 1859, the question whether or not a pension shall be granted to a public servant is to be decided by the Commissioners of the Treasury; and until they have decided to grant

a pension no public servant can maintain an action in respect thereof. The plaintiff, a public servant, who had formerly held the office of the clerk of the patents, but to whom no pension had ever been granted, brought an action against the Attorney-General, claiming a pension in respect of such office, and to have an account taken of all moneys due to him in respect thereof. All matters of account between the plaintiff and the Crown had been finally settled, by the award of the arbitrators, in the year 1869:—Held (on summons) that the action must be stayed, as being frivolous and vexatious, and an abuse of the process of the Court. *Edmonds v. The Attorney-General*, 47 Law J. Rep. Chanc. 345.

3.—An executor mortgaged certain of his testator's hereditaments to C. to pay off incumbrances. C. leased these hereditaments, with the consent of the equitable tenant for life to R. Default having been made in the interest due on the mortgage debt, C. directed R., pursuant to a proviso contained in the lease, to pay the rent to him. This not having been done, C. brought an action against R. on the covenant to pay rent, and to enforce a reserved right of re-entry, and the executor was admitted to defend this action. Shortly before this the executor had instituted an action to administer his testator's estate, and enquiries had been directed in the Chancery Division as to the incumbrances on the estate. An order having been made at chambers and affirmed by a Divisional Court, that the action for rent and re-entry should be stayed until the administration action was concluded, C. appealed:—Held (reversing the decision of the Divisional Court), that the order could not be sustained; that, although the executor was the plaintiff in the administration action, and the defendant in the action by C., still that C. not being a party to the administration action, ought not to be restrained from pursuing all the remedies reserved to him under the mortgage, and that he was entitled to proceed with his action. *Crowle v. Russell* (App.), 48 Law J. Rep. C.P. 76; Law Rep. 4 C.P. D. 186.

4.—The plaintiff brought three actions, charging in each that the defendant conspired with other persons to make a false and malicious representation to the Commander-in-Chief that he, the plaintiff, was unfit to command his regiment. The defendants did not plead, but took out a summons to stay proceedings on affidavits, stating that some years ago they were respectively members of a military Court of Enquiry, and that the actions were brought solely in respect of official and judicial acts done by them as members of the Court, and that until they were appointed members of the Court they knew nothing of the plaintiff. These statements being uncontradicted, the Court ordered all proceedings to be stayed. *Dawkins v. Prince Edward of Saxe-Weimar*; *Same v. Wynyard*; *Same v. Stephenson*, 45 Law J. Rep. Q.B. 567; Law Rep. 1 Q.B. D. 499.

### (b) Multiplicity of proceedings.

5.—Where several plaintiffs have brought separate actions against the same defendant, raising a point in dispute common to all the actions, it is competent for a Court or Judge, on the application of one of such plaintiffs, to order a stay of proceedings in all such actions but one until such one has been tried, upon the plaintiffs in all the actions undertaking that the action so allowed to proceed shall be treated as a test action. The making of such order and the terms in which it is made are in the discretion of such Court or Judge. *Bennett v. Lord Barry*, 49 Law J. Rep. C.P. 411; Law Rep. 5 C.P. D. 839.

6.—A defendant to a suit, instituted by a foreign state or corporate body, who institutes a cross-suit for the purpose of obtaining discovery from the original plaintiffs, is entitled to have the proceedings in the original suit stayed until the plaintiffs have appeared in the cross-suit. But he is not entitled to have those proceedings stayed until any person whom he has himself selected to make discovery on oath on behalf of the original plaintiffs has appeared in the cross-suit. The plaintiffs in the original suit can be compelled, by means of a stay of proceedings in their suit, to make discovery; but they are entitled to point out who is the proper person to make discovery on oath on their behalf. Decision of Malins, V.C., reversed. *The Republic of Costa Rica v. Erlanger* (App.), 45 Law J. Rep. Chanc. 145; Law Rep. 1 Ch. D. 171.

7.—Where an order nisi for a new trial has been refused by a Divisional Court, and granted on appeal by the Court of Appeal, such order should not include a stay of proceedings. A stay of proceedings in such a case must be obtained by a substantive application to the Divisional Court or a Judge in chambers, or from the Court of Appeal on appeal from such substantive application. And per Brett, L.J.: The Court of Appeal has no original jurisdiction in any case to order a stay of proceedings or of execution. *Goddard v. Thompson* (App.), 47 Law J. Rep. Q.B. 382.

*Bankruptcy proceedings.* [See BANKRUPTCY, M 43, 44.]

*Common Law Procedure Act, 1854, s. 11, under.* [See ARBITRATION, 4-6.]

*County Court Act, 1867, under.* [See INTERPLEADER, 4.]

*Foreclosure actions.* [See MORTGAGE, 46-48.]

*Pending appeal.* [See B 66-70 supra.]

*Presentation of winding-up petition: action in common law division.* [See COMPANY, H 87.]

*Restitution of conjugal rights.* [See DIVORCE, 21.]

*Winding up: staying proceedings after.* [See INJUNCTION, 6-10.]

[And see BANKRUPTCY, A 12; and Nos. E 2 supra; FF 2; GG 1, 7 infra.]

## (FF) STOP ORDER.

1.—A judgment creditor may obtain a stop order upon a fund in Court to the credit of an action in the Chancery Division, without any charging order obtained in the division where the judgment was recovered. Stop order granted upon a fund of a specified amount not actually in Court, but to be paid in to the credit of an action under an order of the Court. *Shaw v. Hudson*, 48 Law J. Rep. Chanc. 689.

2.—A person who has a judgment in an action in any division of the Court may now obtain a stop order on a fund standing in Court to the credit of the Chancery Division, without first obtaining a charging order in the division in which his action is. *Hopewell v. Barnes*, Law Rep. 1 Ch. D. 630.

*On fund in another suit.* [See D 2 supra.]

*Supplemental proceeding.* [See W 39 supra.]

*Test action.* [See F 2; G 2 supra.]

*Staying proceedings.* [See EE 5 supra.]

## Third party.

*Claim against.* [See W 75-85 supra.]

*Production of documents by.* [See PRODUCTION OF DOCUMENTS, 26.]

*Trade mark cases, in.* [See TRADE MARK, 28, 29.]

## Time.

*Appeal, for.* [See B 24-59 supra; BANKRUPTCY, M 10-19; COUNTY COURT, 17-20.]

*Demurring, for.* [See W 40 supra.]

*Dismissal of action for want of prosecution, for.* [See H 2, 3, 4 supra.]

*Enrolment of decrees, for.* [See I 2.]

*New trial, for moving for.* [See T 9-13 supra.]

*Renewal of writ, for.* [See II 20, 21 infra.]

*Sundays, Christmas Day and Good Friday, when excluded.* [See BANKRUPTCY, M 10.]

## (GG) TRANSFER OF ACTIONS.

## (a) From one Division to another.

1.—The Court of Appeal has no jurisdiction to make an order for the transfer of a matter commenced by petition under the statutory jurisdiction of the Court of Chancery before the Judicature Act, 1873. *In re Boyd's Trusts* (App.), Law Rep. 1 Ch. D. 12.

2.—An action brought in the Chancery Division will not be transferred on any ground of convenience, because it is merely an action for damages. *Canot v. Morgan*, 45 Law J. Rep. Chanc. 50; Law Rep. 1 Ch. D. 4.

The fact that a previous action, of which the costs are unpaid, has been commenced and discontinued in one of the Common Law Courts is no ground for a transfer to the corresponding division, though it may be a good ground for staying proceedings until such costs are paid. *Ibid.*

3.—An action may, under Order LI. rule 2, be transferred from one division to another by the order of a Judge at chambers, although he is not a Judge of the division to which the action is assigned. And per Amplett, B.—Where in an action for the possession of land a counter-claim for the specific performance of an agreement for a lease is made, the action ought to be transferred to the Chancery Division on a *prima facie* case for specific performance being made out. *Hillman v. Mayhew*, 45 Law J. Rep. Exch. 334; Law Rep. 1 Ex. D. 132.

4.—Motions for the transfer of causes from one division to another of the High Court should be made on notice. *Humphreys v. Edwards*, 45 Law J. Rep. Chanc. 112.

An order for the transfer of a cause is not effectual until the sanction has been obtained of the President of the division to which it is proposed to transfer the cause. *Ibid.*

5.—The defendant, in an action by a purchaser to rescind a contract for sale of land and recover the deposit (on the ground that the defendant, the vendor, had failed to shew his title), filed a counter-claim for specific performance:—Held (reversing the Exchequer Division), that the action ought to be transferred to the Chancery Division. *Holloway v. York* (App.), Law Rep. 2 Ex. D. 333.

6.—A creditor who has obtained a judgment against the executor of his deceased debtor before a decree is made for the administration of the debtor's estate has priority over other creditors, and that priority is unaffected by 32 & 33 Vict. c. 46. But where A., a creditor, had obtained in an action in the Exchequer Division an order *nisi* to sign judgment against the executrix of his debtor, and before judgment had been signed another creditor had obtained in the Chancery Division a decree for the administration of the deceased debtor's estate, A. was held to have no priority, and the action in the Exchequer Division was transferred to the Chancery Division, and proceedings therein stayed upon motion made for that purpose. *In re Stubbs*. *Hanson v. Stubbs*, 47 Law J. Rep. Chanc. 671; Law Rep. 8 Ch. D. 154.

7.—On a summons by an executor under Order LI. rule 2a, for the transfer from the Exchequer to the Chancery Division of an action by a creditor of the estate against the executor personally, which alleged that the executor had committed a *devastavit*, but which had been commenced after an order had been made for the administration of the testatrix's estate; and for a stay of proceedings in such action after it had been transferred,—Held, that the executor was entitled to a transfer of the action; but the Court refused to stay the proceedings on the ground that an executor cannot escape liability by reason of an administration order having been made. *In re Timms*, 47 Law J. Rep. Chanc. 831.

8.—The defendant in an action for trespass to land pleaded that the plaintiff had agreed to grant him a right of way over the land, and

counter-claimed for rectification of conveyance by insertion of such right of way, and also for specific performance of a certain alleged agreement. On application by the defendant to transfer the action to the Chancery Division,—Held, that (supposing the Court of Appeal had power to order the transfer without the consent of the President of the division in which the action was) the relief asked by the defendant was not a sufficient ground for ordering the transfer of the action. *Storey v. Waddle* (App.), Law Rep. 4 Q.B. D. 289.

9.—A collision having occurred between two ships, by which besides damage to cargo, personal injuries were occasioned to a fireman on board one ship, an action in the Admiralty Division by the owners of that ship resulted in the other ship being adjudged solely to blame. The owners of the latter having thereupon instituted a limitation action also in the Admiralty Division, the fireman, the present plaintiff, issued a writ in the Queen's Bench Division, claiming 1,000*l.* damages for personal injuries from the owners of the delinquent ship. By the statement of claim in the limitation action, it was alleged that the fireman's was the only claim arising out of the collision in respect of personal injuries, and that it was for 500*l.* The defendants, of whom the fireman was nominally one, replied that his claim was for 1,000*l.* Judgment was given in the limitation action on this basis. Under these circumstances the fireman's action was transferred from the Queen's Bench Division to the Admiralty Division upon application made by the defendants under Order LI. rule 2. *Hawkins v. Morgan*, 49 Law J. Rep. Q.B. 618.

[And see ADMIRALTY, 30.]

(b) *From one Judge of Chancery Division to another.*

10.—The Court of Appeal has no jurisdiction to transfer any proceeding, but the order must be made by the Lord Chancellor. Where the parties consent to a transfer to be made by the Lord Chancellor, the order must be made on sending in the papers to his secretary. *In re Hutley. Deards v. Putt* (App.), 45 Law J. Rep. Chanc. 79; Law Rep. 1 Ch. D. 11.

11.—An action was brought and a decree made in the Chancery Division for the administration of the personal estate of A., and for an enquiry whether his moiety of certain real estate had become assets of his partnership business carried on with B. B., the surviving partner, brought an action for winding up the partnership in another branch of the Chancery Division:—Held, that B.'s action ought to be transferred to the Judge before whom the action for administration was pending. *Davis v. Davis*, 48 Law J. Rep. Chanc. 40.

12.—Order LI. rule 2 applies only to transfers from one division to another, and not to transfers from one Judge to another of the same division. When one Judge of the Chancery Division is not sitting, a Judge of the Court of

Appeal may, on the request of the Lord Chancellor, hear applications assigned to the absent Judge. *Chapman v. The Real Property Trust (Lim.)*, Law Rep. 7 Ch. D. 732.

(c) *To or from inferior Court.*

13.—A plaintiff had entered his action, being an action for specific performance of a contract, for trial in the Associates' Book for Middlesex. Motion by the defendant to have it struck out and entered in the Chancery Registrar's book allowed. Motion by the plaintiff to have the action transferred to the County Court at Bradford, so as to avoid the expense of bringing up witnesses to London, refused, although the purchase-money being under 500*l.* the action was within the County Court jurisdiction. *Sykes v. Firth*, 46 Law J. Rep. Chanc. 627.

14.—Where a plaintiff commences a suit in the County Court, which at the hearing is transferred to the High Court because the subject-matter exceeds 500*l.*, the plaintiff though successful must pay the costs of the hearing before the County Court. *Ward v. Wyld*, Law Rep. 5 Ch. D. 779.

15.—An action for ejectment, commenced in the County Court, was transferred to the High Court under section 3 of the County Courts Act, 1865. After transfer, but before delivery of any statement of claim, the plaintiff moved for discovery and production of documents under Order XXXI. rule 12:—Held, that after transfer the proceedings must be regulated by the practice of the High Court, and that the plaintiff was not entitled to discovery before delivery of a statement of claim. *Davies v. Williams*, 49 Law J. Rep. Chanc. 852; Law Rep. 13 Ch. D. 550.

[And see ADMIRALTY, 30.]

(HH) TRIAL.

(a) *Place of trial.*

1.—A plaintiff who had set down an action for trial before a Judge of the Chancery Division, applied to have a preliminary issue of fact tried at Chester, and the trial of the action postponed. His application was refused on the ground of delay. *Lloyd v. Jones*, 47 Law J. Rep. Chanc. 470; Law Rep. 7 Ch. D. 390.

(b) *Notice of trial.*

2.—Notice of trial of an action "in Middlesex" held sufficient notice of trial before a Judge in the Chancery Division. *Harris v. Gamble*, 47 Law J. Rep. Chanc. 344; Law Rep. 7 Ch. D. 877.

3.—The defendants delivered a statement of defence and counter-claim; the plaintiffs replied, their reply not closing the pleadings, and at the same time gave notice of trial. Next day they entered the action for trial:—Held, that the action must be struck out of the cause list, on the ground (per Kelly, C.B.), that the entry for trial was irregular, and (per Stephen, J.),

that the notice of trial and consequently the entry were irregular. *The Metropolitan Inner Circle Completion Railway Company v. The Metropolitan Railway Company*, 49 Law J. Rep. Exch. 505; Law Rep. 5 Ex. D. 196.

4.—By Order XXXVI. rule 3, a plaintiff is entitled as of right to give notice of trial with his reply, even though the reply may not formally close the proceedings. *Asquith v. Molinneau*, 49 Law J. Rep. Q.B. 800.

[And see Y 1 supra.]

(c) *Separate issues or questions of law or fact.*

5.—Rule 26, Order XXXVI. applies to cases where Courts of law and equity had concurrent jurisdiction. Where the defendant desires a jury, rule 26 is not to be put in force without special reason; and in an action to restrain carrying on works as a nuisance, the reasonableness of the mode of working is not proper to be put in issue. *West v. White*, 46 Law J. Rep. Chanc. 333; Law Rep. 4 Ch. D. 631.

6.—Where the decision of a question of law rendered the decision of complicated questions of fact unnecessary, the Court at the hearing decided the question of law first. *Pooley v. Driver*, Law Rep. 5 Ch. D. 458.

7.—After the issue of the writ and appearance entered, a Judge has power at any time under Order XXXIV. rule 2 to make an order for a question of law to be raised for the opinion of the Court, if upon all the facts brought to his notice on the application, such an order appears to him to be expedient. *The Metropolitan Board of Works v. The New River Company* (App.), 46 Law J. Rep. Q.B. 183; Law Rep. 2 Q.B. D. 67; on appeal from the Queen's Bench Division, 46 Law J. Rep. Q.B. 759; Law Rep. 1 Q.B. D. 727.

Semble, per Cockburn, L.C.J., that the Court of Appeal will not review the discretion of a Divisional Court as to the making of such an order. *Ibid.*

8.—The Court has power to order an action, as well as a question or issue of fact, to be tried at the assizes. *Wood and Ivory (Lim.) v. Hamblet*, 47 Law J. Rep. Chanc. 113; Law Rep. 6 Ch. D. 512.

By rules of Court, December, 1876, Order XXXVI. rule 29a, the order directing such trial must state on its face the reason for which it is expedient that the action should be so tried. Where both parties wished it, and the action was for damages only, and related to land in the county where the great majority of the witnesses resided, the Court made the order, stating these facts on its face as the reason. Semble, the mere wish of the parties without other circumstances is not sufficient reason. *Ibid.*

9.—In all actions in the Chancery Division where there are distinct questions of fact in dispute between the parties to be tried by a Judge without a jury, the Judge need not necessarily order the question of fact to be tried as

specific issues before the hearing of the action, but he should try such questions as they would be tried in actions in the Common Law Divisions, that is, his findings on matters of fact, and his judgment on questions of law arising upon those findings, must properly be treated as separate acts to be dealt with if objected to by separate proceedings by way of appeal, *Krohl v. Burrell* (App.), 48 Law J. Rep. Chanc. 252; Law Rep. 11 Ch. D. 146.

The words in the latter part of Order XXXIX. rule 1 do apply to actions commenced in the Chancery Division, but tried by one of the Judges of the Common Law Divisions with a jury, but do not include actions commenced and tried by a Judge alone in the Chancery Division. *Ibid.*

10.—Order on plaintiff's application for determination of two simple issues as against two of several defendants granted on terms of the plaintiff not seeking any further relief against such defendants, and undertaking to discontinue such part of the action as the Court should direct. *The Emma Silver Mining Company v. Grant*, Law Rep. 11 Ch. D. 918.

11.—One issue in an action will be directed to be tried before another only on very special grounds. In a partnership action a defendant set up by counter-claim an agreement by the plaintiff for sale to the defendant of his (the plaintiff's) interest in the partnership at a stated price:—Held, that the defendant was not entitled under Rules of Court, 1875, Order XXXVI. rule 6, to have the issue raised by his counter-claim tried before the plaintiff's issues in the action. *The Emma Silver Mining Company v. Grant* (see last case) explained in reference to the exceptional cases in which the Court will accede to applications under Order XXXVI. rule 6. *Piercy v. Young*, Law Rep. 15 Ch. D. 475.

12.—The defendant, under Order XXXVI. rule 3, moved that certain specified issues of fact might be tried before a Judge or jury in the country:—Held, first, that the Court was bound to order the trial subject to the discretion given by rule 26, and it not appearing desirable to direct a trial without jury the motion was acceded to, the issues to be settled in chambers:—Held, secondly, that the defendant ought to have given notice out of Court without moving for an order, and should have required the issues of fact to be tried without specifying any particular issues. No costs allowed the defendant. *Powell v. Williams*, Law Rep. 12 Ch. D. 234.

*Right to begin: testamentary cause.* [See PROBATE, 31.]

(d) *Trial by jury: right to.*

13.—One of several defendants is not entitled, under Order XXXVI. rule 3, to trial by jury in opposition to or without the consent of the others. Order XXXVI. rule 26 gives the Court a discretion as to allowing a trial by jury

in all cases of fraud and in cases raising questions which were properly within the Chancery jurisdiction before the Judicature Act. *Back v. Hay*, Law Rep. 5 Ch. D. 235.

14.—The Court of Appeal will not, except in a very strong case, interfere with the discretion of a Judge as to mode of trial. *Ruston v. Tobin* (App.), Law Rep. 10 Ch. D. 558.

The plaintiff gave notice of trial by a jury of a Chancery action to set aside an agreement on the ground of fraudulent representation:—Held (on motion by the defendant) that the action ought to be tried by a Judge alone. *Ibid.*

15.—A plaintiff had entered his action, being an action for specific performance of a contract, for trial in the Associates' Book for Middlesex. Motion by the defendant to have it struck out and entered in the Chancery Registrar's book allowed. *Sykes v. Firth*, 46 Law J. Rep. Chanc. 627.

16.—Semble, per James, L.J., and Mellish, L.J., in all cases which would formerly have come within the jurisdiction of the Court of Chancery, the Judge may, under Order XXXVI. rule 26, direct a trial of the facts without a jury, except in those particular cases in which a jury might previously have been demanded. Whether in actions in the Chancery Division, which must formerly have been brought at Common Law, the Court can, against the wish of the parties, direct a trial of questions of fact without a jury, quere. *Swindell v. The Birmingham Syndicate; The Birmingham Syndicate v. Swindell* (App.), 45 Law J. Rep. Chanc. 756; Law Rep. 3 Ch. D. 137.

17.—The plaintiff in a creditor's administration suit instituted before, but in which issue was joined after the 1st of November, 1875, gave the defendant notice of trial with a jury in Middlesex, but subsequently proposed that the trial should be before a Judge only. The defendant having claimed trial by jury,—Held, that he was, under Order XXXVI. rule 3 (1875), entitled to have the action so tried. *Clarke v. Cookson*, 45 Law J. Rep. Chanc. 752; Law Rep. 2 Ch. D. 746.

Where the case is one for a jury, the right of the plaintiff or defendant under rule 3 should not ordinarily be interfered with by the Court under rule 26. *Ibid.*

Actions in the Chancery Divisions for trial by jury should be set down in Middlesex unless the statement of claim mentions some other place of trial, under Order XXXVI. rule 1. *Ibid.*

A Judge of the Chancery Division can, in any case under Order XXXVI. rules 27 and 29, direct issues to be tried by a Judge with a jury, and order a trial at the assizes or at the sittings in London or Middlesex; but, having regard to sections 29, 30, 37, 42 and 43 of the Judicature Act, 1873, and Orders XXVI. XXXVI. rules 1, 8, 16, and XXXIX. cannot himself try a case with a jury. *Ibid.*

18.—In a suit for specific performance, which was commenced before the Judicature Act came

into force, and in which the plaintiff claimed damages against one of the defendants, the plaintiff, acting on a notice lately issued by the senior registrar, entered the action with the associates of the Exchequer Division for trial before a Judge and special jury:—Held (on a motion by the defendants), that the action might be heard before the Vice-Chancellor, that under Order XXXVI. rules 3, 26, a plaintiff has no absolute right to have his action tried before a Judge and jury, but that the Court or a Judge has a discretion in the matter, and that the action, being one for specific performance, was a proper one to be tried by a Judge of the Chancery Division. *Pilley v. Baylis*, 46 Law J. Rep. Chanc. 847; Law Rep. 5 Ch. D. 241.

19.—In an action for an injunction to restrain the defendant from permitting a building to continue erected so as to obstruct the alleged ancient lights of the plaintiffs, where notice of trial had been given, and the defendant claimed to have a jury,—Held, that under Rules of Court, 1875, Order XXXVI. rule 3, the defendant had the right which he claimed; and that the case being apparently of a nature fit to be tried by a jury, the right should not be interfered with by the exercise of the discretion given to the Court by rule 26. *Bordier v. Burrell*, 46 Law J. Rep. Chanc. 615; Law Rep. 5 Ch. D. 512.

20.—Where there is more than one defendant, and all do not desire, that is, do not request a trial before a jury, the Court will not comply with the request of one defendant to have the action tried before a jury unless it is of opinion that the case comes within the 27th rule of Order XXXVI. The refusal of one defendant does not prevent an action being tried before a jury; but it imposes on the defendant who desires such a trial the duty of shewing that it is more convenient. *Warehouse v. Barnett*, 47 Law J. Rep. Chanc. 689.

21.—The plaintiffs brought an action to restrain the defendants from infringing their patent and trade-mark. The only issue of fact in the action was whether in one instance the defendants had or had not sold goods representing them to be of the plaintiffs' manufacture. The defendants desired to have the action tried before a Judge and special jury:—Held that it was a proper case for the Judge to exercise his discretion under Order XXXVI. rule 26, and to retain the action in the Chancery Division. *Spratt's Patent v. Ward & Company*, 48 Law J. Rep. Chanc. 645; Law Rep. 11 Ch. D. 240.

Order XXX. rule 3 does not entitle the defendant to give notice that he desires to have "the action," but only the "issues of fact" tried before a Judge and jury. *Ibid.*

22.—The plaintiffs brought an action to restrain the defendant from selling or advertising as "Singer machines" sewing machines not of the plaintiffs' manufacture. The defence was that the word "Singer" signified, not machines of any character made by the plaintiffs, but a class of machines having a particular

system of construction. The defendant moved to have certain issues of fact tried before a jury, and that the action might be transferred to a Common Law Division:—Held, that it was a proper case for the Judge to exercise his discretion under Order XXXVI. rule 26, and to retain the action in the Chancery Division. *The Singer Manufacturing Company v. Loog*, 48 Law J. Rep. Chanc. 647; Law Rep. 11 Ch. D. 656.

23.—Where in an action as to the ownership of land and the obstruction of a right of way in the country, the defendants had given notice under Rules of Court, 1876, Order XXXVI. rule 3, for the trial of issues of fact by a jury, on motion by the plaintiff that the action might be tried by a Judge without a jury:—Held, that, as it appeared that the question in the action was mainly one of title depending on certain conveyances, plans and photographs, it could be more conveniently tried without a jury under Order XXXVI. rule 26. *Wedderburn v. Ploking*, Law Rep. 13 Ch. D. 769.

[And see BANKRUPTCY, M 36; PATENT, 33.]

### (c) Mode of trial.

#### (1) Hearing counsel, &c.

24.—The order in which the speeches of counsel on the trial of an action with witnesses are to be made, pointed out. *Kino v. Rudkin*, Law Rep. 6 Ch. D. 160.

25.—In actions which come on for hearing on motion for trial, where the questions of fact have to be decided apart from questions of law, only one counsel on each side will be heard on the trial of questions of fact. *Conington v. Gilliatt*, 45 Law J. Rep. Chanc. 273; Law Rep. 1 Ch. D. 694.

26.—Where, at the trial of an action with witnesses, the leading counsel has opened his case, and put in his evidence, either the leading counsel or his junior may sum up the evidence, but so that only one counsel shall be heard after the evidence has been put in. *Metzler v. Wood*, 47 Law J. Rep. Chanc. 139.

27.—A plaintiff seeking alternative inconsistent relief against different defendants has a right to have the first alternative tried out. In such actions counsel for the second defendant may address the Court against and cross-examine the witnesses of his co-defendant. *Child v. Stenning*, 47 Law J. Rep. Chanc. 371; Law Rep. 5 Ch. D. 695.

C. was lessee under W. of premises over which S. claimed a right of way. C. brought an action by which he claimed an injunction against S., or in the alternative damages from W. under a covenant for quiet enjoyment. The injunction was refused with costs and damages assessed against W., with costs of the action against himself, but without the costs of the claim against S. *Ibid.*

#### (2) Where notice given to third party.

28.—In an action for non-acceptance of goods the defendants pleaded (among other things)

that they bought as brokers for principals, A. and B., as the plaintiffs knew, and that the goods were not according to contract, and were therefore refused by the defendants, and A. and B. respectively. The defendants served notices on A. and B. under Order XVI. rule 18 of the Judicature Act, claiming an indemnity from them, as the goods were ordered on their behalf. It was admitted that the clause as to quality was the same as between the plaintiffs and the defendants, on the one hand, and the defendants and A. and B. on the other:—Held, that the notices had been properly given, and that the Court would, under rule 21, give directions as to the mode of trial. Order made in the case that A. should be at liberty to appear and contest the question of quality, being bound by the result of the trial. Question of costs reserved till after the trial. *Benecke v. Frost*, 45 Law J. Rep. Q.B. 693; Law Rep. 1 Q.B. D. 419.

#### (3) Hearing in camera.

29.—The Court has no power to hear any case in private, even with the consent of the parties, except cases which relate to lunatics or wards of Court, and cases in which the whole object would be defeated by a trial in public, and cases in which the practice of the Ecclesiastical Courts is preserved under the 22nd section of the Divorce Act (20 & 21 Vict. c. 85). *Nagle-Gillman v. Christopher*, 46 Law J. Rep. Chanc. 60; Law Rep. 4 Ch. D. 173.

#### (4) Jury cases in Chancery Division: new trial.

30.—Actions in the Chancery Division to be tried by jury will be tried in the county or place named in the statement of claim, or (if no place be named) will be placed in the list of actions for trial in the county of Middlesex, in exactly the same way as actions in the Queen's Bench, Common Pleas and Exchequer Divisions. *Warner v. Murdoch*; *Murdoch v. Warner* (App.), 46 Law J. Rep. Chanc. 121; Law Rep. 4 Ch. D. 150.

Semble, that a motion for a new trial of an action in the Chancery Division must be made to the Judge of that Division to whose Court the action is attached. *Ibid.*

Per Bramwell, J.A.—The provisions of rule 4, of the Orders of December, 1876 (amending Order XXXVI. rule 29), which require an order directing the trial of an action in the Chancery Division, or of any issue therein, at the Assizes, or at the London or Middlesex sittings of any other Division, to state the reasons for the order, apply only to cases where a special order for such a trial is made, under Order XXXVI. rules 1 or 29, and not in the ordinary case where the action goes into the list without any order. *Ibid.*

#### (5) Verdict on several issues.

31.—Where there are several distinct issues to be tried in one action, it is competent to the

Judge, in his discretion, and without the consent of the parties, to accept the verdict of the jury upon those issues on which they are able to agree, and discharge them upon the others without invalidating the trial, leaving the parties, if they think fit, to take down the undecided issues to a new trial; and the Court will give judgment on the decided issues, and has power, if asked, to send down the undecided issues to a new trial. *Marsh v. Isaacs*, 45 Law J. Rep. C.P. 505.

*Amendment at trial.* [See W 27-34.]

*Default of appearance at.* [See C 5, 6 *infra*.]

*Evidence on.* [See *supra* K 19-26.]

*Foreclosure: preliminary account: issues raised by subsequent pleadings.* [See MORTGAGE, 49.]

*Without jury, where there is agreement to take evidence by affidavit.* [See K 11 *supra*.]

#### Trustee Act.

*Under.* [See TRUSTEE ACT, 9-18.]

#### Trustee Relief Act.

*Under.* [See TRUSTEE RELIEF ACT.]

#### Undertaking.

*Undertaking not to appeal.*

32. Where a claim under a winding-up was refused, and the counsel for the liquidator asked the counsel for the claimant whether he intended to carry the case further, and on being informed that he did not, said that he should not ask for costs, and an order was drawn up dismissing the claim without costs, and not containing any undertaking not to appeal:—Held, that no undertaking not to appeal having been embodied in the order, an appeal would lie. *In re The Hull and County Bank. Trotter's Claim* (App.), Law Rep. 13 Ch. D. 261.

*Damages, as to: discontinuance.* [See *supra* G 1.]

*Mistake, by: order not enforced.* [See O 3 *supra*.]

#### Vacation.

*Absence of Judge.* [See GG 12 *supra*.]

*Vesting order.* [See TRUSTEE ACT.]

#### Want of prosecution.

*Dismissal of action for.* [See H 1-3 *supra*.]

#### Wilful default.

*Action charging: leave of court when required.* [See ADMINISTRATION, 36.]

#### Withdrawal.

*Consent, of.* [See COUNSEL, 2; E 3; R 3-5 *supra*.]

*Defence, of.* [See W 24 *supra*.]

#### Witness.

*Costs of.* [See COSTS, 101, 102.]

*Costs of mere witness.* [See WITNESS.]

*Examination upon accounts.* [See A 4, 5 *supra*.]

*Examination of: bankruptcy proceedings.*  
[See BANKRUPTCY, M 45, 46.]

*Writ of possession.* [See RECEIVER, 15.]

### (II) WRIT OF SUMMONS.

#### (a) Indorsement of.

1.—In the case of substituted service it is not necessary to indorse on the writ the date of service, as provided by Order IX. rule 13, in order to proceed by default. *Dymond v. Croft* (No. 2), (App.), 45 Law J. Rep. Chanc. 604; Law Rep. 3 Ch. D. 512.

2.—If a plaintiff desires an injunction or a receiver, in addition to other relief, he should indorse his writ with a claim accordingly. *Colebourne v. Colebourne*, 45 Law J. Rep. Chanc. 749; Law Rep. 1 Ch. D. 690.

*Creditor's action, form of.* [See ADMINISTRATION, 33-35.]

#### (b) Writ specially indorsed.

##### (1) Form of indorsement.

3.—The plaintiff claimed by indorsement on his writ of summons a certain sum from the defendant as "contribution to payment of certain bills and promissory notes in which he and the plaintiff were jointly liable, &c.," without specifying any dates or giving further particulars of his claim: Held, that the writ was not specially indorsed under Order III. rule 9 of the Rules of Court, 1875. *Walker v. Hicks*, 47 Law J. Rep. Q.B. 27; Law Rep. 3 Q.B. D. 8.

4.—The plaintiff applied to sign judgment under Order XIV. rule 1, on the following special indorsement: "The plaintiff's claim is 49l. 5s. 8d. The following are the particulars: 1879, Feb. 14. To goods, 16s. 1d." Several similar items followed, and the list ended with, "May 21, British Bank draft returned, 20l." Credit was given for certain cash payments, and also for 20l. "Credit by British Bank draft," and the amount claimed represented the balance on the whole account:—Held (affirming the judgment of the Common Pleas Division), that the indorsement was a sufficient special indorsement. *Smith v. Wilson* (App.), 49 Law J. Rep. C.P. 96; Law Rep. 4 C.P. D. 392.

##### (2) Demurrer to.

5.—A writ specially indorsed in lieu of a statement of claim is equivalent to ordinary pleading. Therefore, where the plaintiff specially indorsed his writ with a claim shewing no cause of action, and gave notice under Order XXI. rule 4, that the special indorsement was the statement of claim, the defendant was allowed to demur. *Robertson v. Howard*, 47 Law J. Rep. C.P. 480; Law Rep. 3 C.P. D. 280.

##### (3) Where corporation plaintiffs.

6.—Where the plaintiff in an action is a corporation, Order XIV. rule 1, does not apply, because the affidavit "verifying the cause of



action and swearing that in his belief there is no defence to the action" can only be made by the plaintiff in person, and an affidavit by the secretary or other officer of the corporation is not sufficient. *The Bank of Montreal v. Cameron* (App.), 46 Law J. Rep. Q.B. 425; Law Rep. 2 Q.B. D. 536.

#### (4) *Order for particulars.*

7.—The rule which formerly existed not to compel a plaintiff to state the items of sums for which he has voluntarily given credit to the defendant in his particulars of demand, is, since the Judicature Act, no longer applicable, and the defendant can require the plaintiff to state such items, unless they are such as would be more within the knowledge of the defendant than of the plaintiff. Therefore where, in an action on a builder's contract, the plaintiff in his particulars, on a specially indorsed writ, gave credit to the defendant for a lump sum "for work not performed," and for another lump sum for "bricks, goods and works," the Court held that the defendant was entitled to have an account, with dates and items, as to these two lump sums. *Godden v. Corsten*, 49 Law J. Rep. C.P. 112; Law Rep. 5 C.P. D. 17.

#### (5) *Leave to defend.*

8.—Where in answer to an application by the plaintiff under Order XIV., rule 1, of the Judicature Act, 1875, for liberty to sign final judgment for the amount endorsed on a specially endorsed writ, the defendant makes an affidavit that he has a good defence to the action on the merits, and shews also by such affidavit that there is some substantial defence, as where the amount claimed to be due for work done by the plaintiff is one which is fairly in dispute, the Judge to whom the application is made ought, in the exercise of his discretion, to give the defendant leave to defend without requiring him to bring the amount into Court. *Runnacles v. Mesquita*, 45 Law J. Rep. Q.B. 407; Law Rep. 1 Q.B. D. 416.

9.—When an action, by a writ specially endorsed, is brought against a guarantor who applies for leave to defend, and there is no evidence of any acknowledgment by him of the debt, or that a defence would be mere delay and vexatious to the plaintiff, the defendant ought to be permitted to defend, in order to have the case against him proved. *Lloyd's Banking Company (Lim.) v. Ogle*, 45 Law J. Rep. Exch. 606; Law Rep. 1 Ex. D. 262.

10.—Upon an application for leave to sign final judgment under Order XIV. rule 1, the defendant, in shewing cause by affidavit, must bring himself within one of two classes of cases provided for by that order. To be within the first he must shew that he has a good defence to the action on its merits, and in such a case no terms ought to be imposed upon him. The second class contains those cases in which the defendant, while failing to do that, yet dis-

closes facts which may entitle him to defend, and then rule 6 of the same Order applies, and such terms may be imposed, as a condition of allowing him to defend, as may be thought fit. *Ray v. Barker* (App.), 48 Law J. Rep. Exch. 569; Law Rep. 4 Ex. D. 279.

11.—Upon an application by the plaintiff for leave to sign final judgment under Order XIV., the Court or Judge has a discretion to allow the plaintiff to file an affidavit in reply to the defendant's affidavit. *Rotherham v. Priest*, 49 Law J. Rep. C.P. 104.

12.—When upon shewing cause against an application for leave to sign final judgment under Order XIV., the defendant's affidavit admits part of the claim to be due and discloses a defence as to the residue, there is no power under rule 4 to require the defendant to pay the plaintiff the amount admitted to be due as a condition of being allowed to defend as to the residue. The proper order is that the plaintiff have judgment for the amount admitted, the defendant to be at liberty to defend as to the residue. *Dennis v. Seymour*, Law Rep. 4 Ex. D. 80.

13.—In an action by a mortgagee in possession against a mortgagor for the mortgage debt, the writ was specially endorsed for a certain sum. Upon an affidavit that there was no defence, notwithstanding counter-affidavits alleging questions of account, an order was made that unless the defendant paid 5,000*l.* into Court by a given day, the plaintiff might sign judgment. Judgment was signed and execution levied under the order:—Held, that the defendant ought to have been allowed to defend, for the purpose of taking an account, without any payment into Court, and that judgment ought to have been signed as security only for what should be found due on the account, without power to issue execution except by leave of the Court, the defendant being required as a condition to consent to the immediate taking of such account. *Wallingford v. The Mutual Society (H.L.)*, 50 Law J. Rep. C.P. 49; Law Rep. 5 App. Cas. 685.

#### (6) *Service of.*

[See BB supra.]

#### (7) *Application to sign final judgment.*

14.—On application by a plaintiff for leave to sign final judgment under Order XIV. rule 8, the Court or a Judge has discretionary power to permit the plaintiff to file an affidavit in reply to the defendant's affidavit. *Davis v. Sponoe*, Law Rep. 1 C.P. D. 719.

15.—An application for final judgment under Order XIV. rule 1, of the Judicature Act, 1875, must be made on affidavit sworn by the plaintiff himself. It is not sufficient that such affidavit should be sworn by the plaintiff's solicitor. *Frederiot v. Vandersee*, 46 Law J. Rep. C.P. 194; Law Rep. 2 C.P. D. 70.

16.—Where the plaintiff has applied for judgment under Rules of Court, 1875, Order

XIV., and the defendant has filed affidavits in opposition, the plaintiff is entitled to file affidavits in reply. *Girvin v. Grepe*, 49 Law J. Rep. Chanc. 63; Law Rep. 13 Ch. D. 174.

17.—Upon an application to sign final judgment under Order XIV., the Court has a discretion to refuse leave to defend the action, although the defendant offers to bring the sum claimed into Court under rule 3 of that Order. *Crump v. Carendish* (App.), 49 Law J. Rep. Exch. 491; Law Rep. 5 Ex. D. 219.

18.—Where a writ is specially endorsed under Order III. rule 6, the plaintiff may apply for judgment under Order XIV. rule 1, although the defendants are a corporation. *Shelford v. The Louth and East Coast Railway Company* (C.A.), Law Rep. 4 Ex. D. 317.

*Bill of Exchange Act: district registry.* [See DISTRICT REGISTRY, 6.]

*Endorsement on writ in district registry against the defendant resident out of district.* [See C 4 *supra*.]

*Proceedings by debtor: summons improper where debt disputed.* [See BANKRUPTCY, M 25.]

#### (8) Renewal of.

19.—Where an original writ of summons has been lost, there is no power under section 11 of the Common Law Procedure Act, 1852, nor under Order VIII. rule 1 of the schedule to the Judicature Act, 1875, to obtain a renewal of it, as the Court cannot dispense with the formalities in those sections so as to order a copy of the lost writ to be sealed as a renewed original writ. *Davies v. Garland*, 45 Law J. Rep. Q.B. 137; Law Rep. 1 Q.B. D. 250.

20.—When a writ of summons has been amended, the twelve months during which it is in force, under Order VIII. rule 1, must be reckoned from the date of issue, and not from the date of amendment. *In re Jones, Eyre v. Cox*, 46 Law J. Rep. Chanc. 316.

Leave given, under Order LVII. rule 6, to renew a writ after the expiration of twelve months. *Ibid*.

21.—Where more than twelve months has elapsed since the date of a writ, and it has not been served on the defendant, the Court has no power under Order LVII. rule 6, to enlarge the time appointed by Order VIII. rule 1, for application to be made to renew the same, if at the date of the application the plaintiff's right to sue is barred by the Statute of Limitations. *Doyle v. Kaufman* (App.), 47 Law J. Rep. Q.B. 26; Law Rep. 3 Q.B. D. 7, 341.

#### PRECATORY TRUST.

[See TRUST, A 7, 10, 11, 12; VOLUNTARY SETTLEMENT, 3; WILL CONSTRUCTION, H 16.]

#### PREDECESSOR.

[See SUCCESSION DUTY, 2.]

#### PREEMPTION.

A. conveyed land to B., reserving the minerals, and covenanted that in case he, his heirs or assigns, should at any time sell the minerals under the adjoining land, he, his heirs or assigns, would offer to B., his heirs or assigns, the reserved minerals at the same price per acre.—Held, that the covenant was not obnoxious to the rules against perpetuities, and the offer must be made in writing. *The Birmingham Canal Company v. Cartwright*, 48 Law J. Rep. Chanc. 552; Law Rep. 11 Ch. D. 421.

*Highway Act, under.* [See HIGHWAY, 10.]

#### PREFERENCE.

*Fraudulent.* [See BANKRUPTCY, B 1-18.]

*Preferential debts, proof of, in bankruptcy.* [See BANKRUPTCY, D 38-40.]

*Shares.* [See COMPANY, G 10; H 57.]

*Undue preference by railway company.* [See RAILWAY, 22.]

#### PRELIMINARY ACCOUNTS.

[See PRACTICE, A 1-3.]

#### PRELIMINARY EXPENSES.

[See COMPANY, A 9, 10.]

#### PREMIUM.

*Return of, on dissolution of partnership.* [See PARTNERSHIP, 21.]

#### PREROGATIVE.

[See CROWN.]

#### PRESCRIPTION.

An easement in respect of an inn to have a signboard attached to the side of another house held to have been acquired by prescription. *Moody v. Steggles*, 48 Law J. Rep. Chanc. 639; Law Rep. 12 Ch. D. 261.

*Access of air: right to, cannot be prescribed for.* [See EASEMENT, 5.]

*Claim of inhabitants to dredge oysters.* [See FISHERY, 2.]

*Common, right of.* [See COMMON.]

*Law of Lower Canada.* [See COLONIAL LAW, 3.]

*Light and air, right to.* [See LIGHT AND AIR, 1, 2, 5, 9.]

*Light, right to: channel.* [See CHURCH, 4.]

*Market: exclusive right of sale.* [See MARKET.]

*Noise and vibration: prescriptive right to create nuisance by.* [See NUISANCE, 1.]

*Profit à prendre in alieno solo.* [See COMMON, 2.]

*Per, right to: 3 & 4 Will. 4. c. 71. s. 2, application of.* [See CHURCH AND CLERGY, 17.]

*Sea wall, prescriptive liability of frontagers to repair.* [See SEA WALL.]

*Support, right of: lateral support: claim of right and without interruption.* [See EASEMENT, 1.]

*Toids.* [See SCOTCH LAW, 26.]

*Water rights.* [See RIVER, 2.]

## PRESentation.

*To endowed chapel: rights of vicar of parish.* [See CHURCH AND CLERGY, 2.]

## PRESUMPTION.

- (A) OF DEATH.
- (B) OF PATERNITY.
- (C) OF MARRIAGE.
- (D) OF AGE OF CHILDBEARING.
- (E) OF TITLE OR OWNERSHIP.
- (F) IN OTHER CASES.

### (A) OF DEATH.

1.—In an action on a policy of insurance the question arose whether the insured was alive or dead. His sister and brother-in-law gave evidence shewing that he had not been heard of for seven years, but admitted that a niece of his had seen in Melbourne a man whom she believed to be the insured, but who was lost in the passing crowd. The other relatives believed the niece to be mistaken, and no effort had been made to find him at Melbourne. The jury men also believed her to have been mistaken. The Judge directed the jury that they could not, on this evidence, say that the man had not been heard of for the last seven years, and still less that he had never been heard of, and directed them to give a verdict for the defendants. The Court of Appeal had ordered a *venire de novo*. On appeal the House of Lords was equally divided, and the decision of the Court of Appeal was accordingly affirmed. *The Prudential Assurance Company v. Edmonds* (H.L.), Law Rep. 2 App. Cas. 487.

Observations of Lord Blackburn as to the duty of a judge when a mixed question of law and facts arises upon a trial by jury. *Ibid.*

2.—By a settlement dated in 1866, a trust was declared of a sum of money in favour of H. C. H. C. disappeared in 1861 and had never since been heard of, and no evidence was procurable as to the date of his death. The representatives of the settlor claimed to be entitled to the sum of money under a resulting trust, on the ground that the *onus* of proving that H. C. survived the date of the settlement lay upon those who claimed under him:—Held, that inasmuch as by the settlement a trust was declared in favour of a person named as then existing, such trust remained until it was got

rid of by evidence to the contrary; that the *onus* of proving that H. C. died before the date of the settlement lay upon the representatives of the settlor, and that, as they had not discharged this *onus*, the sum in question must be paid to the representatives of H. C. *In re Corbishley's Trusts*, 49 Law J. Rep. Chanc. 266; Law Rep. 14 Ch. D. 846.

### (B) OF PATERNITY.

3.—Where a man and a woman, after open courtship, the woman being advanced in pregnancy, hurry on their marriage and seven weeks after the marriage a child is born, the presumption of the man's paternity to the child is almost irresistible. If the paternity is denied by the man the *onus probandi* lies on him. *Gardner v. Gardner* (H.L. Sc.), Law Rep. 2 App. Cas. 723.

Per Cairns, L.C., the presumption in such a case is a presumption *juris tantum* and not *juris et de jure*.

### (C) OF MARRIAGE.

*Habit and repute: Scotch law.* [See SCOTCH LAW, 15.]

*That church duly licensed.* [See BIGAMY.]

### (D) OF AGE OF CHILDBEARING.

4.—A woman aged fifty-four and six months, who had never had any children, but who has only been married three years, cannot be presumed to be past childbearing. *Croxtan v. May* (App.), Law Rep. 9 Ch. D. 388.

### (E) OF TITLE OR OWNERSHIP.

5.—The dealing with land originally of leasehold tenure for a long period by persons in possession of it was held to afford a presumption, as between those claiming under such persons, that the reversion had been got in. *Holmes v. Milward*, 47 Law J. Rep. Chanc. 522.

6.—The plaintiff granted to the defendant two pieces of land separated by, and each described as abutting on, a strip of land called a street, which the plaintiff intended to dedicate as a highway, but which was in fact never so dedicated. For more than twenty years before action the defendant used this piece of land for the purposes of his business in such a way as to make it impassable, save for foot passengers. Within twenty years both the plaintiff and the defendant had repaired some railings which separated this intended street from an adjoining highway; and within the same period the defendant had first enclosed a small portion of the street, and then fenced it in at each end, where it abutted on two highways. In an action to recover possession of the land,—Held (affirming the decision of the Exchequer Division), that the presumption that the soil to the middle of a highway belongs to the owner of the adjoining enclosed land, does not apply where such land abuts on an intended highway which

has not at the time of the conveyance been dedicated to the public. Held also, that the plaintiff had not been dispossessed by the defendant nor had he discontinued possession within the meaning of section 3 of the Statute of Limitations. *Leigh v. Jack* (App.), 49 Law J. Rep. Exch. 220; Law Rep. 5 Ex. D. 264.

*Forshore: title to.* [See FORESHORE, 2.]

*Title: private chapel annexed to church: evidence of acts of ownership.* [See CHURCH AND CLERGY, 4.]

*Title: presumption in favour of adjoining owner: evidence against interest.* [See EVIDENCE, 6.]

#### (F) IN OTHER CASES.

*Against double portions.* [See PORTIONS, 1-4.]

*Of inutility of patent.* [See PATENT, 28.]

*Of non-existent Act of Parliament.* [See COMMON, 3.]

*Railway Company: superfluous lands.* [See LANDS CLAUSES ACT, 43.]

*That directors know contents of company's books.* [See COMPANY, D 38.]

*That peerage is descendible to heirs male.* [See PEERAGE, 1.]

*Water, right to flow of.* [See WATER, 3.]

#### PREVENTION OF CRIME.

[The Prevention of Crimes Act, 1871, amended. 39 & 40 Vict. c. 23.]

[The minimum term of penal servitude, in the case of a previous conviction, reduced. Amendment of Prevention of Crimes Act, 1871, 42 & 43 Vict. c. 55.]

#### PRINCIPAL AND AGENT.

##### (A) CONTRACT OF AGENCY.

##### (B) LIABILITY OF PRINCIPAL FOR ACTS OF AGENT.

##### (C) RIGHTS OF PRINCIPAL AS AGAINST THIRD PARTIES.

(a) *Notice of agency.*

(b) *Following money.*

##### (D) AUTHORITY OF AGENT.

(a) *Factor selling in own name: set off.*

(b) *Revocation of, by insanity of principal.*

##### (E) LIABILITY, RIGHTS AND DUTIES OF AGENT.

(a) *Liability of agent contracting in his own name.*

(b) *Stockbroker: trustee and cestui que trust.*

(c) *Incapacity of agent to profit by his agency.*

(d) *Liability to account.*

(e) *Right to commission.*

(f) *Lien of agent on goods.*

##### (A) CONTRACT OF AGENCY.

1.—An agreement was entered into between F., a broker, and R., a colliery owner, "in consideration of the services and payments to be mutually rendered," that F. should act as R.'s agent at Liverpool for the sale of his coals for seven years. It was stipulated that R. should not employ any other agent at Liverpool; that F. should not act as agent for any other principal; that the rates and terms of sales should be under R.'s control, and that if F. could not sell, or if R. could not supply a certain amount of coal within the year, either party might put an end to the agreement. Before the expiration of the seven years R. sold the colliery, whereupon F. brought an action against him for breach of the agreement:—Held, that the action was not maintainable, for that the agreement merely bound R. to employ F. as his agent for the sale of such coal as he should send to Liverpool, and was necessarily determined on his parting with the subject-matter of the agency. *Rhodes v. Forwood*, (H.L.), 47 Law J. Rep. Exch. 396; Law Rep. 1 App. Cas. 256.

*Broker: illegal contract: differences on Stock Exchange.* [See BROKER, 3.]

##### (B) LIABILITY OF PRINCIPAL FOR ACTS OF AGENT.

2.—A man who orders work to be executed from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief. *Bower v. Peate*, 45 Law J. Rep. Q.B. 446; Law Rep. 1 Q.B. D. 321.

3.—The appellants employed the respondent as their agent to make advances on goods. The respondent employed a sub-agent to make such advances, with power to draw on the appellants for the amount. The sub-agent fraudulently drew on the appellants for an amount not advanced:—Held, that such sub-agent was acting within his authority, and that the respondent was liable for the act of his sub-agent. *Swire v. Francis*, 47 Law J. Rep. P.C. 18; Law Rep. 3 App. Cas. 106.

4.—The plaintiff, a landlord, demanded a specified sum from the defendant, his tenant, for rent, and gave A. a written authority to receive it. A. called on the defendant, who offered to pay such sum, but A. declined to receive it, and demanded more.—Held, that the plaintiff could not recover more than such sum, and that the defendant, having paid that sum into Court, was entitled to his costs from the date of the payment in. *Gretton v. Mees*, Law Rep. 7 Ch. D. 839.

5.—The plaintiffs owned large estates in New Zealand, the produce of which was shipped to England for realisation, principally in the London market. They had offices at Glasgow, but

no office or agency in London; and the mode adopted by them for the realisation of their produce was to ship the wheat in New Zealand and take bills of lading, making it deliverable to them in London. These bills were from time to time indorsed to Messrs. M. & T. of Glasgow, with instructions to sell the goods in London. Messrs. M. & T., when sales were effected, delivered "account sales" in the usual form, debiting all expenses and *del credere* commission, and then paying the balance by cheque at the expiration of three months from the average date of the sales appearing upon the account. Messrs. M. & T. from time to time re-indorsed the bills of lading received by them from the plaintiffs, specially to the defendants, who carried on business as corn factors and brokers in London, for the purpose of sale by them, the terms of the employment being altogether different from that upon which the plaintiffs employed Messrs. M. & T. The plaintiffs were aware that sales effected by Messrs. M. & T. for them in London were made by agents employed by them; but the plaintiffs were in no way parties to these sub-contracts, nor were their names disclosed in them. The indorsement by the plaintiffs to Messrs. M. & T., and by Messrs. M. & T. to the defendants, was for the purpose of sale only, and was not intended to pass any property in the cargoes. The defendants, in pursuance of their employment, effected sales of certain cargoes, and paid the proceeds into their own account with their bankers in the ordinary way, and from time to time made general remittances to Messrs. M. & T. on account of them. The proceeds thus got mixed up with all their receipts from other sources, but the proceeds of their sales could be traced and identified by reference to the defendants' books. In an action brought by the plaintiffs to recover from the defendants so much of the proceeds of certain cargoes as they had not remitted to Messrs. M. & T. the jury found, first, that the plaintiffs through their agents did not employ the defendants to sell and account for the proceeds to the plaintiffs; and, secondly, that the defendants knew that Messrs. M. & T. were acting as agents for another person:—Held (by Field, J., upon further consideration), that the plaintiffs were entitled to sue the defendants for the balance in their hands, and that the latter were not entitled to set off any claim, arising at other times and upon other transactions which they might have against Messrs. M. & T. Held also (upon the second finding of the jury), that the plaintiffs, as owners of the cargo, were entitled to follow the proceeds of the property in the hands of the defendants in their fiduciary character of agents and trustees. *The New Zealand and Australian Land Company v. Ruston*, 49 Law J. Rep. Q.B. 842; Law Rep. 5 Q.B. D. 474; reversed on appeal, but not yet reported.

8.—Where a broker acting within the scope of his authority buys goods for his principal,

and the vendor knows that the goods are bought for a principal, but does not know the name of the principal, the principal cannot discharge himself from liability to pay the vendor by settling with the broker, unless there has been conduct on the part of the vendor which justifies the buyer in concluding that the vendor looks to the agent and not to the principal for payment, and which estops the vendor from enforcing the debt against the principal. So held by the Court of Appeal (affirming the decision of Bowen, J., reported 49 Law J. Rep. Q.B. 239; Law Rep. 5 Q.B. D. 102). *Irvine and Company v. Watson and Sons* (App.), 49 Law J. Rep. Q.B. 531; Law Rep. 5 Q.B. D. 414.

*Contract made with agent of lunatic.* [See LUNATIC, 19.]

*Fraudulent acts of agent.* [See HUSBAND AND WIFE, 33.]

### (C) RIGHTS OF PRINCIPAL AS AGAINST THIRD PARTIES.

#### (a) Notice of agency.

*Order and disposition: reputed ownership.* [See BANKRUPTCY, F 7.]

#### (b) Following money.

7.—Average orders were entrusted to a bank to collect. The bank stopped payment, and was wound up:—Held, that the principal was not entitled to cash in the possession of the bank being proceeds of such orders collected but not paid over when the bank stopped. *In re the West of England and South Wales District Bank; ex parte Dale, Young & Company*, 48 Law J. Rep. Chanc. 600; Law Rep. 11 Ch. D. 772; and *Birt v. Burt*, ib. n.

*Receipt of wife's chose in action by agent.* [See HUSBAND AND WIFE, 14.]

### (D) AUTHORITY OF AGENT.

#### (a) Factor selling in own name: set-off.

8.—It being within the ordinary scope of a factor's authority to sell his principal's goods in his own name, a purchaser who has no knowledge of the agency is entitled to set off against the price of the goods a debt due to him from the factor personally. *Semenza v. Brinsley* (34 Law J. Rep. C.P. 161; 13 Com. B. Rep. N.S. 467) explained. *Ex parte Dixon; in re Henley* (App.), 46 Law J. Rep. Bankr. 20; Law Rep. 4 Ch. D. 133.

The principal had stipulated with his factor that bills of exchange for the price of goods sold should be made payable in such a manner as to shew the factor's connection with the principal, and they were, in fact, stamped "Agent for W. D. (Lim.), C. & G. Ironworks, Glasgow," in pale blue ink, but so that the stamp was concealed or obscured by the agent's signature:—Held, that the purchase being from a factor, and not a mere agent, the stipulation

was immaterial as regarded the purchaser, unless he was affected with notice, and that the stamping of the bills was not sufficient evidence of notice against the purchaser's uncontradicted oath that he was unaware of any agency. *Ibid.*

(b) *Revocation of, by insanity of principal.*

9.—The defendant, having held out his wife to the plaintiff as having authority to pledge his credit, afterwards became insane. The plaintiff, being unaware of the insanity, continued to supply the wife with goods on credit:—Held, that the defendant was liable to the plaintiff for the price of the goods so supplied. *Drew v. Nunn* (App.), 48 Law J. Rep. Q.B. 591; Law Rep. 4 Q.B. D. 661.

Insanity so great as to deprive the insane person of any contracting mind revokes an authority given by him, when sane, to an agent; and an agent who, after knowledge of such insanity on the part of the principal, continues to act on the authority so given will himself be liable to the person with whom he so deals. *Ibid.*

*Prosecution by bank manager.* [See *BANKER*, 3.]

*Ratification: managing owner and co-owners: power of attorney.* [See *SHIPPING LAW*, S.]

*Ship's husband or master, of.* [See *SHIPPING LAW*, N, U.]

*To delegate agency.* [See No. 3 *supra*.]

(E) LIABILITY, RIGHTS AND DUTIES OF AGENT.

(a) *Liability of agent contracting in his own name.*

10.—The defendants signed in their own name, without qualifying their signature, a charter-party purporting in the body to be made by them "as agents for charterers":—Held, that the defendants were personally liable upon the charter-party. *Hough and Company v. Manzanos and Company*, 48 Law J. Rep. Exch. 398; Law Rep. 4 Ex. D. 104.

11.—Though an agent signs a contract with his own name only, yet, if an intention to act merely on behalf of a named principal can be shewn in the body of the contract no personal liability will attach to the agent by reason of such signature. And the words "sold to you on account of James Morand & Co." sufficiently indicate such an intention. The judgment of the Court below reversed, and *Paice v. Walker* (39 Law J. Rep. Exch. 109; Law Rep. 5 Exch. 173) distinguished and impugned. *Gadd v. Houghton* (App.), 46 Law J. Rep. Exch. 71; Law Rep. 1 Ex. D. 357.

12.—The defendant, a broker, delivered to the plaintiffs a note in the following form—"Messrs. Southwell, I have this day sold by your order and for your account to my principals five tons of anthracene, payment in cash in fourteen days after delivery, less 2½ per cent.

discount, and one per cent. brokerage. *W. A. Bowditch*:"—Held (reversing the decision of the Court below, 45 Law J. Rep. C.P. 374; Law Rep. 1 C.P. D. 100), that there was nothing in the language of the above contract to make the defendant personally liable, as buyer of the goods, to the plaintiffs. *Humphrey v. Dale* (7 E. & B. 266; 26 Law J. Rep. Q.B. 137; in Exch. Ch., E. B. & E. 1004; 27 Law J. Rep. Q.B. 390) and *Fleet v. Murton* (41 Law J. Rep. Q.B. 49; Law Rep. 7 Q.B. 390) distinguished. *Southwell v. Bowditch* (App.), 45 Law J. Rep. C.P. 630; Law Rep. 1 C.P. D. 374.

13.—In an action on an undertaking signed by the defendant "on account of the B. colliery,"—Held, that there was evidence to warrant a jury in finding that he had signed as principal. *Weidner v. Hoggett*, Law Rep. 1 C.P. D. 533.

*Usage of London dry goods market: personal liability of broker.* [See *SALE OF GOODS*, 24.]

(b) *Stockbroker: trustee and cestui que trust.*

14.—A stockbroker who is instructed to sell trust funds and to re-invest the purchase-money, with actual notice of the trust, is a trustee of the proceeds of sale, and the customer employing him is entitled as against his trustee in bankruptcy to so much of the proceeds of sale as can be identified. *In re Strachan; ex parte Cooke* (App.), 46 Law J. Rep. Bankr. 52; Law Rep. 4 Ch. D. 123.

(c) *Incapacity of agent to profit by his agency.*

15.—The defendant company contracted with the plaintiff company to make and lay a telegraphic cable for 300,000*l.*, of which 40,000*l.* was to be paid on the order being given, and the remainder by instalments upon certificates given by the plaintiffs' engineer. Shortly afterwards the plaintiff company's engineer agreed with the defendant company to lay the cable for a sum to be paid to him by the defendants from time to time by instalments upon receipt by the defendant company of the instalments agreed to be paid them by the plaintiff company. This agreement was not disclosed to the plaintiff company, who gave the order for the cable, and paid the 40,000*l.* to the defendant company; but the work was not completed. Two years after the date of the contract a bill was filed to set it aside on the ground of fraud:—Held, that the agreement between the engineer and the defendant company was such a surreptitious dealing between the agent of one principal to the contract and the other principal as amounted to fraud, and that therefore the plaintiff company were entitled to have their contract with the defendant company set aside, and the 40,000*l.* repaid to them. *The Panama and South Pacific Telegraph Company (Lim.) v. The India Rubber, Gutta Percha and Telegraph Works Company (Lim.)*, 45 Law J. Rep. Chanc. 121; Law Rep. 10 Ch. D. 615.

Per Mellish, L.J.—Although the Court requires strict proof of the existence of fraud, yet where a case of fraud is proved, it will draw reasonable inferences as to the time when it was commenced. *Ibid.*

16.—On the 2nd of November, 1871, K. on behalf of the M. Company, then about to be formed, entered into an agreement with H. for the purchase of the lease of the M. Mine, the consideration to be paid partly in cash and partly in paid-up shares in the company. At the same time there was a secret arrangement between H. and K., that a portion of those shares should be transferred gratuitously to K. The company was formed on the 7th of November, and K. acted as secretary from that date till the 8th of March, 1872. All the shares were allotted, and on the 5th of March the stipulated number of paid-up shares were issued to H., who, on the 12th of April, transferred them for a nominal consideration to K. In the meantime K. had left England, having first executed the transfer in blank. He returned to England, and was appointed a director in December, 1874, and continued in that capacity till the winding-up in February, 1875. Calls were made under the winding-up to the full amount of the shares, and the official liquidator took proceedings against K. under the 165th section of the Companies Act, 1862, for a misfeasance as an officer of the company:—Held, first, affirming the decision of the vice-warden of the Stannaries, that K. could only acquire the shares for the benefit of the company. Secondly, affirming the same decision, that proceedings were properly taken under the 165th section, and thirdly, that the measure of compensation was the amount which the company would have received, had the shares been ordinary shares issued to a solvent purchaser, and the fact that they had been worthless to K. was immaterial. *In re The Morvah Consols Tin Mining Company (Lim.). McKay's Case* (App.), 45 Law J. Rep. Chanc. 148; Law Rep. 2 Ch. D. 1.

17.—The plaintiff sent a steamer to G., in China, for sale on commission. The terms were cash payment, and not less than 90,000 dollars. G. employed the defendant as a sub-agent, informing him of the terms. The defendant, having accepted the agency, informed G. that he could not sell for cash, and offered to take the vessel over himself upon the terms named. The defendant had in the meantime arranged with a Japanese prince for the sale to him of the steamer for 160,000 dollars, of which about 75,000 dollars were to be paid in cash, and the rest during the course of the year. The steamer was assigned to the defendant upon these terms, and the defendant carried out his sale to the prince. The plaintiff instituted a suit for the account and payment of the profits made by the defendant as his agent for sale of the vessel:—Held (affirming the decision of Hall, V.C.), that G. had both express and implied authority to appoint a sub-agent or substitute for sale of

the vessel; that having exercised that authority the relationship of principal and agent arose between the plaintiff and the defendant, and the defendant could not change his position of agent for that of purchaser without the consent of the plaintiff; that in this case G. had not consented to the termination of the agency till after the defendant had agreed to sell the steamer to the prince; that, therefore, when that sale was made the defendant was both in law and in fact the agent of the plaintiff; and that on all these grounds the plaintiff was entitled to the account claimed. *De Bussche v. Alt* (App.), 47 Law J. Rep. Chanc. 381; Law Rep. 8 Ch. D. 286.

The sale of the steamer, as above stated, took place in the commencement of the year 1869. Previously to July in that year the plaintiff was informed by friends in Japan, others than the defendant or G., that the steamer had been sold by the defendant for 160,000 dollars upon long credit of five years. The defendant did not give either to the plaintiff or G. any information as to the terms upon which he had sold the steamer to the prince, and the defendant did not know till after he filed his bill that the whole price was to be paid within a year, or that the defendant had agreed for the sale to the prince before he offered to take over the steamer himself for cash. The plaintiff wrote in July, 1869, giving a reluctant implied assent to the sale of the steamer. The suit was instituted in April, 1873:—Held (affirming the decision of Hall, V.C.), that the plaintiff had not prior to the institution of the suit any such knowledge of the material facts of the case as to prevent him by acquiescence, laches or estoppel by conduct from pursuing his claim against the defendant. *Ibid.*

18.—Per Malins, V.C.—Where an agent for sale of an estate in collusion with a purchaser, and in consideration of a bribe, allows the purchaser to obtain the estate at less than its value, with a view to a sale at a higher price to a sub-purchaser, and the transaction is concealed from the vendor, both agent and purchaser are jointly and severally liable for the increased amount obtained by such sub-sale. This decision reversed on appeal but on other grounds. *Morgan v. Elford*, Law Rep. 4 Ch. D. 352.

*Purchase by Scotch advocate from his clients without their knowledge.* [See SOLICITOR, 18.]

#### (d) Liability to account.

19.—H. by agreement with J. became solicitor on the record in certain suits, and an arrangement was made that moneys received by him as such solicitor should be applied to meet some fees to counsel due from J. The moneys were so received and applied after J.'s death. J.'s estate was insolvent, and a summons was taken out by J.'s executor for payment of these sums:—Held, that as H. had received these moneys as solicitor on the record and by express agreement with J., he was entitled to

retain them, subject only to an account. *Joyes v. Joyes*, 45 Law J. Rep. Chanc. 245.

20.—Unless there is a fiduciary relation between the parties the Court will only open settled accounts when the errors are considerable both in number and amount, but where there is such relation fewer errors or a single fraudulent entry will suffice. *Williamson v. Barbour*, 50 Law J. Rep. Chanc. 147; Law Rep. 9 Ch. D. 529.

*Misappropriation by agent.* [See EMBEZZLEMENT.]

(c) *Right to commission.*

21.—The defendant entered into the following contract with the plaintiff:—"In the event of your procuring me the sum of 2,000*l.*, or such other as I shall accept, I agree to pay you a commission of 2½ per cent. on any money received." The plaintiff procured a party willing to lend 1,625*l.* if the defendant shewed a sufficient title to his security. The defendant accepted the offer, but failed to shew a sufficient title. The negotiations consequently went off, and no money was in fact received by the defendant:—Held, that the plaintiff was notwithstanding entitled to his commission on the 1,625*l.*, as it was owing to the defendant's own default that he never received the sum, and the plaintiff had performed all his part of the contract. And, *semble*—per Bramwell, L.J., that those who bargain to receive commission for introductions have a right to their commission as soon as they have completed their portion of the bargain, irrespective of what may take place subsequently between the parties introduced. *Fisher v. Drewett* (App.), 48 Law J. Rep. Exch. 32.

22.—The defendant having ships for sale employed the plaintiff to obtain purchasers, agreeing to pay a commission if the plaintiff should be the means of introducing a purchaser. In February, 1876, the plaintiff introduced a person who had been recommended to buy one of the plaintiff's ships by A., and the defendant agreed that if this resulted in a sale the plaintiff and A. should share the commission. No sale did result, and in March A. mentioned the defendant's same vessel to B., who chanced to call upon him in reference to a ship of another owner. The plaintiff, hearing of this, informed the defendant of B.'s call, and suggested his seeing B. on the subject. The defendant did nothing in the matter, and B. had at that time no intention of purchasing the defendant's ship, and made no communication about it to any one. The defendant then told the plaintiff that it was no use doing anything until the ship returned home, and the plaintiff thenceforth took no steps to find a purchaser. A., however, in April, again reminded B. of the vessel, but B. took no notice of his letters, and neither the plaintiff nor the defendant were aware of A.'s having written. In May B. wrote as broker

direct to the defendant in reference to the vessel, and after some negotiation, on the 13th of June, disclosed the name of the principal for whom he was acting, and the sale was effected. The plaintiff, on hearing afterwards of the sale, claimed his commission, on the ground that the purchaser had been introduced through the medium of his original negotiations with A. The jury found on questions left to them, first, that the plaintiff was authorised to find a buyer for the defendant's vessel, and secondly, that B. was induced to enter upon the negotiation for the purchase by the information he received from A.:—Held (reversing the decision of Lush, J., 48 Law J. Rep. Q.B. 37), that the plaintiff was entitled to his commission. *Wilkinson v. Alston* (App.), 48 Law J. Rep. Q.B. 733.

23.—To entitle an agent to commission for the introduction of capital into a business such agent must shew that the introduction of such capital was directly caused by his agency. Where, therefore, 10,000*l.* capital was introduced upon which the agent received commission and subsequently 4,000*l.* more was advanced by the same person, which was not contemplated when the 10,000*l.* was advanced, but was the result of further negotiation between the lender and borrower:—Held, that the agent was not entitled to commission on the 4,000*l.* *Tribe v. Taylor*, Law Rep. 1 C.P. D. 505.

24.—Where a shipowner had for several years employed merchants to effect insurances for him, and had never enquired on what terms they had effected them, and it appeared that the merchants had consistently charged the shipowner with the full premiums, retaining the usual and accustomed per-centage of five per cent. brokerage and ten per cent. discount for ready money,—Held, that the shipowner could not object to the ten per cent. being so retained. *Baring v. Stanton* (App.), Law Rep. 3 Ch. D. 502.

(f) *Lien of agent on goods.*

25.—W. was appointed agent of a company for the sale of goods manufactured by them. Part of the arrangement was that the company should draw on W. against the goods assigned to him as agent. W. accepted a bill for 200*l.* at four months' date; before the bill arrived at maturity the company was ordered to be wound up, and the goods then in possession of W. were taken by the liquidators and sold by them. W. honoured the bill when it arrived at maturity:—Held, that W. had a lien on the goods to the extent of the payment by him in respect of the bill, and that he was entitled to be repaid the amount paid by him, out of the proceeds of the sale of the goods. *In re Percy's Patent Felted Fabric Company (Lim.)*, 45 Law J. Rep. Chanc. 318; Law Rep. 1 Ch. D. 631.

*Policy on ship: broker's lien on.* [See MARINE INSURANCE, 27.]



PRINCIPAL AND SURETY.

(A) VALIDITY AND CONSTRUCTION OF CONTRACT OF GUARANTY.

- (a) *Illegality: stifling prosecution.*
- (b) *Joint and several liability of partners.*
- (c) *Past debts, whether extending to.*
- (d) *Limited guaranty.*
- (e) *Continuing guaranty.*

(B) RIGHTS OF SURETY.

- (a) *Right to securities on payment of creditor.*
- (b) *Contribution: special agreement between sureties.*

(C) DISCHARGE OF SURETY.

- (a) *Alteration of agreement between principals.*
- (b) *Subsequent legislation, effect of.*
- (c) *Releasing principal debtor.*
- (d) *Giving time to principal debtor.*

(A) VALIDITY AND CONSTRUCTION OF CONTRACT OF GUARANTY.

(a) *Illegality: stifling prosecution.*

1.—A contract of suretyship is not *uberrima fidei*, but is one which a small amount of *mala fides* or want of disclosure in its inception will vitiate. *The London and Provincial Marine Insurance Company v. Davies. Davies v. The London and Provincial Marine Insurance Company*, 47 Law J. Rep. Chanc. 511; Law Rep. 8 Ch. D. 469.

A sum was provided by A. under an agreement, by which it was to be applied in paying the liability of B. to a company, with the object on the part of A. of saving B. from a criminal prosecution. The company intended to prosecute, but pending negotiations for the contract counsel advised them that no crime had been committed:—Held, that the agreement was void on three grounds—first, that the company had not disclosed the fact that they had abandoned their intention; secondly, that it was against public policy as being an agreement to stifle a public prosecution; thirdly, that it was made under pressure. Held also, that the illegality was not such that (the fund being *in medio*) the Court would refuse to interfere in favour of A. *Ibid*.

(b) *Joint and several liability of partners.*

2.—The firm of N. & Co., consisting of five persons, gave their written undertaking to deliver to a bank the personal obligation of the firm and of the individual partners, and also the guarantee of S. & Co., as security for advances to be made to N. & Co. by the bank. The firm of S. & Co. consisted of three of the persons who were partners in N. & Co. Subsequently the bank received a guarantee, commencing: "We hereby guarantee," and signed in the firm's name of S. & Co., and also by the three partners in S. & Co. in their individual names:—Held, that the guarantee gave the bank the joint liability

of the firm of S. & Co., and as an additional security, the separate and individual liability of each member of that firm. *In re Smith, Fleming & Company; ex parte Harding* (App.), 48 Law J. Rep. Bankr. 115; Law Rep. 12 Ch. D. 537.

(c) *Past debts, whether extending to.*

3.—A married woman being entitled to separate estate, without restraint upon anticipation, in order to obtain credit for her husband, a trader, gave the following guarantee to a wholesale dealer: "In consideration of you the said G. M. having, at my request, agreed to supply and furnish goods to W. M. C., I do hereby guarantee to you, the said G. M., the sum of 500l. This guarantee is to continue in force for the period of six years, and no longer:—Held (reversing the decision of Fry, J.), that the guarantee only extended to the price of goods supplied after it was given, and not to debts owing to G. M. in respect of previous transactions. *Morrell v. Cowan* (App.), 47 Law J. Rep. Chanc. 73; Law Rep. 7 Ch. D. 151.

(d) *Limited guaranty.*

4.—Where a surety has become party to a bond conditioned for payment of the debt and interest, with a proviso that he shall not be liable for more than a certain sum, and the creditor, under a liquidation of the affairs of the debtor, receives a dividend on the whole of the debt and interest then due, the right of the surety to have a proportion of those dividends applied in reduction of the claim against him depends upon whether the bond amounts to a guarantee of the whole debt, with a limitation of the sum which he is to be called upon to pay, or to a guarantee of a part only of the debt. In the former case he is liable for the whole unpaid balance to the extent of the sum limited in the proviso. In the latter case he is entitled to a deduction *pro rata* in respect of the dividends. *Ellis v. Emanuel* (App.), 46 Law J. Rep. Exch. 25; Law Rep. 1 Ex. D. 157.

*Prima facie*, a continuing guarantee, limited in amount, to secure a floating balance, is, as between surety and creditor, a guarantee of so much only of the debt as does not exceed the sum named in the limitation, for it is to be presumed that the surety did not contemplate the creditor's allowing the debtor to become indebted to him beyond that amount. No such presumption arises where the debt, in respect of which the bond is given, is an ascertained amount exceeding the sum named in the limitation. *Gray v. Seckham* (41 Law J. Rep. Chanc. 281) distinguished. *Ibid*.

(e) *Continuing guaranty.*

5.—A guarantee to Lloyds against all the engagements of H. as underwriting member of Lloyds was held to continue after the death of the guarantor; to extend to liabilities to strangers to Lloyds contracted at Lloyds through

subscribers, and to be enforceable for the benefit of such strangers by Lloyds as trustees for the subscribers, the agents of such strangers. *Lloyds v. Harper*, 49 Law J. Rep. Chanc. 217; affirmed on appeal, 50 Law J. Rep. Chanc. 140.

8.—A continuing guarantee is not *ipso facto* revoked by the death of the guarantor. But notice of the death of the guarantor and of the existence of a will, given to the holder of the guarantee, is constructive notice of the determination of the guarantee as to future advances. *Cuthart (Public Officer of the Stalybridge, Hyde and Glossop Bank) v. Clementson*, 49 Law J. Rep. Q.B. 204; Law Rep. 5 Q.B. D. 42.

*Construction of guarantee: condition precedent.*  
[See CONDITION PRECEDENT, 1.]

#### (B) RIGHTS OF SURETY.

##### (a) Right to securities on payment of creditor.

7.—A woman who was married before the Dower Act, joined in a mortgage by her husband of his freehold to release her dower, the equity of redemption and trusts of surplus under the power of sale being reserved to the husband:—Held (reversing the decision of Bacon, V.C., 46 Law J. Rep. Chanc. 545; Law Rep. 4 Ch. D. 639), that the equity of redemption was charged with the amount of dower against a subsequent assign of the husband. *Danson v. The Bank of Whitehaven*, 46 Law J. Rep. Chanc. 884; Law Rep. 6 Ch. D. 218.

8.—In the absence of a special contract the law of principal and surety does not apply as between the discounter of and the indorsees and other parties to a bill of exchange in respect of securities pledged by any of such other parties to and held by the discounter for the amount due on the bill of exchange. *Duncan, Fox & Company v. The North and South Wales Bank (App.)*, 48 Law J. Rep. Chanc. 876; Law Rep. 11 Ch. D. 88; reversed on appeal by the House of Lords, 50 Law J. Rep. Chanc. 855; Law Rep. 6 App. Cas. 1.

A., a member of a firm, pledged his separate estate to a bank to secure to the bank the balance for the time being owing to the bank from the firm. Afterwards the firm accepted bills of exchange which were indorsed to and discounted for B. by the bank. The firm became bankrupt and the bills were dishonoured at maturity. The bank having demanded of B. payment of the amount due on the bills, B. claimed to be a surety for the firm in respect of the bills, and to be entitled as such surety to the benefit of the securities held by the bank:—Held, that B., as indorsee of the bill of exchange, was a principal debtor to the bank, and not entitled to any such right of suretyship as he claimed. Held, also, that if the law of suretyship could apply, A. and B. were co-sureties for the firm, and that A. had the prior right to require B. as a principal to the bill, to contribute to relieve him. *Ibid.*

9.—A surety is entitled to the benefit of any security which the creditor has received for the debt, though he has received it after the con-

tract of suretyship; and therefore, where the creditor has so dealt afterwards with such security that on payment by the surety it cannot be given to him in the same condition as it was when the creditor first acquired it, the surety is discharged to the extent of such security. *Campbell v. Rothwell*, 47 Law J. Rep. Q.B. 144.

10.—By a scheme of arrangement under section 28 of the Bankruptcy Act, 1869, all proceedings in a liquidation were stayed, and an agreement was approved whereby the property of the debtors was transferred to a company formed to continue their businesses, who were to issue to every creditor, to the amount of his debt, B debentures payable to bearer, and only payable (except at the company's option) out of the residue of profits after payment of certain other charges, or on the winding up of the company. Creditors to a large amount were the holders of bills drawn by the liquidating debtors, on which the acceptor (who stood in the position of surety for them) had, after proof by such creditors in the liquidation, paid them a composition of four shillings in the pound. The surety claimed to take four shillings in the pound of the debentures to be issued to the creditors, on the ground that such debentures were a satisfaction of their debts in full:—Held (Baggallay, J.A., *dubitante*), that the debentures must be considered as taken, not in satisfaction of the debts, but of the dividends to be received in respect thereof; and that the surety's only right was to pay the debt in full, and take over the debentures; or possibly (per Mellish, L.J.), if the debentures were really worth more than 16s. in the pound (which they were not), to require the debentures to be sold, and the surplus paid to him. *Ex parte Corry; in re Fothergill (App.)*, 45 Law J. Rep. Bankr. 153; Law Rep. 3 Ch. D. 445 (nom. *Ex parte Turquand*; *in re Fothergill*).

##### (b) Contribution: special agreement between sureties.

11.—A, B, C and D, at request of E., who was in pecuniary difficulties, had joined with E. as sureties in various promissory notes and bills of exchange, but in no one instance had they all four joined. A. was liable to a larger amount than B., C. and D. The creditors of E. pressed for payment, and A, B, C. and D. employed W., a solicitor, to enter into arrangements with the creditors on their behalf, and the following agreement was drawn up by W., and signed by A., B., C. and D.: "We, the undersigned, being jointly liable as guarantors upon certain bills of exchange given in favour of E., hereby authorise W. to act for us as our joint and several solicitor in all matters concerning those bills, and we further authorise W. to take such proceedings as he may think fit to recover the amount of such bills from E. In carrying out the above terms W. will negotiate to settle the above upon the best terms he can. As, however, between the parties themselves, the following is the basis of the arrangement *inter se*: Upon

the amount being ascertained for which the liabilities can be discharged, the parties to this arrangement undertake to provide the same in the proportion of one-fourth each, and all sums recovered from E. are to be brought into account and repaid to such parties in proportion to their existing liabilities, or to the amounts respectively found by them." In a suit by A. for contribution,—Held, that upon the true construction of this agreement, the parties did not intend to alter their existing liabilities and to take the entire liability upon themselves in equal shares, but only to advance the requisite money in the first instance in equal shares, and that consequently their ultimate rights and liabilities were not thereby varied. *Ardeekens v. Howard Vaughan* (H.L.), 45 Law J. Rep. Chanc. 622.

(C) DISCHARGE OF SURETY.

(a) Alteration of agreement between principals.

12.—In an action against a surety on his bond, whereby he guaranteed the performance of a covenant by his principal, the lessee of a farm and flock of sheep, to deliver up to the plaintiff at the end of the tenancy, with the farm, a like number and quality of sheep regularly heathed and pastured on the farm, it was proved that an alteration had been made in the terms of the letting by the surrender of a small part of the farm and a proportionate reduction of the rent. The jury found that the alteration had not made any material difference in the relation between the parties, so as to affect the capacity of the tenant to perform his covenant:—Held (affirming the decision below, 47 Law J. Rep. Q.B. 81), by Cotton, L.J., and Thesiger, L.J. (Brett, L.J., dissenting), that the surety was discharged. By Cotton, L.J., and Thesiger, L.J.—Any alteration in the form of the agreement between principals discharges the surety, unless it is self-evident that the alteration cannot prejudice the surety; the surety himself being the judge as to materiality. By Brett, L.J.—The surety is discharged where there has been a material alteration, or an alteration of some specific provision of the agreement, but not otherwise. By the whole Court (overruling the decision below).—The mere surrender of a small part of demised premises and proportionate reduction of the rent does not in itself amount to a surrender by operation of law of the old tenancy, and the creation of a new one. *Holme v. Brunskill* (App.), 47 Law J. Rep. Q.B. 610; Law Rep. 3 Q.B. D. 495.

13.—The defendant became surety for the payment of a debt of 400*l.*, owing from P. to the plaintiff, and by agreement between the parties, P. handed over a policy of insurance on his life to the plaintiff as collateral security. P. afterwards became bankrupt, and at that time two of the premiums on the policy remained unpaid, and the policy had lapsed. The plaintiff proved in P.'s bankruptcy for the full amount of her debt, stating in her proof that

she held the policy as collateral security, but putting no value on it. The policy was afterwards given up to the trustee in bankruptcy for the benefit of the creditors, and the insurance company agreed to reinstate it. The plaintiff sued the defendant, as surety, for the amount of P.'s debt, and at the trial the plaintiff's counsel agreed to credit the defendant with 32*l.*, being the admitted value of the policy when reinstated:—Held (affirming the judgment of Manisty, J., reported 49 Law J. Rep. Q.B. 353; Law Rep. 5 Q.B. D. 138), that the defendant's position as a surety was not altered so as to discharge him from liability, by reason of the course the plaintiff had pursued in the bankruptcy, as the policy was valueless when she sent in her proof:—Held also, that, if the policy was of value when the plaintiff proved in the bankruptcy, and if she exercised her option, under the bankruptcy law, of handing over her security to the trustee, and proving for the whole amount of her debt, the defendant was not thereby wholly discharged from liability as a surety, but only to the extent of the value of the policy. *Rainbow v. Jiggins* (App.), 49 Law J. Rep. Q.B. 718; Law Rep. 5 Q.B. D. 422.

(b) Subsequent legislation, effect of.

14.—Where the defendant undertook to indemnify the plaintiff against all liability which he might incur in giving a bond to the Crown, and under a statute passed since the giving of the bond the money secured was ordered to be paid into Court,—Held, on demurrer, that the defendant's liability was not affected by the subsequent legislation. *Webster v. Petre*, Law Rep. 4 Ex. D. 127.

(c) Releasing principal debtor.

15.—N., a wine merchant, was desirous of turning his business into a limited liability company. Being at the time indebted to the plaintiffs he entered into an agreement, binding himself (among other things) to transfer to them certain shares or warrants of the company, to the amount of 6,000*l.*, and to redeem them at par within twelve months. His book debts, amounting to about 8,000*l.*, were to be collected and divided equally between the plaintiffs and E., the plaintiffs re-delivering warrants to an amount corresponding to that which they received. The redemption of the shares within twelve months was guaranteed by the defendant. Afterwards, and with the knowledge, but without the assent of the defendant, who had become chairman of the company, the plaintiffs released their interest in the book debts, receiving bills of exchange accepted by the company in lieu thereof, and the right to the book debts was transferred to the company. The shares not having been redeemed, an action was brought on the guarantee:—Held (affirming the decision of the Court below, 45 Law J. Rep. Q.B. 869), that

the defendant was discharged altogether. *Polak v. Everett* (App.), 46 Law J. Rep. Q.B. 218; Law Rep. 1 Q.B. D. 669.

(d) *Giving time to principal debtor.*

16.—The defendant gave a bond to the plaintiffs for the performance by D. of a contract to take tar and ammoniacal liquor from the plaintiffs, containing a stipulation that estimates of the quantity taken should be made on the last day of every month, "and payment for the same should be made within the first fourteen days of the ensuing month after every estimate should be so made, unless the company should by writing signed by their secretary allow a longer time for payment." One monthly payment being in arrear, the secretary of the company by writing, after the expiration of the fourteen days prescribed by the agreement for payment, gave further time to D.:—Held, first (confirming the decision of the Common Pleas Division), that such giving time was not a giving of time in accordance with the agreement, and therefore operated as a discharge of the surety with respect to the payment for which time was so given. Held, secondly (reversing the decision of the Common Pleas Division, 45 Law J. Rep. C.P. 869; Law Rep. 1 C.P. D. 707), that the contract of the surety, being for several payments and at different times and in respect of different deliveries, was severable; and that the giving time to the principal in respect of one payment did not discharge the surety as to the rest. *The Croydon Commercial Gas and Coke Company v. Dickinson* (App.), 46 Law J. Rep. C.P. 157; Law Rep. 2 C.P. D. 46.

17.—Where a debt is contracted by two joint debtors, the creditor may bind himself to one of them in any way not amounting to an absolute release, without thereby prejudicing his right to sue the other; and if the position of the joint debtors changes to that of principal and surety, while the debt exists the position of the creditor remains unchanged, although he gives time to one of them after he has had notice of the change. *Swire v. Redman*, Law Rep. 1 Q.B. D. 536.

*Oakeley v. Pasheller* (4 Cl. & F. 207; 10 Bli. N.S. 548) distinguished. *Ibid.*

*Appropriation of payments by creditor.* [See BILL OF EXCHANGE, 25.]

### PRIORITY.

*Agent: following trust money.* [See PRINCIPAL AND AGENT, 7.]

*Bottomry bond: necessities.* [See SHIPPING LAW, C 2.]

*Debenture-holders, of.* [See BOND, 1.]

*Holders of bills of sale, of.* [See BILL OF SALE, 16-18.]

*Mortgages, of.* [See MORTGAGE, 20-28.]

*Patentees, of.* [See PATENT, 2-5.]

*Sequestration, of.* [See SEQUESTRATION.]

*Shipping: claim of owners of cargo and crew.* [See SHIPPING LAW, E 21.]

*Solicitor: costs: mortgage by client.* [See SOLICITOR, 38.]

### PRISON.

[Amendment of the law respecting certain returns from convict prisons. 39 & 40 Vict. c. 42.]

[The law relating to prisons in England amended. 40 & 41 Vict. c. 21.]

1.—The liability for the maintenance of insane prisoners, which by 3 & 4 Vict. c. 54. s. 2 is imposed upon the county in default of any ascertained place of settlement, is not transferred from the county to the Consolidated Fund by the Prisons Act, 1877 (40 & 41 Vict. c. 21). *Reg. v. The Justices of Surrey*, 48 Law J. Rep. M.C. 188; affirmed on appeal, 50 Law J. Rep. M.C. 4.

2.—The Prisons Act, 1877 (40 & 41 Vict. c. 21), has not transferred to the Secretary of State the liability for the expenses of conveying prisoners after summary conviction or committal for trial by a magistrate to the gaol named in the warrant. Such expenses still fall, as enacted in 27 Geo. 2. c. 3, and 11 & 12 Vict. c. 42, in Middlesex upon the overseers, and in other counties upon the treasurer of the county where the offence alleged against the prisoner was committed. *Mullins v. The Treasurer of the County of Surrey*, 49 Law J. Rep. Q.B. 257; Law Rep. 5 Q.B. D. 170; reversed on appeal, 50 Law J. Rep. Q.B. 181; Law Rep. 6 Q.B. D. 156.

*Discharge of prisoner: computation of time.* [See FALSE IMPRISONMENT, 1.]

*Boy sent after imprisonment to reformatory: expense of supplying proper clothing for reformatory.* [See REFORMATORY.]

*Lunatic prisoner: maintenance.* [See LUNATIC, 25.]

### PRIVILEGE.

*Of Parliament.* [See PARLIAMENT, 1.]

*Privileged communications.* [See DIVORCE, 35; LIBEL, 4-12; PRODUCTION, 1-13.]

### PRIVY COUNCIL.

1.—Where the amount in question was only 300 dollars, and the issue between the parties involved no general principle and did not affect other cases, their Lordships declined to advise the exercise of the prerogative of allowing an appeal reserved to Her Majesty by the Canadian Act, 38 Vict. c. 11. s. 47. *Johnston v. The Ministers and Trustees of St. Andrew's, Montreal* (P.C.), Law Rep. 3 App. Cas. 159.

2.—The judicial committee will not enter-

tain grounds of appeal which were not taken in the Court below. *The London Chartered Bank of Australia v. White & Blackwood*, 48 Law J. Rep. P.O. 75; Law Rep. 4 App. Cas. 413.

*Appeal involving questions previously decided.*  
[See CHURCH AND CLERGY, 19.]

*Leave to appeal: Lower Canada: Queen's Bench: civil code.* [See COLONIAL LAW, 4.]

*Leave to appeal: Quebec Controverted Elections Act.* [See COLONIAL LAW, 14.]

*Stay of execution on motion pending appeal.*  
[See CHURCH AND CLERGY, 35.]

## PRIZE OF WAR.

[See BOOTY OF WAR.]

## PRO CONFESSO.

[See PRACTICE, X.]

## PROBATE.

### (A) JURISDICTION.

- (a) *To grant probate.*
- (b) *To set aside testamentary disposition after grant.*
- (c) *Injunction, to grant.*

### (B) GRANT OF PROBATE OR ADMINISTRATION.

- (a) *To trustees of settlement.*
- (b) *To father of grandchildren where son abroad.*
- (c) *To party entitled in distribution.*
- (d) *To stranger with consent of committee and next-of-kin of lunatic.*
- (e) *To creditor.*
  - (1) *Bond to pay debts ratably.*
  - (2) *Grant ad colligenda bona with power of sale.*
  - (3) *Creditor preferred to next-of-kin.*
- (f) *Administration de bonis non.*
  - (1) *Will of married woman: executrix of first husband.*
  - (2) *Limited grant to assignee of trustee.*
  - (3) *Renunciation by executrix and universal legatee: retraction of.*
- (g) *Will of married woman having separate estate.*
- (h) *Administration durante absentia.*
- (i) *Will of naturalised British subject domiciled abroad.*
- (k) *Executor's executor out of jurisdiction.*
- (l) *American and English wills dealing with properties separately.*
- (m) *Foreign grant of English will: English translation admitted to probate.*
- (n) *Will of Persian subject made in Persia.*
- (o) *Foreign will: evidence: executor's affirmation.*

### (C) ADMINISTRATION BOND.

### (D) PRACTICE AND PLEADING.

- (a) *Citation of parties interested.*
- (b) *Service out of jurisdiction.*

- (c) *Attachment: refusal to produce will.*
- (d) *Amendment of pleadings at hearing.*
- (e) *Right to begin.*
- (f) *Appeal.*
  - (1) *From findings on issues of fact.*
  - (2) *From Judge of Probate Division.*

### (g) Costs.

- (1) *Abortive proceedings in Chancery Division.*
- (2) *Married woman defendant.*
- (3) *Out of real estate.*
- (4) *Taxation: administrator pendente lite.*

## (A) JURISDICTION.

### (a) *To grant probate.*

1.—A Judge of the Chancery Division has jurisdiction to grant probate of a will, but it is more convenient for such proceeding to be taken in the Probate Division. *Pinney v. Hunt*, Law Rep. 6 Ch. D. 98.

### (b) *To set aside testamentary disposition after grant.*

2.—After probate of a will has been granted, the Chancery Division has no jurisdiction to entertain a suit to set aside testamentary dispositions on the ground of fraud in obtaining the execution of the will, the Probate Division having exclusive jurisdiction in the matter. *Meluish v. Milton* (App.), 45 Law J. Rep. Chanc. 836; Law Rep. 3 Ch. D. 27.

### (c) *Injunction, to grant.*

3.—The Court of Probate, as a Division of the High Court of Justice, to which the jurisdiction formerly exercised by the Court of Chancery has been transferred by 36 & 37 Vict. c. 66. s. 16, has power to issue an order prohibiting the dealing in any share of a ship for a time and on conditions to be named therein, the registrar of shipping, on being served with such order, or an official copy thereof, must obey the same. *Nicholas v. Dracochis*, 45 Law J. Rep. P.D. & A. 45; Law Rep. 1 P.D. 72.

4.—The deceased died intestate. The plaintiff, as next-of-kin, claimed the grant of administration, alleging that the deceased had died a bachelor. At his instance a writ of summons issued against the defendant, who claimed to be the lawful widow of the deceased, and was in possession of his personal estate, but there was some difficulty in serving the writ upon her. The Court granted an injunction restraining her from dealing with the estate. *Brand v. Mitson*, 45 Law J. Rep. P. D. & A. 41.

### (B) GRANT OF PROBATE OR ADMINISTRATION.

#### (a) *To trustees of settlement.*

5.—A. died intestate, leaving B., his lawful sister and only next-of-kin, surviving him. B. was a married woman, but she had for some

years lived apart from her husband, who was abroad, and whose address was not known. Under the marriage settlement B. took the first life interest in all her after-acquired property. The Court, with her consent, granted administration to the personal estate and effects of A. to the trustees of the settlement. *In the goods of Maychell*, 47 Law J. Rep. P. D. & A. 31; Law Rep. 4 P.D. 74.

(b) *To father of grandchildren where son abroad.*

6.—The testator appointed his wife sole executrix of his will. She predeceased him, and he left surviving him a son and three grandchildren, minors. The son was resident in America, but his precise whereabouts was not known. The Court granted administration, with will annexed, under the 73rd section of the Probate Act, to the father of the grandchildren of the deceased, for their use and benefit. *In the goods of John See*, 48 Law J. Rep. P. D. & A. 70; Law Rep. 4 P.D. 86.

(c) *To party entitled in distribution.*

7.—A. died a spinster and intestate, leaving B., her mother and next-of-kin, and C., her sister, together the only persons entitled in distribution to her personal estate and effects. B., the mother, being aged and infirm, and presumably incapable of administering the estate, the Court made the grant to C. under the 73rd section. *In the goods of Clarke*, 46 Law J. Rep. P. D. & A. 16.

(d) *To stranger with consent of committee and next-of-kin of lunatic.*

8.—A. died intestate, leaving B., a person of unsound mind, her lawful sister and sole next-of-kin, surviving her. C. was appointed committee of B.'s estate, but the Masters in Lunacy objected to his taking the grant of administration of A.'s estate. In these circumstances the Court, with the consent of C. and the consent also of the next-of-kin of B., made the grant to D., a stranger in blood to the deceased. *In the goods of Hastings*, 47 Law J. Rep. P. D. & A. 30; Law Rep. 4 P.D. 73.

(e) *To creditor.*

(1) *Bond to pay debts ratably.*

9.—A creditor's administration was granted to A., who did not enter into a bond to pay *pro rata* the debts of the deceased. The estate was insolvent, and A. claimed to retain his own debt out of the assets. The grant having been properly obtained, the Court refused to revoke it, in order to impose upon the administrator the condition of distributing the assets ratably among all the creditors of the deceased, but intimated that for the future, and whether the other creditors appeared or not, the person taking the grant should enter into a bond to pay the debts *pro rata*. *In the goods of Braokenbury*, 46 Law J. Rep. P. D. & A. 42; Law Rep. 2 P.D. 272.

(2) *Grant ad colligenda bona, with power of sale.*

10.—The deceased, who was a Prussian subject resident in this country, died a bachelor and intestate, without any known relations. He carried on the business of a schoolmaster, and an offer was made for the purchase of the goodwill of the school if possession were given forthwith. The Court, in these circumstances, made a grant *ad colligenda bona* to a creditor, with power to dispose of the goodwill of the school, but directed that the administrator should bring into the registry the proceeds of the sale after deduction of expenses and his taxed costs of obtaining the administration. *In the goods of Schwerdtfeger*, 45 Law J. Rep. P. D. & A. 46; Law Rep. 1 P.D. 424.

(3) *Creditor preferred to next-of-kin.*

11.—Where the next-of-kin of an intestate paper manufacturer (who was alleged to have died insolvent) was a poor woman, quite unfit to carry on and wind up a business, the Court, under 20 & 21 Vict. c. 77. s. 73, granted administration to a principal creditor, whose application was sanctioned by the other creditors. *In the goods of Farrand*, Law Rep. 1 P.D. 439.

(f) *Administration de bonis non.*

(1) *Will of married woman, executrix of first husband.*

12.—W. B. died in 1864, leaving a will of which he appointed his wife (with others) executrix. She proved the will, and survived the other executors. She afterwards married J. S., and during coverture with him made a will under certain powers vested in her, and appointed her husband, J. S., sole executor. On her death in 1876 letters of administration (with her will annexed) were granted to J. S., who was the sole person entitled to the personal estate over which she had no disposing power:—Held, that a further grant was required as to the unadministered effects of W. B., and such grant was made (with the consent of J. S.) to R. F., the natural and lawful daughter of W. B., and one of the residuary legatees under his will. *In the goods of Bridger*, 47 Law J. Rep. P. D. & A. 46; Law Rep. 4 P.D. 77.

(2) *Limited grant to assignee of trustee.*

13.—A. died intestate, and letters of administration of his personal estate and effects were granted to B., a creditor. B. was subsequently adjudicated a bankrupt, and died, leaving part of A.'s estate unadministered. The trustee in bankruptcy of B.'s estate assigned to C., who was also a creditor of B.'s, the debts due from A.'s estate and securities. The Court made a grant *de bonis non* to C., limited to B.'s interest in A.'s estate. *In the goods of Burdett*, 45 Law J. Rep. P. D. & A. 71; Law Rep. 1 P.D. 427.

(8) *Renunciation by executrix and universal legatee, retraction of.*

14.—A., sole executrix and universal legatee, renounced her right as such to the grant of letters of administration, which was accordingly made to B., one of the next-of-kin. Upon the death of B., intestate and insolvent, A. was allowed to retract her renunciation as universal legatee, and take a grant of letters of administration *de bonis non*. *In the goods of Wheelwright*, 47 Law J. Rep. P. D. & A. 87; Law Rep. 3 P. D. 71.

(g) *Will of married woman having separate estate.*

15.—Where the Court is satisfied that there is some separate estate of a married woman, it is not bound to decide as to the details of which it consists, but probate should be granted "to all property that the testatrix had power to dispose of." *In the goods of Tharp* (App.), Law Rep. 3 P. D. 76.

(h) *Administration durante absentia.*

16.—One of the executors named in the will proved the paper and then left the country. The second executor named in the will was also out of the jurisdiction. The Court made a grant *durante absentia* to a legatee and also one of the next-of-kin, to enable her to become a party to a suit in the Chancery Division for the administration of the estate. *In the goods of Jenkins*, 49 Law J. Rep. P. D. & A. 30.

(i) *Will of naturalised British subject domiciled abroad.*

17.—Testator, an Italian by birth, obtained in 1852 letters of naturalisation as a British subject, and in 1871 he executed in England his will according to the forms prescribed by the English law. The letters of naturalisation excepted from the privileges conferred on testator "any rights and capacities of a natural born subject out of and beyond the dominions of the British Crown and the limits thereof," and he died in 1876, domiciled in Italy:—Held, that the will was entitled to probate under 24 & 25 Vict. c. 114. s. 2. *In the goods of Gally*, 45 Law J. Rep. P. D. & A. 107; Law Rep. 1 P. D. 438.

(k) *Executor's executor out of jurisdiction.*

18.—The case of an executor's executor is within the spirit of 38 Geo. 3. c. 87. s. 1, and 21 & 22 Vict. c. 95. s. 18. The executor's executor being out of the jurisdiction, the Court granted administration with will annexed, to the nominee of parties interested, limited to a particular fund. *In the goods of Grant*, 45 Law J. Rep. P. D. & A. 88; Law Rep. 1 P. D. 435.

(l) *American and English wills dealing with properties separately.*

19.—The testator, an American, possessed of property in the United States of America and

England, duly executed two wills. By the first he disposed of his property generally, and by a codicil thereto he expressly limited its application to his estates, real and personal, within the United States of America. By the second will, of later date, and in which different executors were named, he disposed of his property in England, moneys invested in the 3 per cent. Consols, and expressly declared that it was to be deemed a special and limited will, applicable to the said British Consols only; and in a codicil thereto he directed that if his said special will could not receive probate it should take effect as a further codicil to his general will. The Court, in decreeing probate of the English will, held that it was not necessary to incorporate the American will in the probate, but required that verified copies of the American will and codicils should be filed in the registry, and that the existence of such documents should also be noted on the probate. *In the goods of Astor*, 45 Law J. Rep. P. D. & A. 78; Law Rep. 1 P. D. 150.

(m) *Foreign grant of English will: English translation admitted to probate.*

20.—A. died in Mexico, leaving a will written in English, but duly executed according to the law of Mexico, where he was domiciled. The will having been translated into Spanish by order of the Court, probate of it was granted by the proper Mexican tribunal. The Spanish translation was forwarded to this country, and the Court admitted to probate an English translation of it. *In the goods of Rule*, 47 Law J. Rep. P. D. & A. 32; Law Rep. 4 P. D. 76.

(n) *Will of Persian subject made in Persia.*

21.—A., a native of and domiciled in Persia, made and duly executed his will according to Persian law. By the law of Persia, which does not recognise the principle of representation of the estate of a deceased person, his will as well as all his property is taken possession of by the Court, having exclusive jurisdiction in matters of wills, inheritance and succession. This Court is composed of ecclesiastics called "Moojateheds." It is presided over by one of the body, styled the "Superior Religious Head and Highest Authority," and his decrees are irrevocable. Neither the original nor any copy of the will is allowed to go out of the possession of the Court. The contents of the will are published by the Court in the presence of the persons (legatees and heirs) interested in the property of the deceased, and a document is given to each, certifying the portion of the property to which he is entitled. The testator died possessed of certain property (funds standing in his name in the books of the Bank of England), and this property was appointed to B., his eldest son, by the "Superior Religious Head," who gave a document under his hand and seal certifying that fact:—The Court granted to the duly appointed attorney of B. letters of administration

(with the decree of the Persian Court annexed), limited to the property specified in the said decree. *In the goods of Dost Ali Khan*, 49 Law J. Rep. P. D. & A. 78; Law Rep. 6 P. D. 6.

(c) *Foreign will: evidence: executor's affirmation.*

22.—A., a native of and domiciled in Germany, made and duly executed his last will and testament, with ten codicils thereto, according to German law, and thereof appointed B., his nephew, executor. The will was proved in the Court of Gera, in Germany. It was requisite that probate of it should also be obtained in this Court, and the necessary papers for the purpose, with due instructions, were forwarded to B., the executor, in Germany. The papers were returned by B., accompanied by an affirmation which was made by him before the British Vice-Consul at Breslau, but it contained no statement that he had a conscientious objection to the taking of an oath, so as to bring him within the exception created by the Common Law Procedure Act, 1854, section 20. The Court held that the affirmation was defective, and refused to receive the papers. *In the goods of his Highness Prince Henry the sixth-ninth of Reuss-Köstritz*, 49 Law J. Rep. P. D. & A. 67.

(C) ADMINISTRATION BOND.

23.—The personal estate of the deceased proved to be of greater value than that under which it was sworn when the grant was made to the administrator. The administrator being abroad, the Court allowed the bond rendered necessary by the accretion in value of the estate to be given by another person, but required that the usual bond should also be given by the administrator on his return to this country. *In the goods of Ross*, 46 Law J. Rep. P. D. & A. 57; Law Rep. 2 P. D. 274.

24.—Where a limited administration was granted merely to enable the personal representative of the deceased to assign the legal estate in certain leaseholds of the value of 6,000*l.*, which had been sold by the trustees, the Court allowed the administrator's bond to be in the nominal penalty of 200*l.* *In the goods of Bomby*, 45 Law J. Rep. P. D. & A. 100.

25.—For the future, administration will not be granted to a creditor without his agreeing to enter into a bond to pay the debts of the deceased *pro rata*, whether there be other creditors or not to take the objection. *In the goods of Brackenbury*, 46 Law J. Rep. P. D. & A. 42; Law Rep. 2 P. D. 272.

26.—The attorney appointed by the party entitled to the grant to take out letters of administration on her behalf was himself resident out of the jurisdiction, and was unable to procure sureties in this country. The Court accepted justifying sureties resident at Paris, it being shewn that they could be sued on the bond in the French Courts. *In the goods of Hernandez*, 48 Law J. Rep. P. D. & A. 31; Law Rep. 4 P. D. 229 (*nom.* *In the goods of Fernandez*).

27.—Order LIII. rules 2, 3, are not applicable to an application to assign an administration bond in order to its being sued, as such an application is not one made in an action. *In the goods of Cartwright*, Law Rep. 1 P. D. 422.

In such a case the old practice of granting a rule  *nisi* in the first instance, calling upon the sureties to shew cause why the bond should not be assigned, will still prevail. *Ibid.*

(D) PRACTICE AND PLEADING.

(a) *Citation of parties interested.*

28.—The power given to the Court by rule 13 (Judicature Act, 1875, Order XVI.) is in addition to, and not in substitution for, the practice under the Probate Act of 1857, section 61, of bringing before the Court by citation to see proceedings parties whom it is desired to bind. The Court, therefore, on the application of the executor propounding the will, allowed the usual citation to issue to devisees whose interests were affected by alterations in the will, and who were out of the jurisdiction. *Kennaway v. Kennaway*, 45 Law J. Rep. P. D. & A. 86; Law Rep. 1 P. D. 148.

(b) *Service out of jurisdiction.*

29.—If a defendant be a foreigner resident out of the jurisdiction, he must be served as under the Common Law Procedure Act, with notice of the writ of summons in the action. *Beddington v. Beddington*, 45 Law J. Rep. P. D. & A. 44; Law Rep. 1 P. D. 426.

(c) *Attachment: refusal to produce will.*

30.—On motion for an attachment against a person served with a *subpoena* under section 26 of 20 & 21 Vict. c. 77, to bring in a testamentary paper, and who had failed so to do:—Held, that notice of the application must be given in the first instance to the person in default under Order XLIV. rule 2. *Baigent v. Baigent*, Law Rep. 1 P. D. 421.

(d) *Amendment of pleadings at hearing.*

31.—The testatrix made her will in 1853, and by it gave her property to the plaintiffs, defendants and interveners. In an action by the plaintiffs propounding this will, it appeared that in 1874 the testatrix gave instructions for another will, by which she gave her property to the defendants and interveners, excluding the plaintiffs, and some evidence was given tending to shew that she had been prevented by the plaintiffs by force and threats from executing this paper. The Court allowed the pleadings to be amended by adding statements to that effect, and a prayer that the plaintiffs held the shares of the property devolving on them under the will of 1853 as trustees for the defendants and interveners. *Betts v. Doughty (Doughty and others intervening)*, 48 Law J. Rep. P. D. & A. 71; Law Rep. 5 P. D. 26.



(e) *Right to begin.*

**32.**—In a testamentary cause the party propounding the last will is entitled to begin. So also is a party who pleads only undue influence in opposition to the validity of a will. *Hutley v. Grimstone*, 48 Law J. Rep. P. D. & A. 68; Law Rep. 5 P. D. 24.

(f) *Appeal.*

(1) *From findings on issues of fact.*

**33.**—When the Judicature Acts came into operation, proceedings were being carried on in a probate suit under the Probate Act, 1857, and the rules of Court made under the provisions of that Act. The cause was heard by the Court without a jury, and the President determined the issues of fact raised by the pleadings, and made a decree pronouncing for the validity of the will:—Held, that the unsuccessful parties might, at their option, apply for a rehearing in the Probate Court under rule 60 of the rules of the Probate Court, 1862, or might appeal from the decree direct to the Court of Appeal, and that issues of fact as well as questions of law were open for judgment on such appeal. *Sugden v. Lord St. Leonards* (App.), 45 Law J. Rep. P. D. & A. 49; Law Rep. 1 P. D. 154.

(2) *From Judge of Probate Division.*

**34.**—An appeal from the decision of a Judge of the Probate Division, if not made to the House of Lords, can only be heard by the full Court, whose decision is final. The Court of Appeal has no jurisdiction to entertain the appeal. *Westhead v. Westhead* (App.), 46 Law J. Rep. P. D. & A. 32; Law Rep. 2 P. D. 141.

(g) *Costs.*

(1) *Abortive proceedings in Chancery Division.*

**35.**—A. died intestate, and letters of administration of his personal estate and effects were granted to B. as his half-brother and one of the next-of-kin. C. instituted proceedings in the Chancery Division for the administration of the estate of A., alleging that he was the maternal uncle and sole next-of-kin of the intestate, and that B. was illegitimate. The suit was dismissed for want of prosecution, and C. afterwards commenced an action in the Probate Division for revocation of the letters of administration granted to B. The Court refused to order a stay of proceedings until after the payment by C. of B.'s costs in the administration suit. *Hankin v. Turner*, 48 Law J. Rep. P. D. & A. 38; Law Rep. 10 Ch. D. 372.

(2) *Married woman defendant.*

**36.**—In probate actions the Court has power to condemn a married woman in costs. *Morris v. Freeman*, 47 Law J. Rep. P. D. & A. 79; Law Rep. 3 P. D. 65.

DIGEST, 1875-1880.

(3) *Out of real estate.*

**37.**—Testatrix directed by her will that all her "just debts, funeral and testamentary expenses be paid and discharged out of her real and personal estate." She died possessed of no personal estate, and the litigation in relation to her will was in some measure due to its concealment, by her direction, from the defendant in the suit, who opposed probate of it, but failed. In the circumstances of the case the Court was of opinion that the defendant was entitled to his costs, and ordered such costs to be paid rateably out of the real estate. *Smith v. Hopkinson*, 47 Law J. Rep. P. D. & A. 40; Law Rep. 4 P. D. 84.

(4) *Taxation: administrator pendente lite.*

**38.**—In a testamentary suit condemnation in costs includes all the charges of administration *pendente lite*. *Fisher v. Fisher*, 48 Law J. Rep. P. D. & A. 69; Law Rep. 4 P. D. 231.

PROBATE DUTY.

*Heir at law not liable to pay.* [See CHARITY, 1.]

PRODUCTION OF DOCUMENTS.

(A) PRIVILEGED COMMUNICATIONS.

- (a) *Proceedings in former action.*
- (b) *Compromise between defendants and third party.*
- (c) *Professional privilege: correspondence, &c., for advice of solicitor.*
- (d) *Documents relating to party's own title.*
- (e) *Surveys.*
- (f) *Medical reports.*
- (g) *Communication from unprofessional agent.*

(h) *Tendency to criminate.*

(B) AFFIDAVIT AS TO DOCUMENTS.

- (a) *Sufficiency of.*
- (b) *Issue of settled accounts.*
- (c) *By next friend of plaintiff non compos.*
- (d) *Default in filing affidavit.*
  - (1) *Dismissal of action.*
  - (2) *Attachment: discharge of contempt.*

(C) RIGHT TO PRODUCTION.

- (a) *Before statement of claim.*
- (b) *Before defence.*
- (c) *By third party.*
- (d) *Public document.*
- (e) *Court rolls.*
- (f) *Action to recover land.*
- (g) *Action on marine policy: ships' papers.*
- (h) *Production before official referees.*
- (i) *Documents referred to in pleadings or affidavits: form of notice.*

(A) PRIVILEGED COMMUNICATIONS.

(a) *Proceedings in former action.*

**1.**—The plaintiffs sold a cargo of rice to the defendants, and chartered a ship from E. for the purpose of having the same conveyed to the

purchasers. Under the terms of the charter-party, the plaintiffs undertook to name a safe port for the ship to discharge her cargo. The plaintiffs, at the request of the defendants, named a port which turned out to be unsafe, whereupon E. recovered damages in an action against the plaintiffs for breach of the terms of the charter-party. The plaintiffs thereupon (who had, in the contract of sale with the defendants, made a like stipulation as to the naming of a safe port by the latter) sought to enforce their remedy over against the defendants by action for breach of contract:—Held, that the defendants were not entitled to inspect the proceedings in the first action, including the correspondence that passed between the plaintiffs' solicitors and E.'s solicitors, such documents being privileged from discovery. *Bullock and Company v. Corrie and Company*, 47 Law J. Rep. Q.B. 352; Law Rep. 3 Q.B. D. 356.

(b) *Compromise between defendants and third party.*

2.—Goods had been shipped by the plaintiff on board the defendant's ship, B. The B. came into collision with the ship H. In consequence there were cross suits in the Court of Admiralty between the owners of the B. and of the H. These suits were ultimately settled by an agreement of compromise. Meanwhile the plaintiff had sued the defendant for damage to his goods in the collision, and now asked for an order to inspect the agreement between the shipowners as likely to assist his case:—Held, that he was entitled to the inspection. *Hutchinson v. Glover*, 45 Law J. Rep. Q.B. 120; Law Rep. 1 Q.B. D. 138.

The right to discovery is not limited to documents which may be made evidence, but extends to all which may throw light on the case.—Per Blackburn, J. *Ibid.*

3.—The defendant purchased timber abroad to be felled, sawn and delivered according to contract, and resold the same to the plaintiff, who made a claim against him in respect of the timber supplied not being according to contract. The defendant thereupon had a correspondence with his sellers, communicating to them the plaintiff's complaint upon the subject, and they obtained statements with respect to the mode of delivery abroad from their officers there, and gave the defendant copies of such statements, and the result was, according to the defendant's own statement in his answers to interrogatories, that he settled for the price with his sellers on the footing of a compromise before action brought:—Held, that the plaintiff was entitled to inspection of all the above documents. *English v. Tittle*, 45 Law J. Rep. Q.B. 133; Law Rep. 1 Q.B. D. 141.

(c) *Professional privilege: correspondence, &c., for advice of solicitor.*

4.—Correspondence between the solicitor of one of the parties to an action and a third

person for the purpose of ascertaining facts, with a view to the action which was afterwards brought and was then anticipated, and for the purpose of guiding the party as to the mode of carrying it on, is privileged from inspection. *McCorquodale v. Bell*, 45 Law J. Rep. C.P. 329; Law Rep. 1 C.P. D. 471.

The case of *Fenner v. The London and South Eastern Railway Company* (41 Law J. Rep. Q.B. 313; Law Rep. 7 Q.B. 767) commented upon and explained. *Ibid.*

5.—Documents which have been prepared by the agent of a party for the purpose of their being submitted to his solicitor for advice in reference to an intended action, are privileged from inspection; and such privilege is not taken away if the documentary information obtained for such purpose has not, in fact, been laid before the solicitor at the time inspection is sought. *The Southwark and Vauxhall Water Company v. Quick* (App.), 47 Law J. Rep. Q.B. 258; Law Rep. 3 Q.B. D. 315.

6.—The Court or a Judge possesses, under Order XXXI. rule 11 of the Judicature Act, 1875, no greater discretionary power to grant or refuse an order for the production of documents than that possessed by the Court of Chancery under 15 & 16 Vict. c. 86. s. 18, as judicially interpreted prior to the coming into operation of the Judicature Acts. Thus defined, the power of the Court or a Judge to refuse an order for the production of a document is limited to documents which fall within some known rule of protection or privilege hitherto acted upon by the Court of Chancery, such as that of professional privilege. *Bustros v. White* (App.), 45 Law J. Rep. Q.B. 642; Law Rep. 1 Q.B. D. 423.

Professional, including what is sometimes called *quasi*-professional, privilege is the protection which is extended to a party in obtaining the advice of a solicitor or his assistance in the preparation and conduct of legal proceedings. And in determining what documents are within this privilege the question is whether they were written directly or indirectly at the instance and for the use of the solicitor for the purposes of such advice and legal proceedings. *Ibid.*

Where the parties by consent submit the documents themselves to the Judge at chambers, the decision at which the Judge arrives on such inspection will be final. *Ibid.*

7.—A pursuivant of the Herald's College is not in the position of a legal adviser, and communications passing between him and the person employing him in reference to pedigrees in the Herald's College are not privileged, and he is entitled to be examined in reference thereto. *Slade v. Tucker*, 49 Law J. Rep. Chanc. 644; Law Rep. 14 Ch. D. 824.

(d) *Documents relating to party's own title.*

8.—An owner of land in fee-simple is, *prima facie*, entitled to that land down to the centre of the earth. On motion by the defendants,

claiming the right to search for minerals under fee-simple lands of the plaintiffs, for production of title-deeds, such production was refused, on the ground that the *onus* lay upon the defendants to shew that the plaintiffs were not entitled to the minerals. *The Egremont Burial Board v. The Egremont Iron Ore Company*, 49 Law J. Rep. Chanc. 623; Law Rep. 14 Ch. D. 589.

9.—One of the plaintiffs' title-deeds had been referred to in the statement of claim. He refused to produce it for inspection till a statement of defence had been put in. He was allowed to put it in evidence notwithstanding Order XXXI. rule 14. *Webster v. Whewell*, 49 Law J. Rep. Chanc. 704; Law Rep. 15 Ch. D. 120.

(c) *Surveys.*

10.—The Court will not allow surveys made solely for the purpose of the case of one of the parties on a trial or for the opinion of one of the parties' legal advisers to be inspected. *The Southwark and Vauxhall Water Company v. Quick* (47 Law J. Rep. Q.B. 258; No. 5 supra) followed. *The Theodor Korner*, 47 Law J. Rep. P. D. & A. 85; Law Rep. 3 P. D. 162.

(f) *Medical reports.*

11.—Letters and communications written at the instance, either directly or indirectly, of the solicitor to either party to an action, and for his use, for the purposes of the legal proceedings in such action, are privileged from inspection by the opposite party. *Friend v. The London, Chatham and Dover Railway Company* (App.), 46 Law J. Rep. Exch. 696; Law Rep. 2 Ex. D. 439, and *Pacey v. Same*. *Ibid.* n.

Reports of medical men on a medical examination of the plaintiff in an action for personal injuries, made on behalf of the defendants in the action, held to be privileged under the above rule. *Ibid.*

The exception to the general rule as to inspection of documents suggested in *Bustros v. White* (45 Law J. Rep. Q.B. 642; No. 6 supra), approved. *Ibid.*

(g) *Communication from unprofessional agent.*

12.—After litigation threatened, the defendants, an incorporated banking company, telegraphed to their agent abroad (who was aware that claims were pending), asking for full information. The manager who telegraphed stated that the information was sought for the purpose of laying it before the company's solicitors:—Held, that the answer to the telegram was not privileged from discovery; and *Semble*,—a party would be bound to disclose such information obtained from his agent, even after bill filed. *Anderson v. The British Bank of Columbia* (App.), 45 Law J. Rep. Chanc. 449; Law Rep. 2 Ch. D. 644.

Per James, L.J.—The cases where it has been held that communications with persons other

than legal advisers are privileged, may rest on the principle that a party is not bound to disclose his counsel's brief, or the materials obtained for the brief. *Ibid.*

Per Mellish, L.J.—It may be that a party is not bound to disclose notes of evidence obtained from proposed witnesses. *Ibid.*

(h) *Tendency to criminate.*

13.—A master kept copies of the letters written by him in answer to enquiries respecting the character of a servant late in his employ. The servant commenced an action for damages against his master, alleging that the letters were libellous, and took out a summons for liberty to inspect and take copies of the copy letters:—Held, that the copy letters were not privileged from production. *Quere*, whether, if the defendant had deposed on oath that the production of the letters would incriminate him, they would have been privileged from production. *Webb v. East* (App.), 49 Law J. Rep. Q.B. 250; Law Rep. 5 Ex. D. 23, 108.

(B) AFFIDAVIT AS TO DOCUMENTS.

(a) *Sufficiency of.*

14.—An affidavit of documents had been filed setting out the numbers and the dates, but not the parties to title-deeds, and a summons was taken out to have the names of the parties added:—Held, that, as the deeds were privileged, the Court would not order the names of the parties to the deeds to be set out. *Taylor v. Oliver*, 45 Law J. Rep. Chanc. 774.

15.—It is not sufficient that an affidavit of documents should state that certain documents are privileged; it must also state, and, as far as possible, verify, the facts on which the claim of privilege is founded. *Gardner v. Irwin* (App.), 48 Law J. Rep. Exch. 223; Law Rep. 4 Ex. D. 49.

16.—A defendant's affidavit of documents contained the following paragraph: "I have in my possession or power certain letters and correspondence which have passed between me and my legal adviser, in relation to the matters in question in this cause, and with a view to my defence to the plaintiff's claim, and certain instructions to and opinions of counsel in relation to the same matters, all of which I claim to be privileged from producing." In a further affidavit he swore, "The documents referred to in paragraph 2 of my former affidavit are numbered 60 to 76 inclusive, and are tied up in a bundle marked A., and initialled by me:—Held, that the two affidavits together were sufficient, as they identified the documents for which privilege was claimed, sufficiently to enable the Court to order them to be produced if necessary. *Taylor v. Batten* (App.), 48 Law J. Rep. Q.B. 72; Law Rep. 4 Q.B. D. 85.

17.—When an affidavit of documents has been made in answer to an order for discovery, no affidavit will be allowed in reply, unless it

appear from the first-mentioned affidavit itself, or from admissions on the pleadings of the party making it, or from documents mentioned therein, that it is not a sufficient compliance with the order. So held by the Court of Appeal (reversing the decision of the Queen's Bench Division). *Jones v. The Monte Video Gas Company* (App.), 49 Law J. Rep. Q.B. 627; Law Rep. 5 Q.B. D. 556.

(b) *Issue of settled accounts.*

18.—In an action for an account in which the issue of settled accounts was raised, the defendant was compelled to make an affidavit of accounts and documents not pretended to be privileged or irrelevant to the matter of the action, but claimed to be covered by the alleged settled accounts. *Dickson v. Harrison*, 47 Law J. Rep. Chanc. 686; Law Rep. 9 Ch. D. 243.

Semble, that the practice of the Court of Chancery as to discovery of documents is not materially altered by the Judicature Act, and that there may be cases in which production will not be ordered of documents included in an affidavit of documents, and not protected by privilege. *Bustros v. White* (45 Law J. Rep. Q.B. 642; No. 6 supra) explained. *Ibid.*

(c) *By next friend of plaintiff non compos.*

19.—Where an action is brought by a person of unsound mind, suing by a next friend, the defendant, having delivered his statement of defence, is entitled to the usual affidavit of documents in the possession or power of the plaintiff, to be made by the next friend. *Higginson v. Hall*, 48 Law J. Rep. Chanc. 250; Law Rep. 10 Ch. D. 235.

(d) *Default in filing affidavit.*

(1) *Dismissal of action.*

20.—Where in a suit in the High Court of Chancery an order had been made that the plaintiff should file a sufficient affidavit of documents within a time specified in the order, and that in default of such affidavit being filed, the bill should be dismissed with costs, and a sum of money which had been brought into Court by the defendant should be paid back to him,—Held, that the Court had jurisdiction to make the order. *The Republic of Liberia v. Roye* (H.L.), 45 Law J. Rep. Chanc. 207; Law Rep. 1 App. Cas. 139.

(2) *Attachment: discharge of contempt.*

21.—The defendant being in default for not making an affidavit of documents, the plaintiff obtained an order for his attachment. The defendant then filed an affidavit, and thereupon obtained *ex parte* an order of course discharging his contempt. The plaintiff now moved to set aside the order of course, on the ground that the affidavit was insufficient, and that therefore the order of course had been obtained

on a misrepresentation:—Held, that the question of sufficiency could be raised on this motion, and that the affidavit being insufficient, the order of course must be discharged, so as to revive the original order for attachment. *Price v. Price*, 48 Law J. Rep. Chanc. 215.

(C) RIGHT TO PRODUCTION.

(a) *Before statement of claim.*

22.—An order for production of documents by a defendant will not, except under special circumstances, be made until the plaintiff has delivered his statement of claim. *Cashin v. Craddock*, Law Rep. 2 Ch. D. 140.

Semble, in no case will such an order be made on the defendant's solicitors. *Ibid.*

(b) *Before defence.*

23.—An order for discovery of documents will not be made before defence delivered in the absence of an affidavit stating facts which make immediate discovery necessary. *Hancock v. Guerin*, Law Rep. 4 Ex. D. 8.

24.—In an action by a plaintiff against his former solicitor, to obtain certain documents necessary for prosecuting a pending action,—Held, that a mandatory order could not be made on motion before delivery of defence; but an order for inspection was made before delivery of claim. *The Republic of Costa Rica v. Strousberg* (App.), Law Rep. 11 Ch. D. 323.

25.—Although a plaintiff is not entitled, as a matter of right, to discovery from the defendant, immediately after delivery of his statement of claim, and the Court has the power to decline to make an order for discovery at that stage, unless special reasons are given, shewing the necessity for it at that time, nevertheless in an action in which there can be no dispute as to what the "matters in question" are, the plaintiff is entitled to discovery before the statement of defence is delivered. *The Union Bank of London v. Manby* (App.), 49 Law J. Rep. Chanc. 106; Law Rep. 13 Ch. D. 239.

In an action by a puisne incumbrancer against a mortgagee in possession, and a mortgagor for an account, and for redemption and foreclosure, a plaintiff, immediately after delivery of his statement of claim, applied for the common order for discovery and production. The Vice-Chancellor made the order, which was upheld on appeal. *Ibid.*

(c) *By third party.*

26.—Where a third party, upon whom notice has been served by a defendant to an action, enters an appearance in the action pursuant to Order XVI. rule 20, such third party is a party within the meaning of Order XXXI. rule 12, and liable to make discovery of documents according to the terms of the rule. *McAllister v. The Bishop of Rochester*, 49 Law J. Rep. C.P. 443; Law Rep. 5 C.P. D. 194.

(d) *Public document.*

*Admissibility of, in evidence.* [See EVIDENCE, 12.]

(e) *Court rolls.*

27.—Where the plaintiffs claimed to be owners in fee of certain land, but the defendants alleged that they were freehold tenants of a manor of which he was lord, and had only customary rights over the land,—Held, that the plaintiffs were not entitled to inspection of the Court Rolls of the manor. *Owen v. Wynn* (App.), Law Rep. 9 Ch. D. 29.

Decision of Bacon, V.C., reversed. *Ibid.*

(f) *Action to recover land.*

28.—In an action for the recovery of land of which the defendant is in possession he may be compelled, under Order XXXI. rule 12, to make an affidavit of his documents of title notwithstanding that he may be entitled to object to produce them. *The New British Mutual Investment Company v. Peed*, Law Rep. 3 C.P. D. 196.

(g) *Action on marine policy: ship's papers.*

29.—In an action against an underwriter of a policy of marine insurance for his proportion of the amount insured, the defendant applied for a stay of proceedings till discovery of ship's papers should be made by a person on whose behalf the policy had been effected, but who had ceased to be interested in it, and was not under the control of the plaintiffs real or nominal, and was out of the jurisdiction of the Court:—Held, that as the person from whom discovery was required was not interested in the action, and the persons by and for whom respectively the action was brought had no power over him, the defendant was not entitled to the order. *Fraser v. Burrows*, 46 Law J. Rep. Q.B. 501; Law Rep. 2 Q.B. D. 624.

30.—In an action on a policy of marine insurance by mortgagees of 32-64ths of a ship, it appeared that the plaintiffs had no ship's papers, but that the ship had been sailed by the mortgagor and managing owner, since deceased, the defendants applied for an order that both the plaintiffs and the mortgagor or his representatives, and also all persons interested in the proceedings and in the insurance, should produce upon oath the ship's papers, and for a stay of proceedings in the interim:—Held, that the defendants were entitled to the order (the old practice not having been superseded by Order XXXI. rules 11-18), and that the order must stand until the plaintiffs had satisfied the Court that they had used every effort to produce the ship's papers. *The West of England and South Wales District Bank v. The Canton Insurance Company*, Law Rep. 2 Ex. D. 472.

(h) *Production before official referee.*

31.—The official referees being officers of the Court, the suitors have a right in matters referred to them to take the opinion of the Judge

himself, and orders enforcing discovery or production of documents should generally be made by the Judge in person. *In re Leigh's Estate. Romcliffe v. Leigh*, 46 Law J. Rep. Chanc. 60; Law Rep. 4 Ch. D. 661.

(i) *Documents referred to in pleadings or affidavits: form of notice.*

32.—Notice to produce documents referred to in a party's pleadings or affidavits must be made in the mode and form prescribed by Order XXXI. or an equivalent form, in order to entitle the applicant to an order for inspection under rule 17. Therefore where one party gave notice to another to produce certain documents for his inspection the following day; and upon attending the following day was refused inspection:—Held, that this refusal was not such an objection to give inspection as entitled the applicant to an order. *In re The Credit Company (Lim.)*, 48 Law J. Rep. Chanc. 221; Law Rep. 11 Ch. D. 256.

Where a company, respondent to a petition, filed an affidavit stating certain figures alleged to be taken from the books of the company,—Semble, that an application by the petitioner to inspect "the books of the company referred to in the affidavit" sufficiently described the documents of which inspection was sought. *Ibid.*

Under section 43 of the Companies Act a member is entitled to inspect the register of mortgages not only in person, but also by his solicitor. *Ibid.*

*Crown, to.* [See PETITION OF RIGHT, 2.]

*Documents subject to solicitor's lien.* [See SOLICITOR, 35.]

PROFIT A PRENDRE.

[See COMMON, 2, 3; CUSTOM, 1.]

PROHIBITION.

- (A) JURISDICTION TO GRANT.
- (B) TO LORD MAYOR'S COURT.
- (C) TO ECCLESIASTICAL COURT.
- (D) TO COUNTY COURT.
- (E) TO RAILWAY COMMISSIONERS.

(A) JURISDICTION TO GRANT.

1.—All the Judges of the High Court have, since the Judicature Act, 1873, jurisdiction to issue a writ of prohibition to an inferior Court; and in the present case the Court could have issued a writ of prohibition to the justices, but as such writ would only be directed to the inferior tribunal, the Court in such a case will consider it "just and convenient," within the meaning of section 25, sub-section 8 of the Judicature Act, 1873, to grant an injunction which takes effect *inter partes* to restrain the defendant proceeding upon his notice instead of issuing a writ of prohibition to the inferior Court. *Hedley v. Bales*, 49 Law J. Rep. Chanc. 170; Law Rep. 13 Ch. D. 420.

## (B) TO LORD MAYOR'S COURT.

2.—A Superior Court is not bound to grant prohibition to the Mayor's Court, to prevent that Court from proceeding in an action from want of jurisdiction, unless it is clear that the cause of action sued on arose outside the jurisdiction. *Taylor v. Nicholls*, 45 Law J. Rep. C.P. 455; Law Rep. 1 C.P. D. 242.

Therefore where the plaintiff, who carried on business in the City, brought an action to recover the price of goods sold to the defendant (who resided and carried on business outside the City) and delivered to the defendant outside the City, and the defendant by a letter addressed to and received by the plaintiff's solicitor in the City, but posted out of the City, had admitted the debt, the Court refused to grant prohibition, holding that it was not clear that the action was not brought on accounts stated, and consequently that the Mayor's Court might have jurisdiction. *Wallace v. Allen* (32 Law Times N.S. 778; 45 Law J. Rep. C.P. 111 s.) and *Evans v. Nicholson* (44 Law J. Rep. C.P. 351) distinguished and explained. *Ibid*.

3.—When the plaintiff's claim in an action brought in the Mayor's Court, London, is composed of several items, some whereof relate to business done within, and others to business done without, the City of London, a Superior Court, upon an application for a prohibition, has a discretion to allow the plaintiff finally to abandon the causes of action accruing out of the City, and to proceed in the Mayor's Court for those accruing within the City. *Ellis v. Fleming*, 45 Law J. Rep. C.P. 512; Law Rep. 1 C.P. D. 237.

4.—Prohibition will not be granted to restrain the Mayor's Court from proceeding where no plea to the jurisdiction is allowed under section 12 of the Mayor's Court Procedure Act, 1857. *Hawes v. Paveley* (App.), 46 Law J. Rep. C.P. 18; Law Rep. 1 C.P. D. 418.

5.—By 20 & 21 Vict. c. clviii. s. 48, a judgment removed from the Mayor's Court to a Superior Court is to have the same force and effect as a judgment recovered in the Superior Court:—Held, that the Court to which such judgment is removed can set it aside if satisfied that it was obtained in a matter not within the jurisdiction of the Mayor's Court. *Bridge v. Branch*, Law Rep. 1 C.P. D. 633.

In such a case a prohibition may be moved for by the defendant himself. *Baker v. Clark* (Law Rep. 8 C.P. 121) explained. *Ibid*.

## (C) TO ECCLESIASTICAL COURT.

[See CHURCH AND CLERGY, 26, 27, 30.]

## (D) TO COUNTY COURT.

6.—An appeal lies from the decision of the Divisional Court on an application for a prohibition to a County Court; for section 42 of 19 & 20 Vict. c. 108, relates to procedure only, and does not enact that the judgment of the Divi-

sional Court shall be final. *Barton v. Titmarsh* (App.), 49 Law J. Rep. Exch. 573.  
[And see COUNTY COURT, 1; SALFORD HUNDRED COURT.]

## (E) TO RAILWAY COMMISSIONERS.

[See RAILWAY, 35.]

## PROLIXITY.

[See PRACTICE, W 3-8.]

## PROMISSORY NOTE.

[See BILL OF EXCHANGE.]

## PROMOTERS.

[See COMPANY, A.]

## PROOF OF DEBT.

[See ADMINISTRATION, 3-11; BANKRUPTCY, D; COMPANY, H 32-50.]

## PROPERTY TAX.

1.—The right of the Crown to distrain for property tax under 5 & 6 Vict. c. 35. s. 70, is not taken away by the Companies Act, 1862. *In re Henley & Company* (App.), 48 Law J. Rep. Chanc. 147.

In the administration of assets under a winding-up the Crown is entitled to be paid in priority to the other creditors. *Ibid*.

2.—A landlord promised his tenant that if he would continue to pay his rent in full without deducting anything for property tax, he, the landlord, would repay to him all sums which he had paid or should pay for such property tax. The tenant having paid his rent in full to the landlord during his lifetime, claimed from his executors the amount of property tax so paid and not deducted from his rent:—Held, on demurrer (affirming the decision of the Queen's Bench Division, 48 Law J. Rep. Q.B. 277; Law Rep. 4 Q.B. D. 220), that the agreement was not void as "an agreement for the payment of rent in full" within section 103 of 5 & 6 Vict. c. 35. *Lamb v. Brewster* (App.), 48 Law J. Rep. Q.B. 421; Law Rep. 4 Q.B. D. 607.

## PROSECUTION OF OFFENCES.

[Appointment of director of public prosecutions, &c. 42 & 43 Vict. c. 22.]

## PROSPECTUS OF COMPANY.

[See COMPANY, B.]

## PROTECTION ORDER.

[See HUSBAND AND WIFE, 12, 58.]

**PROTECTOR OF SETTLEMENT.**

[See FINES AND RECOVERIES ACT; LUNATIC, 15.]

**PROVIDENT SOCIETY.**

[Consolidation and amendment of the law relating to industrial and provident societies. 39 & 40 Vict. c. 45.]

**PROVISIONAL LIQUIDATOR.**

[See COMPANY, H 22, 23, 37.]

**PROVISIONAL SPECIFICATION.**

[See PATENT, 7, 8.]

**PROXIMATE CAUSE OF INJURY.**

[See DAMAGES, 17-24.]

**PROXY.**

[See BANKRUPTCY, K 16-18; L 8; COMPANY, D 45.]

**PUBLIC BODY.**

1.—Where, under statute, certain persons were incorporated and empowered to collect the waters of several small streams into a reservoir, for the purpose of maintaining an adequate supply of water to a river through a certain channel, and the persons so incorporated executed the works, but after a time failed to cleanse the channel, so that at times it overflowed its banks and did damage to the lands of the adjoining owners:—Held, that the corporation were liable, as it is the duty of persons having statutory powers for a particular purpose to take measures to prevent the execution of such powers from causing inconvenience or injury to others. *Geddis v. The Proprietors of the Bann Reservoir* (H.L. Ir.), Law Rep. 3 App. Cas. 430.

*Rating of.* [See RATES, 15.]

**PUBLIC DOCUMENT.**

*Admissibility of, in evidence.* [See EVIDENCE, 12.]

**PUBLIC ENTERTAINMENT.**

[Children under fourteen years of age not to be employed in dangerous performances. 42 & 43 Vict. c. 34.]

1.—By 25 Geo. 2. c. 36. s. 2, it is enacted that no house, room, garden or other place shall be kept for dancing, music or other public entertainment of the like kind in London or Westminster, or within twenty miles thereof, without a licence. The defendant was indicted under that Act for keeping without a licence a place

for skating by means of wheel skates, or "rink-ing," to which the public were admitted on payment, and at which a band of music played:—Held, that the rink was a place of public entertainment within the Act, and required a licence. *Reg. v. Tucker* (O.C.R.), 46 Law J. Rep. M.C. 197; Law Rep. 2 Q.B. D. 417.

2.—A shop, consisting of one room only, open in front, without seats of any kind, kept for the supply to the persons who frequented the shop of ginger beer and lemonade, to be drunk by them at the counter, and kept open for that purpose till two or three o'clock a.m., is a house kept open for public refreshment, resort and entertainment, within the meaning of 23 Vict. c. 27. s. 6, and requires a licence to be taken out for the same under that statute. *Homes v. The Inland Revenue* (App.), 46 Law J. Rep. M.C. 15; Law Rep. 1 Ex. D. 385.

Decision of the Court of Appeal from inferior Courts (45 Law J. Rep. M.C. 86) affirmed. *Ibid.*

**PUBLIC HEALTH AND LOCAL GOVERNMENT ACTS.**

(A) ELECTION OF LOCAL BOARD.  
(B) CONSTITUTION AND POWERS OF LOCAL BOARD.

- (a) *Disqualification of members.*
- (b) *By-laws.*
  - (1) *Dismissal of clerk.*
  - (2) *Breach of: jurisdiction to give relief.*
  - (3) *Reasonableness of.*
- (c) *Contract: seal.*
- (d) *Street vested in board: power to let pasturage.*
- (e) *Buildings, as to.*
- (f) *Validity of rate: "things duly done:" saving clause.*
- (g) *Sanitary rate: exemptions.*
- (h) *Compulsory powers of purchase.*
- (i) *Delegation of powers.*

(C) PAVING STREETS.

- (a) *Apportionment of expenses.*
- (b) *Recovery of expenses.*
- (c) *Limitation of time for recovery of rates.*

(D) SEWERS.

(E) NOTICE OF ACTION.

(F) NOTICE OF APPEAL TO QUARTER SESSIONS.

(G) ORDER TO ABATE NUISANCE.

(H) OFFENCES.

- (a) *Selling fish within town.*
- (b) *Unsound meat.*
- (c) *Exposing infected person in public street.*

[Provisions for prevention of pollution of rivers. 39 & 40 Vict. c. 75.]

[Amendment of the Public Health Act, 1875, so far as relates to the supply of water. 41 & 42 Vict. c. 25.]

[Amendment of the law with respect to district auditors. 42 Vict. c. 6.]

[Amendment of the Public Health Act, 1875, as to interments. 42 & 43 Vict. c. 31.]

[Amendment of the Public Health (Ireland) Act, 1878. 42 & 43 Vict. c. 67.]

[Amendment of law as to Metropolis. 38 & 39 Vict. c. 55. ss. 108, 115, 291; 42 & 43 Vict. c. 54. ss. 15, 16.]

#### (A) ELECTION OF LOCAL BOARD.

1.—In March, 1875, an election was held to fill vacancies in a local board of health. There were three regular vacancies and one casual vacancy. The persons elected to fill the regular vacancies would hold office for three years, while the successor to the casual vacancy held office only for his predecessor's unexpired term. The elections to all the vacancies were made together, and there being a contest, the four candidates who were highest on the poll were declared elected, the board afterwards selecting which should be held to be elected for the unexpired term:—Held, that this mode of election was wrong, as a distinction should have been made in the election between what were, in fact, distinct offices. *Reg. v. Rippon*, 45 Law J. Rep. Q.B. 188; Law Rep. 1 Q.B. D. 217.

2.—By Schedule II. rule 69 of the Public Health Act, 1875, a penalty is imposed upon any one fabricating a voting paper, but section 253 enacts that "proceedings for the recovery of any penalty under this Act shall not be had or taken by any person other than by a party aggrieved or by the local authority of the district in which the offence is committed, without the consent, in writing, of the Attorney-General." The appellant was one of two candidates for election to a local board, and was in a minority of five at the close of the poll. The respondents were charged with fabricating a voting paper for three votes in favour of the successful candidate:—Held, that the appellant was a "party aggrieved" within the section, and was entitled to proceed against the respondents for the penalty. And per Lush, J. —Independently of any consideration of the effect of a fabricated vote upon the result of an election, any candidate is aggrieved by the fabrication of a vote within the meaning of the Act. *Verdin v. Wray*, 46 Law J. Rep. M.C. 170; Law Rep. 2 Q.B. D. 608.

*Finality of chairman's certificate as to validity of votes: ministerial and judicial functions.*  
[See QUO WARRANTO, 2.]

#### (B) CONSTITUTION AND POWERS OF LOCAL BOARD.

##### (a) Disqualification of members.

3.—By section 253 of the Public Health Act, 1875, proceedings for the recovery of a penalty are not to be taken "by any person other than by a party aggrieved," or by a local authority, without the consent of the Attorney-General, and by Schedule II. rule 70, a person acting as a

member of a local board without qualification is liable to a penalty of 50*l.* A., who was acting as chairman of a local board, although disqualified, complained to the members thereof of the conduct of B., the clerk to the board. B., apprehending dismissal, resigned and sued A. for the penalty of 50*l.*:—Held, that B. was not a "party aggrieved" within the above section. *Rockfort v. Atherley*, Law Rep. 1 Ex. D. 511.

4.—A lessee of lands from a local board under a lease, by which he covenants to cultivate them as a sewage farm, and use upon them all the sewage to be supplied, the board covenanting to deliver to him all the sewage of their district, is not disqualified from being elected or continuing a member of the board within the meaning of rule 64 of Schedule II. of the Public Health Act, 1875. *Reg. v. Gaskarth*, 49 Law J. Rep. Q.B. 509; Law Rep. 5 Q.B. D. 321.

5.—Section 253 of the Public Health Act, 1875, enacts that "proceedings for the recovery of any penalty under the Act shall not, except as in this Act is expressly provided," be taken by any person other than by a party aggrieved, or by the local authority of the district, without the consent in writing of the Attorney-General. By rule 70 of Schedule II. (which by section 317 is to be read as part of the Act) any person who acts as a member of a local board, after disqualification, shall be liable to a penalty of 50*l.*, "which may be recovered by any person" by action of debt. In an action to recover a penalty under rule 70, it was—Held (affirming the judgment of the Exchequer Division, 49 Law J. Rep. Exch. 697), that the exception in section 253 applied to "any person" suing for a penalty under rule 70, and therefore that the plaintiff could bring his action without the consent of the Attorney-General. *Fletcher v. Hudson* (App.), 49 Law J. Rep. Exch. 793; Law Rep. 5 Ex. D. 287.

##### (b) By-laws.

##### (1) Dismissal of clerk.

6.—A by-law of a Local Board of Health, duly made and confirmed, forbade the rescission of any resolution of the board, unless at a meeting where at least as many members were present as were present when such resolution was passed:—Held, that such by-law did not apply to the dismissal of the clerk to the board; for a resolution to effect this was not in the nature of a rescission of that by which he had been appointed, but was a new resolution in itself. Such clerk, therefore, holding his office under the Public Health Acts, "at the pleasure of the board," could not obtain an information in the nature of *quo warranto* because of his dismissal by the resolution of a meeting consisting of fewer members than were present when he was appointed. *Ex parte Richards*, 47 Law J. Rep. Q.B. 498; Law Rep. 3 Q.B. D. 368.



Where application is made for an information in the nature of a writ of *quo warranto* by a person who is liable to immediate dismissal from the office in which he seeks to be reinstated, the Court will not, in the exercise of its discretion, grant the application. *Ibid.*

(2) *Break of : jurisdiction to give relief.*

7.—A local board sought, by counter-claim, relief in respect of alleged breaches of their by-laws and the Public Health Act. The Court refused to interfere, on the ground that the plaintiff ought to have been afforded an opportunity of justifying his acts to the board. *Masters v. The Pontypool Local Board of Health*, 47 Law J. Rep. Chanc. 797; Law Rep. 9 Ch. D. 677.

(3) *Reasonableness of.*

8.—By a by-law of a local board it was provided that every person who should intend to erect any new building should give a week's notice to the town surveyor, and leave at his office detailed plans and sections of every floor of such intended new buildings under a penalty not exceeding 5*l.*:—Held, that if this by-law was intended to apply to a building erected for a temporary purpose only, it was unreasonable and bad, and a conviction under it in respect of such a temporary building was quashed. *Fielding v. The Rhyl Improvement Commissioners*, Law Rep. 3 C.P. D. 272.

Where a local Act (15 Vict. c. xxxii.) prescribed a somewhat fuller mode of publication of by-laws than that prescribed by the Public Health Acts, 1848 and 1858,—Held, that a publication of the by-laws which satisfied the last-mentioned Acts was sufficient. *Ibid.*

(c) *Contract: seal.*

9.—By section 85 of the Public Health Act, 1848 (11 & 12 Vict. c. 63), every contract by the local Board of Health, whereof the value exceeds 10*l.*, and by section 174 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), every contract by an urban authority, whereof the value exceeds 50*l.*, shall be in writing and sealed with the seal of such board or authority as the case may be. The defendants who were a local board within section 85 of the Act of 1848, and an urban authority within the meaning of section 174 of the Act of 1875, were found by a jury to have authorised their surveyor to employ the plaintiff, an architect, to prepare certain plans for offices they intended to erect, but which they did not erect, and to have ratified the act of their surveyor in procuring them, and such offices were found also by the jury to be necessary for the purposes of the defendants, and the plans necessary for the erection of the offices. The plans were ordered when the Public Health Act, 1848, was in force, but were not finished until that Act had been replaced by the Act of 1875. There was no contract under seal with the plaintiff, nor ratification

under seal of any contract with him, and the value of the work done exceeded 50*l.*:—Held (affirming the judgment of Lindley, J., 47 Law J. Rep. C.P. 540; Law Rep. 3 C.P. D. 208), that as the enactments requiring a seal were compulsory and not merely directory, and had not been complied with, the defendants were not liable to pay for the plans, notwithstanding the findings of the jury. *Hunt v. The Wimbledon Local Board*, 48 Law J. Rep. C.P. 207; Law Rep. 4 C.P. D. 49.

(d) *Street rested in board : power to let pasturage.*

[See HIGHWAY, 15.]

(e) *Buildings, as to.*

10.—By the Public Health Act, 1875, section 35, it shall not be lawful to rebuild any house pulled down to or below the ground-floor without a sufficient water-closet, earth closet or privy. P. pulled down and rebuilt two cottages and provided one privy, which afforded sufficient accommodation to the respective occupiers of both cottages:—Held, that the requirements of the 35th section had been complied with, and that it was not necessary to provide a separate privy for each cottage. *Reg. v. The Guardians of the Poor of Clutton Union*, 48 Law J. Rep. M.C. 135; Law Rep. 4 Q.B. D. 340 (nom. *The Guardians of Clutton Union v. Pointing*).

11.—By section 34 of the Local Government Act, 1858 (21 & 22 Vict. c. 98), local boards have power to make by-laws with respect to—First, the level, width and construction of new streets; second, the structure of the walls of new buildings; third, the sufficiency of space about buildings; fourth, the drainage, &c., of buildings. And they may further provide for the observance of the same by enacting therein such provisions as they think necessary, as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the local board, and as to the power of the local board to remove, alter or pull down buildings:—Held (affirming the decision below, 47 Law J. Rep. Exch. 289; Law Rep. 8 Ex. D. 5), that the power to pull down buildings for which the local boards might make provision was not confined to cases of contravention of by-laws relating to structure, but might be extended to cases of contravention of by-laws relating to the giving of notices, the deposit of plans, &c. *Baker v. The Mayor, &c., of Portsmouth* (App.), 47 Law J. Rep. Exch. 223; Law Rep. 8 Ex. D. 157.

The word "streets" in sub-section 1 of section 34 includes not only the roadway, but also the buildings at the side of the roadway. *Ibid.*

12.—An Act "for the protection of the health of the inhabitants of Liverpool, and the better regulation of buildings in the borough," enacted (among other provisions dealing entirely

with footways) that "no projection of any kind should be made in front of any building over or upon the pavement," with certain exceptions in favour of shop fronts and doorways:—Held, that an oriel window, which projected over the pavement of a street, but did not interfere with the use of the footpath, but only with the access of light and air to the street, was not within the above provisions. *Goldstraw v. Duckworth*, 49 Law J. Rep. M.C. 73; Law Rep. 5 Q.B. D. 275.

(f) *Validity of rate: "things duly done:" saving clause.*

13.—A local Board of Health, after having made a valuation as required by the Public Health Act, 1848, and other Acts, duly gave a notice of their intention to make a rate under those Acts. On the day when this notice expired the Acts under which it was made were repealed by the Public Health Act, 1875. The local board not knowing this proceeded to lay and collect the rate. The Public Health Act, 1875, is a consolidation Act, and preserves the machinery and proceedings of the old Acts. There is no difference in the kind or length of notice required, or in the estimate of the objects of the rate, but a slight alteration is made in the mode of valuing assessable property. The Act contained a clause saving things duly done under the repealed Acts. A question having arisen as to the validity of the rate,—Held, that the rate was valid, the valuation and notice being "things duly done" under the saving clause, and the rate itself in all material points being a good rate under the new Act. *Reg. v. The Justices of the West Riding of Yorkshire*, 45 Law J. Rep. M.C. 97; Law Rep. 1 Q.B. D. 220.

(g) *Sanitary rate: exemptions.*

14.—By a local Act commissioners were appointed in 1848, with power to levy a district rate for sanitary purposes throughout a district partly within and partly without the borough of W.; by this Act railways were exempted from a part of the rate so levied. The Public Health Act, 1872, constituted the borough of W. an urban sanitary district, and the town council the sanitary authority; it enacted that in the case of the council of a borough all expenses incurred under the Sanitary Acts should be paid out of a borough rate, "provided that where an urban sanitary authority had, before the passing of this Act, power to levy within its district a rate for sanitary purposes," all expenses incurred by such authority under the Sanitary Acts should be charged on such rate, unless where "at the time of the passing of this Act any such expenses were chargeable upon the borough rate." The definition of Sanitary Acts in section 60 did not include local Acts. The Public Health Act, 1875, section 207, enacts that all expenses incurred by an urban authority in the execution of this Act shall be defrayed out of a district rate, subject to the exception "that if in any district the

expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts, were, at the time of the passing of this Act, payable out of the borough rate," then the expenses incurred under the Act shall be paid out of the borough rate. This Act gave railways an exemption with respect to district rates. By a local Act passed in 1876, the Act of 1848 was, as far as is material, repealed; the borough of W. was extended so as to include the whole of the commissioners' district; the commissioners were abolished; the town council was made the sanitary authority for the whole borough, and succeeded to all the duties and powers of the commissioners. In November, 1876, the council of the borough levied a borough rate for all purposes, including sanitary expenses, and declined to allow the respondents the exemption claimed by them in respect of their railway:—Held (affirming the judgment of the Queen's Bench Division), that the respondents were entitled to the exemption claimed, inasmuch as in the borough of W. all sanitary expenses were, at the time of the passing of the Act of 1875, payable out of a district rate, so that the case fell within the general enactment, and not within the first exception contained in section 207 of that Act. *The Overseers of the Poor of Walsall, and the Mayor, &c., of Walsall v. The London and North Western Railway Company* (App.), 48 Law J. Rep. M.C. 57; Law Rep. 4 Q.B. D. 141. Affirmed on appeal to the House of Lords, 48 Law J. Rep. M.C. 166; Law Rep. 4 App. Cas. 467.

(h) *Compulsory powers of purchase.*

15.—The enacting part of an Act of Parliament is not to be controlled by the title or recitals unless the enacting part is ambiguous, and then the title and recitals may be referred to for the purpose of ascertaining the intention of the Legislature. *Bentley v. The Rotherham Local Board*, 46 Law J. Rep. Chanc. 284; Law Rep. 4 Ch. D. 588.

By a local Act of 1863, a Board of Health was authorised to construct waterworks, and purchase and establish markets, and to exercise compulsory powers for the purchase of land for those purposes. These compulsory powers expired on the 13th of July, 1870, and on the 1st of August, 1870, a second Act was passed, to extend the time for the compulsory purchase of lands and completion of the waterworks, and to authorise the board to construct gas-works, and for other purposes, not including the establishing of markets. On motion by the owner of property required for establishing a market to restrain the board from compulsorily taking the property under a notice to treat served on him in December, 1870, on the ground that the powers of the first Act had ceased to exist and could not be extended, and that the second Act must be read as creating new powers for the purposes of the second Act only,—Held, that the powers were extended as well as the time

for their exercise, and that the notice to treat was effectual. *Ibid*.

16.—An arbitration held for the assessment of compensation in respect of lands taken compulsorily by a local board by virtue of the powers of the Public Health Act, 1875, is not an arbitration under that Act within sections 179 and 180, but is regulated by the provisions of the Lands Clauses Consolidation Acts incorporated by section 176. The costs of such arbitration are, therefore, not in the discretion of the arbitrator. *Ex parte Rayner*, 47 Law J. Rep. Q.B. 660; Law Rep. 3 Q.B. D. 446.

(i) *Delegation of powers.*

17.—By rule 6 of Part II. of the schedule to the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), a drainage board of a drainage district "may delegate any of their powers to committees consisting of such member or members of their body as they may think fit," and by rule 8 of Part II. of the schedule "a committee may meet and adjourn as they think proper, and questions at any meeting shall be determined by a majority of the votes of the members present; and in case of an equal division of votes the chairman shall have a second or casting vote." Where, pursuant to the above power, a drainage board appointed a committee of three of their members to act in any case of emergency, it was held that such committee could not divide a drainage district amongst them, so as to enable any one of its members, in the absence of the others, to lawfully execute any of the powers of the Act which had been delegated to the committee by such drainage board. *Cook v. Ward*, 46 Law J. Rep. C.P. 554; Law Rep. 2 C.P. D. 255.

(C) PAVING STREETS.

(a) *Apportionment of expenses.*

18.—An apportionment of expenses duly incurred by a local board under section 150 of the Public Health Act, 1875, in the paving, &c., of streets was served on the owner of premises fronting the same. The apportionment mixed up the expenses of more than one street, but the owner not having objected within the three months provided by section 257, it was—Held, that it was too late to raise an objection to the apportionment, which thenceforward became valid and binding. The deposit of plans and estimate of the works intended to be executed under section 150, and by that section directed to be made for the inspection of all persons interested, is not a condition precedent to the validity of all subsequent proceedings. *Cook v. The Ipswich Local Board* (40 Law J. Rep. M.C. 169; Law Rep. 6 Q.B. 451) considered. *The Shanklin Local Board v. Miller*, 49 Law J. Rep. C.P. 512; Law Rep. 5 C.P. D. 272.

19.—The Public Health Act, 1875, provides by section 150 that in certain cases a local authority may by notice require owners of premises adjoining certain roads to pave such roads,

and empowers the local authority, on default by the owners, to do it themselves, and to recover from the owners the expenses incurred, in such proportion as shall be settled by the surveyor, and in case of dispute by arbitration in the manner provided by the Act. Section 257 provides that the apportionment of the surveyor is to be binding and conclusive on the owner unless disputed within three months. Section 180 makes the award of the arbitrator final on all parties to the reference. The plaintiffs, a local authority, required the defendant and other owners of land adjoining a road within the above section to pave that road, and on their failing to do so, executed the work themselves, had the amount apportioned, and claimed and received from the defendant, who did not dispute the apportionment, his share of the expenses so incurred. Certain of the other owners disputed the apportionment, and an arbitration was held of which the defendant had no notice, and to which he was no party. The arbitrator reapportioned the whole sum expended amongst all the owners, including the defendant, and fixed the amount to be paid by the defendant at a higher sum than had been fixed by the surveyor. In an action to recover the additional amount so charged to the defendant,—Held, that the plaintiffs could not recover the sum claimed on the footing of the assessment made by the arbitrator, and that the award was not binding on the defendant. *The Tunbridge Wells Local Board v. Akroyd* (App.), 49 Law J. Rep. Exch. 403; Law Rep. 5 Ex. D. 199.

20.—Where an urban sanitary authority, acting under 38 & 39 Vict. c. 55 (The Public Health Act, 1875), s. 150, repaired the footway on one side of a street, and apportioned the whole cost among the owners and occupiers of premises on that side only:—Held, that the apportionment was right. *The Wakefield Sanitary Authority v. Mander*, Law Rep. 5 C.P. D. 248.

(b) *Recovery of expenses.*

21.—An owner of premises abutting on a street having received from the urban authority notice under section 150 of the Public Health Act, 1875, to pave, &c., such street, indorsed on the notice an authority to the urban sanitary authority to execute the works, and an undertaking to repay the costs on completion. On default of payment after demand made, the urban sanitary authority proceeded to "recover the expenses in a summary manner" before justices:—Held, that the owner having by the submission indorsed on the notice admitted the right of the sanitary authority to issue the notice, could not require proof to be given before the justices of the fulfilment of the conditions precedent to the existence of such right. The owner could not by such submission give jurisdiction to the sanitary authority if in fact they had none, but he did thereby waive the proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their

original authority, if he wished to dispute it. *Lewis v. Cardiff Urban Sanitary Authority*, 47 Law J. Rep. M.C. 101.

22.—Where an owner of premises having received a notice from the urban sanitary authority under section 150 of the Public Health Act, 1875, to pave, &c., the street adjoining his premises, fails to comply with the same, and afterwards the local authority execute the works, but after the work has been begun by the local board, and before completion of it, the owner sells the premises, he ceases upon such sale to be an "owner in default," and cannot be ordered to pay the expenses incurred by the local authority in executing the works; such expenses being by section 257 of the same Act recoverable only from the person who is "owner of the premises when the works are completed." *Reg. v. The Swindon New Town Local Board*, 48 Law J. Rep. M.C. 119; Law Rep. 4 Q.B. D. 305.

23.—The defendant was tenant of a public-house under a lease by which he covenanted to pay "all rates, taxes, charges and assessments whatsoever which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof, land tax and property tax excepted." The plaintiff, who had acquired the lessor's interest in the premises, received a notice from the local Board of Health, under the Public Health Act, 1848, s. 69, requiring him as owner to sewer, level, pave, &c., a street adjoining the premises. The plaintiff failing to comply with this notice, the local board executed the required works themselves, and under the above Act and the Acts amending the same, demanded and obtained from the plaintiff the proportion of the expenses and interest assessed in respect of these premises:—Held, that the plaintiff was entitled to recover these expenses from the defendant, for that such expenses were a "charge upon the premises" as well as "upon a person in respect thereof," which the defendant by his covenant had undertaken to pay. *Hartley v. Hudson*, 48 Law J. Rep. Q.B. 751; Law Rep. 4 Q.B. D. 367.

24.—The premises of L. were divided from D. Street by a small stream, but connected with it by means of two bridges over the stream, having gates which L. could close and thereby shut off all communication. One of the bridges had been removed and reinstated by L. The principal outlet from L's premises led into W. Street:—Held, that L's premises "fronted" and "abutted" on D. Street within the meaning of section 69 of the Public Health Act, 1848. *Wakefield Local Board of Health v. Lee*, Law Rep. 1 Ex. D. 336.

(c) *Limitation of time for recovery of rates.*

25.—The council of a borough gave notice to the respondent, as well as the other owners of property abutting upon a street (not being a highway), to pave, &c., the same under the provisions of 11 & 12 Vict. c. 63. s. 69, and such notice not having been complied with, executed

the works, and had the expenses apportioned by their surveyor among the owners according to the frontage. Notice of such apportionment was served on the respondent on the 12th of April, 1875, and not being disputed within three months became binding on him under section 63 of the Local Government Act, 1858 (21 & 22 Vict. c. 98). On the 31st of July the council, who had never declared the expenses to be private improvement expenses, served on the respondent a notice demanding payment, and within six calendar months afterwards preferred a complaint before the justices for the recovery of the sum due. By 11 & 12 Vict. c. 43. s. 11, a complaint, where no time is limited, must be made within six calendar months from the time when the matter arose:—Held, that a notice of demand of payment was necessary, and that the six months under 11 & 12 Vict. c. 43. s. 11, began to run from the service of such notice. *Greece v. Hunt*, 46 Law J. Rep. M.C. 202; Law Rep. 2 Q.B. D. 389.

26.—The proceedings under 24 & 25 Vict. c. 61. s. 24, in the County Court for the recovery of a demand below 20*l.* having been taken after the expiration of six months from the time when such demand became due,—Held (affirming the judgment below), that such proceedings (being authorised in substitution, at the option of the Local Board, for proceedings before two justices) were by implication subject to the limitation fixed by 11 & 12 Vict. c. 43. s. 11, in respect of such last-mentioned proceedings. *Tottenham Local Board of Health v. Rowell* (App.), 46 Law J. Rep. Exch. 432; Law Rep. 1 Ex. D. 511.

27.—In 1864 the plaintiff board under the powers of the Public Health Act, 1848, incurred certain expenses in execution of certain works in the street adjoining R.'s premises, for which expenses he, as owner (among others), became liable under section 69 of that Act, and which the board by a resolution declared to be private improvement expenses, and for which, under the powers of section 90 of the Act, they levied on the owners and occupiers a private improvement rate, payable by annual instalments. These expenses constituted under section 62 of the Local Government Act, 1858, a charge on the premises, bearing interest at five per cent. per annum till payment. In 1872 they revoked the resolution, and made a fresh rate for the whole amount remaining unpaid to be paid by the owners and occupiers. R. not having paid this rate, the board, in 1875, brought an action against his representatives (he having died in 1874) to enforce the charge on his property:—Held (reversing Malins, V.C., 49 Law J. Rep. Chanc. 147), that the charge under the 62nd section constituted an additional and not an alternative remedy, and that the bar of six months which applied to the summary remedy against the person before the Justices, and also in the County Court, did not apply to the additional remedy of enforcing a charge on the property, and that the board were not precluded by their election to treat the expenses as private

improvement expenses from enforcing the charge, but that it was enforceable only in respect of the instalments for the time being in arrear. *The Tottenham Local Board of Health v. Rowell* (App.), 50 Law J. Rep. Chanc. 99; Law Rep. 15 Ch. D. 378.

28.—A decision of justices, unappealed against, on a summons under the Public Health Act against an owner of premises abutting on a street, for payment of the expenses incurred by the board in paving, &c., such street is final and conclusive as to the street being or not being a highway repairable by the inhabitants at large. Where such a summons had been dismissed by Justices in 1874, and no certificate of dismissal had been required or given under section 14 of 11 & 12 Vict. c. 43, —Held, that upon a fresh summons in 1879, the former adjudication was sufficiently proved by the entry in the justices' note-book, and when so proved was binding and conclusive. *Reg. v. Hutchins*, 49 Law J. Rep. M.C. 64; Law Rep. 5 Q.B. D. 353; reversed on appeal, Law Rep. 6 Q.B. D. 300.

#### (D) SEWERS.

29.—In 1872, a Board of Health served notices to sewer and pave roads on an owner. The owner took no notice during his lifetime, and the works having been executed by the board, notices to pay apportionments were on the 30th of July, 1875, served on the tenant for life under the will of the owner, and on the executors, who within the statutory three months served counter-notices on the board, disputing the amount of the apportionments, and alleging that the roads were public roads. Thereupon the board commenced proceedings by arbitration, which the owners refused to attend, and in their absence an award was made in favour of the board on the 9th of August, 1877. On the 19th of January, 1878, the award was made a rule of the Queen's Bench Division. On the 12th of February notices of demand were served by the board on the owners, and on the 9th of July, 1878, proceedings in the Queen's Bench Division to enforce the award were commenced and subsequently abandoned. On the 1st of August, 1878, proceedings were taken in the Queen's Bench with reference to the costs of the award, and these, on the 23rd of January, 1879, were transferred to the Chancery Division, in which an administration action was pending:—Held, by Bacon, V.C., and by the Court of Appeal, that a summons by the board for leave to prove in the administration action for the amount awarded must be refused, on the ground that the remedy of the board was by a summary proceeding before justices, and had become barred by the operation of Jervis's Act, 11 & 12 Vict. c. 43, s. 11. *West v. Downman* (App.), Law Rep. 14 Ch. 11.

Per Bacon, V.C.—Where a notice, served by a Board of Health upon an owner, calling upon him to pay an apportionment of expenses incurred

in the sewerage and paving of roads, is met by a counter-notice disputing the amount alone, such demand may be the subject of arbitration; but where the counter-notice disputes the liability to pay, such a demand must be tried by justices, who, if the counter-notice also disputes the amount, may exercise their jurisdiction as to the amount also. *Ibid.*

30.—By a Local Act the Oldham Corporation were generally empowered to lay sewers in streets and courts not being highways, with certain special provisions as to sewerage S. Road, which it was admitted had not been complied with. The same Act repealed all the other general Acts on the subject, so far as they applied to the borough, but made no mention of the Sewage Utilisation Act, 1865, which was passed a few days before the Local Act, and which gave the corporation general powers to lay sewers. The Public Health Act, 1875, repeals the Sewage Utilisation Act, and itself empowers sewer authorities to lay sewers in any "road or street or place laid out as or intended for a street." After the passing of the Public Health Act, the corporation proceeded to sewer S. Road, which was a private way, with houses on each side, for the passage along which a toll was taken by the plaintiffs, in whom it was vested. A motion by the plaintiffs for an injunction to restrain the corporation was refused. The Court held, first, that the corporation had power to sewer S. Road, independently of the Local Act, under the Public Health Act, 1875, s. 16, as continuing the power given by the Sewage Utilisation Act, which it only repealed for the purpose of consolidation and re-enactment; and secondly, that S. Road was a street within the meaning of the Acts. *Taylor v. The Corporation of Oldham*, 46 Law J. Rep. Chanc. 105; Law Rep. 4 Ch. D. 395.

31.—Under the 16th section of the Public Health Act, 1875, authorising any local authority to carry any sewer into, through or under any lands within their district, the Local Board have power to carry their sewer above the surface of such lands. *Roderick v. The Aston Local Board* (App.), 46 Law J. Rep. Chanc. 802; Law Rep. 5 Ch. D. 328.

32.—By an indenture dated the 18th of July, 1874, it was agreed that the plaintiffs, the N. Local Board, should allow the defendants, the C. Local Board, to cause the sewer of their district to communicate with the outfall sewer of the N. District, provided that "the sewage of any other districts or places should not be permitted" by the C. Board to pass into their sewer, so as to discharge into the outfall sewer of the N. Board. The Public Health Act, 1875, section 22, empowers the "owner of any premises without the district of a local authority" to cause "any drain from such premises to communicate with any sewer of the local authority" on such terms as . . . may be settled by a Court of summary jurisdiction. The defendant, W., the owner of premises without the district of the C. Board, intended to connect

his drains with the sewer of the C. Board, whence his sewage would be discharged into the plaintiff's outfall sewer; and had the compensation to be paid by him, for so connecting his drains, assessed under the above section. An action was now brought by the N. Board against the C. Board and W., claiming an injunction to restrain them respectively from permitting any such sewage to pass into the sewer of the C. Board, so as to be discharged into the plaintiff's outfall sewer. The defendants demurred:—Held, first, that the C. Board were discharged from their covenant by the subsequent Act of Parliament, which empowered the defendant W., the owner of premises without their district, to do that which they had covenanted should "not be permitted" to be done; and, secondly, that the defendant W. had not done anything which he was not entitled to do under section 22 of the Act. Demurrers, therefore, allowed. *The Newington Local Board v. The Cottingham Local Board and Wilkinson*, 48 Law J. Rep. Chanc. 226; Law Rep. 12 Ch. D. 725.

33.—In 1875 a local board, who had constructed a sewer under a public road, constructed on the land adjoining the road a side-entrance or man-hole to the sewer, and subsequently gave the owner of the land notice of their intention to construct two other man-holes. The landowner contended that the man-holes were "necessary works" within the 46th section of the Public Health Act, 1848, and the 19th section of the Public Health Act, 1875, and that the board could not construct them without first acquiring his land by purchase:—Held, that the man-holes were parts of a "sewer" within the 46th section of the Act of 1848 and the 16th section of the Act of 1875, and that the board had power to enter on the land and construct the man-holes without purchase, the only remedy of the landowner being compensation. *Sranston v. The Twickenham Local Board* (App.), 48 Law J. Rep. Chanc. 623; Law Rep. 11 Ch. D. 838.

34.—Where a local authority by agreement with the owner of premises constructs, so as to communicate with their sewer, a drain from his premises which they could have required him to make under section 23 of the Public Health Act, 1875, such agreement is not *ultra vires*, and they are responsible to him for any damage caused to his premises by the negligent construction of the drain. *Hall v. The Mayor, &c., of Batley*, 47 Law J. Rep. Q.B. 148.

*Drainage: expenses of repairing: covenant by tenant to pay rates, assessments, &c.* [See LANDLORD AND TENANT, 7.]

#### (E) NOTICE OF ACTION.

35.—The 264th section of the Public Health Act, 1875, requiring a month's notice to be served on a local authority before commencing an action for anything done under the provisions of the Act, does not apply where the

object of the action is to restrain the commission of a nuisance; and this notwithstanding the plaintiff also claims compensation for past damage. *Flower v. The Low Leyton Local Board* (App.), 46 Law J. Rep. Chanc. 621; Law Rep. 5 Ch. D. 347.

#### (F) NOTICE OF APPEAL TO QUARTER SESSIONS.

36.—The Public Health Act, 1875 (38 & 39 Vict. c. 55), gives an appeal to quarter sessions in respect of any order, conviction, judgment or determination of any Court of summary jurisdiction, subject to the condition that the appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party, &c., of his intention to appeal. An order was made upon the appellants under section 48 of the same Act, which order was eighteen days afterwards served upon them; and they, within eight days from the receipt of the service, gave notice of appeal:—Held, that the notice of appeal was too late. The words, "cause of appeal," in section 269, sub-section 2, have the same meaning as "decision of the Court," in section 269, sub-section 1; and a notice of an appeal against an order made under section 48 must be given within fourteen days from the time when the Court pronounces its decision. *Reg. v. The Barnet Rural Sanitary Authority*, 45 Law J. Rep. M.C. 105; Law Rep. 1 Q.B. D. 558.

37.—The Public Health Act, 1875, provides in certain cases for an appeal from petty sessions to quarter sessions, and provides that the quarter sessions may state the facts specially for the determination of a superior Court. In a case under this Act an appeal was brought to quarter sessions, which quashed the order appealed from, subject to a case reserved. A *certiorari* issued, and a rule calling on the prosecutor to shew cause was granted, and was argued in and discharged by the Queen's Bench Division. Leave to appeal was not given:—Held, that the case so reserved fell within the provisions of section 45 of the Judicature Act, 1873, and that no appeal could be brought from the decision of the Divisional Court upon it unless special leave to appeal were granted. *Reg. v. The Swindon New Town Local Board* (App.), 49 Law J. Rep. Q.B. 522.

#### (G) ORDER TO ABATE NUISANCE.

38.—Under the Nuisance Removal Acts (18 & 19 Vict. c. 121. ss. 12, 13, and 29 & 30 Vict. c. 90. s. 19), Justices made an order on the 15th of May, 1875, for the abatement of a nuisance and prohibiting the recurrence of the same. On the 11th of August, 1875, the Public Health Act, 1875 (38 & 39 Vict. c. 55), came into operation and repealed the above Nuisance Removal Acts, but with a saving clause in section 343 that such repeal should not affect any right or liability acquired, accrued or incurred under any enactment thereby repealed. A

complaint was made before the Justices for the disobedience of the above order by allowing a recurrence of the nuisance on the 12th of August, 1875. The Justices refused to convict on the ground that the order was gone by reason of the repealing statute:—Held, that the Justices were wrong on the ground that the defendant was liable to be convicted, as he had incurred a liability under the repealed enactment which was not affected by the repeal. *Barnes v. Edleston* (App. Div.), 45 Law J. Rep. M.C. 162; Law Rep. 1 Ex. D. 102.

[And see NUISANCE, 12-15.]

#### (H) OFFENCES.

##### (a) *Selling fish within town.*

39.—Where by a local Act passed in 1822 a penalty was imposed on persons selling any fish in the "town" of R. (except in the market-place), and in 1876 the respondent sold fish in a principal street of the town, the site of which was green fields in 1822:—Held, that the respondent was guilty of an offence, as the word "town" meant the collection of buildings from time to time called the town of R. *Collier v. Worth* (Div. App.), Law Rep. 1 Ex. D. 464.

##### (b) *Unsound meat.*

40.—By the Public Health Act, 1875 (38 & 39 Vict. c. 55. s. 116), an inspector of nuisances may, at all reasonable times, inspect any meat exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man (the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged), and if it appears to the inspector that the meat is unfit for the food of man, he may seize and carry the same before a Justice. By section 117, if it appears to the Justice that the meat seized is unfit for human food, he shall condemn the same and order it to be destroyed or disposed of; and the person on whose premises the same was found is made liable to a penalty on conviction, either by the Justice who condemned the meat, or by any other Justice having jurisdiction. The appellant was convicted before two Justices of having deposited meat for the purpose of sale or for the purpose of preparation for sale, found by an inspector of nuisances to be unfit for the food of man. The meat in question had been seized and carried away by an inspector, and had been ordered to be destroyed by a Justice *ex parte* without any formal notice being given to the appellant. It was objected by the appellant that the meat could not be condemned and ordered to be destroyed by a Justice *ex parte* and without notice to him to attend and shew cause against the same. It was also objected that the conviction was bad for duplicity:—Held, that the condemnation of the meat and an order for destruction was an *ex parte* proceeding altogether apart from the punishment

of the offender. Held also, that the purpose for which the meat was deposited was properly charged in the alternative, and that consequently there was no duplicity. *Reg. v. White*, 49 Law J. Rep. M.C. 19; Law Rep. 5 Q.B. D. 15.

##### (c) *Exposing infected person in public street.*

41.—B., a medical practitioner practising in the town of T., sent a man suffering from scarlet fever to the fever hospital, with a certificate, directing him to walk in the middle of the road and talk to no one. The certificate being informal, the man was refused admission, and B. thereupon walked with him through the town to the residence of the chairman of the local board, from whom, after some delay, he procured an order for the man's admission to the hospital. B. then returned with the man to the police station to procure an ambulance to convey him to the hospital. Justices having refused to convict upon an information against B. under section 126, sub-section 2 of the Public Health Act, 1875, on the ground that it was not proved that B. "had the charge of" the man; that he had not wilfully exposed the man in a street or public place "without proper precaution;" and that he had, in fact, done the best he could to prevent the spread of the fever,—Held, that their decision was right. *The Tunbridge Wells Local Board v. Bishopp*, Law Rep. 2 C.P. D. 187.

#### PUBLIC HEALTH ACT (SCOTLAND).

*Public well.* [See SCOTCH LAW, 19.]

#### PUBLIC-HOUSE.

[See ALRHOUSE.]

#### PUBLIC MEETING.

*Law of: voting by ballot.* [See CHURCH AND CLERGY, 1.]

*Right of.* [See METROPOLIS, 21.]

#### PUBLIC PLACES.

[The law relating to public baths and wash-houses amended. 41 Vict. c. 14.]

#### PUBLIC POLICY.

*Agreement to share subject of litigation.* [See CHAMPERTY.]

*Contracts contrary to.* [See CONTRACT, 3-16.]

*Gift with clause of forfeiture on forsaking Jewish religion.* [See FORFEITURE, 4.]

*Prolongation of patent.* [See PATENT, 27, 28.]

#### PUBLIC PROSECUTION.

[Provisions for prosecution of offences in England: appointment of public prosecutor. 42 & 43 Vict. c. 22.]

## PUBLIC WORKS LOANS.

[The Public Works Loans Act, 1875, amended. 39 & 40 Vict. c. 31.]

[The Public Works Loans Act, 1875, amended. 41 Vict. c. 18.]

[Amendment of the Acts relating to Public Works Loans in Ireland. 42 & 43 Vict. c. 77.]

[Public Works Loan commissioners appointed, and provisions made relating to loans by them. 43 & 44 Vict. c. 1.]

## PUBLIC WORSHIP REGULATION ACT.

[See CHURCH AND CLERGY, 26-28.]

## QUALIFICATION.

*County voter, of: description.* [See PARLIAMENT, 7-12.]

*Director of company, of.* [See COMPANY, D 5-11.]

*Member of local board, of.* [See PUBLIC HEALTH ACT, 3-5.]

*Municipal corporation, of members of.* [See MUNICIPAL CORPORATION, 1-3.]

*Scholar, of, as "parishioner."* [See CHARITY, 26.]

## QUARANTINE.

[Regulations respecting quarantine. 39 & 40 Vict. c. 36. s. 234. In Ireland, 41 & 42 Vict. c. 52. ss. 149-152.]

## QUARE IMPEDIT.

[See CHURCH AND CLERGY, 2.]

## QUARRY.

[See MINES.]

*Right of tenant to work.* [See WASTE, 1.]

## QUARTER SESSIONS.

[See ALMOUSE, 3, 24; JUSTICE OF THE PEACE, 1; PUBLIC HEALTH, 14, 36, 37; RATES, 25.]

## QUEBEC.

[See COLONIAL LAW, 9, 14, 16.]

## QUEEN ANNE'S BOUNTY.

[Amendment of the Agricultural Holdings Act, 1875. 39 & 40 Vict. c. 74.]

## QUEEN'S PROCTOR.

[See DIVORCE, 9.]

## QUIET ENJOYMENT.

*Covenant for.* [See COVENANT, 13, 17; DAMAGES, 12.]

## QUIT RENTS.

*Sale subject to: form of conveyance.* [See VENDOR AND PURCHASER, 25.]

## QUO WARRANTO.

1.—A by-law of a local Board of Health duly made and confirmed, forbade the rescission of any resolution of the Board, unless at a meeting where at least as many members were present as were present when such resolution was passed:—Held, that such by-law did not apply to the dismissal of the clerk to the Board; for a resolution to effect this was not in the nature of a rescission of that by which he had been appointed, but was a new resolution in itself. Such clerk, therefore, holding his office under the Public Health Acts, "at the pleasure of the Board," could not obtain an information in the nature of *quo warranto* because of his dismissal by the resolution of a meeting consisting of fewer members than were present when he was appointed. *Ex parte Richards*, 47 Law J. Rep. Q.B. 498; Law Rep. 3 Q.B. D. 368.

Where application is made for an information in the nature of a writ of *quo warranto* by a person who is liable to immediate dismissal from the office in which he seeks to be reinstated, the Court will not, in the exercise of its discretion, grant the application. *Ibid.*

2.—The Public Health Act, 1848 (11 & 12 Vict. c. 61. s. 27), enacts that on the day after the election "the chairman shall . . . attend at the office . . . and ascertain the validity of the votes by an examination of the rate books, and such other books and documents as he may think necessary, and by examining such persons as he may think fit, and he shall cast up such of the votes as he shall find to be valid, . . . and ascertain the number of such votes for each candidate; and the candidates . . . who shall have obtained the greatest number of votes shall be deemed to be elected, and shall be certified as such by the chairman." On the trial of an issue on a *quo warranto*, evidence was given to shew, first, that a vote not given for the defendant had wrongly been put down to him, and votes given for the relator had wrongly been put down to other persons, and, secondly, that one voting paper, in favour of the relator, had been mislaid and not counted at all:—Held (by the Queen's Bench Division, 45 Law J. Rep. Q.B. 413; Law Rep. 1 Q.B. D. 336), that these were mechanical errors, and that evidence of them might be received and the mistakes corrected.

Evidence was further offered to shew that certain votes given and received by the chairman were, in fact, invalid on grounds which had not been called to the chairman's attention when the vote was given, so that no such investigation into their validity as is prescribed by the above section was in fact entered into:—Held (by Mellor, J., and Field, J., Blackburn,



J., dissenting), that evidence on this head could not be admitted, the receipt of these votes being a judicial act, into which no enquiry was intended by the Act to be permitted. *Ibid.*

On appeal,—Held, that the casting of the votes, being the exercise of a ministerial function, might be reviewed on *quo warranto*, and that the evidence was, therefore, rightly received. *Reg. v. Collins* (App.), 46 Law J. Rep. Q.B. 257; Law Rep. 2 Q.B. D. 30.

### RABBITS.

*Property in: embezzlement by gamekeeper.* [See EMBEZZLEMENT, 3.]

*Sale of, for food: implied warranty.* [See SALE OF GOODS, 6.]

### RACECOURSE.

[Suburban racecourses to be licensed. 42 & 43 Vict. c. 18.]

*Rateability, of.* [See RATES, 12; COLONIAL LAW, 51.]

### RAILWAY.

#### (A) CONSTITUTION OF RAILWAY COMPANY.

(a) *Shareholders.*

(b) *Debenture stocks: priorities.*

#### (B) POWERS AND RIGHTS OF RAILWAY COMPANY.

(a) *As to land.*

(1) *Grant of right of way.*

(2) *Adjoining landowner: access of light.*

(3) *Mines under railway.*

(4) *Superfluous lands.*

(b) *Construction of works.*

(1) *Bridge over public road.*

(2) *Extinguishment of rights of way.*

(3) *Diversion of river.*

(4) *Accommodation works.*

(c) *Letting rolling stock.*

(d) *Contracts and agreements.*

(1) *Working agreement: "maintenance" of works.*

(2) *Agreement for running powers: determination of.*

(3) *Contractor's agreement: former and subsequent contract.*

(e) *By-laws and regulations.*

(1) *Passenger travelling without ticket.*

(2) *Season ticket: forfeiture of deposit.*

(3) *Toll "not exceeding per ton per mile."*

(f) *Right of company to compensation for telegraph purchased by Postmaster-General.*

#### (C) LIABILITIES OF RAILWAY COMPANY.

(a) *As carriers.*

(1) *Of passengers and passengers' luggage.*

(2) *Railway and Canal Traffic Act: undue preference.*

(3) *Just and reasonable condition.*

DIGEST, 1875-1880.

(4) *"Services incidental to business of carrier:" special Act: undue restrictions.*

(5) *Land and sea carriage.*

(b) *For negligent acts of servants.*

(c) *For neglecting to fence land.*

(d) *Vendor's lien.*

(e) *Action by judgment creditor: receiver and manager.*

(D) PASSENGER DUTY ACT.

(E) ABANDONMENT.

(F) BOARD OF TRADE, POWERS OF.

(G) RAILWAY COMMISSIONERS, JURISDICTION OF.

[Provisions for returns by railways to the Board of Trade respecting continuous brakes. 41 Vict. c. 20.]

[Continuation of the Regulation of Railways Acts, 1873 and 1874. 42 & 43 Vict. c. 56.]

[The Railways Construction Facilities Act, 1864, amended. 43 & 44 Vict. c. 31.]

[Assessment of railway to income tax. 43 & 44 Vict. c. 19. ss. 82, 95.]

#### (A) CONSTITUTION OF RAILWAY COMPANY.

(a) *Shareholders.*

1.—By a special Act of Parliament, with which the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), was incorporated, the defendant, and certain other persons therein described, were united into a company for making a railway, and it was enacted, *inter alia*, that the defendant and four other persons therein mentioned should be the first directors of the company, and that they should continue in office until the first ordinary meeting of the company held after the passing of such Act; that the capital of the company should be 600,000*l.* in 60,000 shares of 10*l.* each, and that the qualification of a director should be the possession in his own right of not less than thirty shares. It appeared that no meeting of the company had been ever held, though the time for holding such first ordinary meeting had long elapsed, that no directors had been appointed otherwise than by the Act itself, that there never was any register of shareholders, and that no shares had been ever allotted to the defendant:—Held, notwithstanding, that the defendant was a shareholder in respect of thirty shares of 10*l.* each in the capital of the company, within the meaning of section 36 of the Companies Clauses Consolidation Act, 1845, and, as such, liable to be proceeded against by *scire facias*, at the suit of a judgment creditor of the company. *Porter v. Emmons*, 45 Law J. Rep. 305; Law Rep. 1 C.P. D. 201; affirmed on appeal, 46 Law J. Rep. C.P. 179; Law Rep. 1 C.P. D. 664.

(b) *Debenture stocks: priorities.*

2.—A railway company by their Special Act passed in 1873 were empowered to borrow 250,000*l.* on mortgage, and the Act further pro-

vided as follows: "The company may create and issue debenture stock subject to the provisions of part 3 of the Companies Clauses Act, 1863, but notwithstanding anything therein contained the interest of all debenture stock at any time created and issued by the company shall rank *pari passu* with the interest of all mortgages at any time granted by the company, and shall have priority over all principal moneys secured by such mortgages." By a subsequent Act passed in 1875 the company were empowered to raise additional capital and to borrow on mortgage, in respect of such additional capital, any sum not exceeding 25,000*l.*, and the Act further enacted as follows: "The company may create and issue debenture stock subject to the provisions of part 3 of the Companies Clauses Act, 1863, but notwithstanding anything therein contained the interest of all debenture stock at any time after the passing of this Act created and issued by the company shall rank *pari passu* with the interest of all mortgages at any time after the passing of this Act granted by the company, and shall have priority over all principal moneys secured by such mortgages." The company issued mortgages and debenture stock under the Act of 1873, some of such debenture stock being issued subsequently to the passing of the Act of 1875, and they also issued debenture stock under the Act of 1875:—Held, that notwithstanding the use of the words "at any time" in the Act of 1873, that enactment applied only to the mortgages and debenture stock for which provision was made by that Act, and that therefore the interest on the mortgages and debenture stock, issued under the Act of 1873 (such interest ranking *pari passu*), had priority over the interest on the debenture stock issued under the later Act. Held also, regard being had to the use of the words "at any time after the passing of this Act" in the Act of 1875, that that enactment applied not only to debenture stock issued under that Act, but also to any debenture stock which might, after the passing of that Act, be issued under the Act of 1873, and that, therefore, the interest on mortgages and debenture stock issued under the Act of 1873, previously to the passing of the Act of 1875, had priority over the interest on the whole of the debenture stock issued after that date. Held further, that, by virtue of the appointment of a receiver under a section in the Act of 1873, the principal of the mortgages issued under that Act would be repayable next after the interest of such mortgages and of any debenture stock ranking as to interest *pari passu* therewith, in priority to the interest of other subsequent debenture stock. *Harrison v. The Cornwall Minerals Railway Company*, 49 Law J. Rep. Chanc. 834; Law Rep. 16 Ch. D. 66 [subsequently varied on appeal, but not yet reported].

Semble, where a Special Case stated, in an action for the opinion of the Court, under the Rules of Court, 1875, Order XXXIV. rule 1, in effect involves a decision of the action, the

order should not be merely in the form of answers to the questions stated in the Special Case, but should embody declarations giving effect to the answers, and the action should be set down *pro forma* for trial on motion for judgment on the declarations to be so made. *Ibid.*

## (B) POWERS AND RIGHTS OF RAILWAY COMPANY.

### (a) As to land.

#### (1) Grant of right of way.

3.—In the absence of express enactment a railway company incorporated by Special Act has no power to alienate, either for value or without value, any portion of the land acquired by them for the purposes of their undertaking, and not being "superfluous lands" or lands acquired for "extraordinary" purposes. *Muliner v. The Midland Railway Company*, 48 Law J. Rep. Chanc. 258; Law Rep. 11 Ch. D. 611.

The A. Railway Company, having the usual powers under their Special Acts, and also power to enter into agreements with the defendant railway company for the user and working by them of the line, acquired lands under their Special Acts, and constructed their railway so that a station and the line of railway was partly built on arches. The A. company granted for value to their contractors certain superfluous land on one side of the line, and also an unlimited right of way, not being a way of necessity, through one of the arches to this superfluous land. The contractors granted for value the land, with the right of way, to the plaintiff. The railway since its opening had been worked by the defendant company, and the latter now required the exclusive use of the archway for the purposes of their traffic, and claimed to close up the same entirely, so as to interrupt the plaintiff's right of way:—Held, that the land under the archway was part of the railway and works, that the A. company had no power to grant the right of way in question through or over land actually used by them for the purposes of their undertaking, that the grant was invalid, and that the defendant company was entitled to the exclusive use of the arch for the purposes of their traffic. Held also, that the fact of the line being worked by the defendant company made no difference to the plaintiff's rights, and that he, having purchased with notice of the defendant company's rights, was not entitled to any relief, and an action by him to restrain the interference by the defendant company with his alleged right of way was accordingly dismissed with costs. *Ibid.*

Remarks on the right of a railway company to deal with lands acquired by them for the purposes of their undertaking. *Ibid.*

#### (2) Adjoining landowner: access of light.

4.—Where land has been taken by a railway company for the purposes of their railway, the owner of the adjoining land is as fully master of it for all purposes as he was before, so that

he does not interfere with the proper working of the railway. The plaintiff, the owner of land adjoining a railway, built on his own land a house having windows overlooking the railway. The defendant company erected a large hoarding close in front of these windows, to prevent the plaintiff from acquiring an absolute right to the access of light across the railway. This hoarding was afterwards blown down:—Held, that as these windows in no way interfered with the working of the railway, the company had no right to erect the hoarding; and injunction granted to restrain them from re-erecting it. *Norton v. The London and North Western Railway Company*, 47 Law J. Rep. Chanc. 859; Law Rep. 9 Ch. D. 623.

### (3) Mines under railway.

5.—The lessee of mines whose term is of sufficient length to enable him, working with reasonable diligence, to exhaust them, is, for the purpose of dealing with a railway company who require the support of the minerals, the absolute owner thereof; and the company having paid him compensation under the 78th section of the Railways Clauses Consolidation Act, 1845, are in the position of absolute purchasers of those minerals in perpetuity; and neither the reversioner nor any person claiming under him is entitled to any compensation other than for the loss of royalty by reason of the non-working of the mines. *The Great Western Railway Company v. Smith* (App.), 45 Law J. Rep. Chanc. 235; Law Rep. 2 Ch. D. 235; affirmed on appeal to the House of Lords, 47 Law J. Rep. Chanc. 97; Law Rep. 3 App. Cas. 165. [And see LANDS CLAUSES ACT, 3, 43.]

### (4) Superfluous lands.

[See LANDS CLAUSES ACT, 43-45.]

### (b) Construction of works.

#### (1) Bridge over public road.

6.—By their special Act, passed in 1872, a railway company whose line was made in 1857, were authorised to divert a road crossing their line on the level, and to carry it under their line by a bridge, and the soil of the diverted road was to belong to the company. The new road and bridge were to be in accordance with the deposited plans and sections, which shewed a total height from the road to the rails on the bridge of sixteen feet three inches, but did not mention the height of headway. The special Act incorporated the Lands Clauses Act, 1845, and the Railway Clauses Act, 1845 (section 49 of which provides that all bridges shall have a headway of fifteen feet), and it provided that nothing in the special Act should exempt the company from the provisions of the general Acts. It also gave the company power to deviate from the deposited sections to the extent of five feet. The company without altering the levels of their line (no such alteration

being shewn on the deposited plans) made their bridge of the prescribed height of sixteen feet three inches, but with a headway of only fourteen feet, and that partly gained by carrying the road below the level of the adjoining land, so that at times it was flooded from an open ditch near the line and became impassable. The evidence shewed that if the surface of the road was raised one or two feet, all serious inconvenience from flooding would be removed, and that a headway of twelve or thirteen feet would be sufficient for the traffic of the district. On an information at the relation of the road surveyors,—Held, that the Attorney-General was entitled to an injunction restraining the company from making or maintaining the bridge with less headway than fifteen feet, or any bridge which, by reason of the road thereunder being of too low a level, might cause the road to be flooded. *The Attorney-General v. The Furness Railway Company*, 47 Law J. Rep. Chanc. 776.

### (2) Extinguishment of rights of way.

7.—Where a private Act of Parliament gave a railway company power to extinguish all rights of way "in, over or affecting" five footways which formed level crossings, but no compensation was provided for:—Held, that the Act related to public rights, and that persons who claimed, under a contract with the company, a free way of passage with horses, carts, waggons and carriages over one of such level crossings, were entitled to an injunction to restrain the company from stopping it up. *Wells v. The London, Tilbury and Southend Railway Company* (App.), Law Rep. 5 Ch. D. 126.

### (3) Diversion of river.

8.—The power conferred upon a railway company, by the Railways Clauses Consolidation Act, 1845, s. 16, to divert the course of a road or river, by carrying the same "over or under or by the side of the railway, as they may think proper," only authorises their so doing when the road or river presents an actual obstacle to the construction of their line, and does not justify the diversion merely for the sake of avoiding expense in the construction. *Reg. v. The Wycombe Railway Company* (36 Law J. Rep. Q.B. 121; Law Rep. 2 Q.B. 310) approved. *Pugh v. The Golden Valley Railway Company* (App.), 49 Law J. Rep. Chanc. 721; Law Rep. 15 Ch. D. 330. On appeal from Fry, J., 48 Law J. Rep. Chanc. 666; Law Rep. 12 Ch. D. 274.

### (4) Accommodation works.

9.—An action was brought by owners of land adjoining a railway against the railway company for damage from alleged insufficiency of accommodation works made by the company. No proceedings had been taken by the landowners before justices of the peace under the Railways Clauses Consolidation Act, 1845, s. 69, in respect of the alleged insufficiency in the

works, and the time limited by section 73 of that Act for compelling the company to make further accommodation works had expired:—Held (on demurrer), that the action was not maintainable. *Colley v. The London and North Western Railway Company and others*, 49 Law J. Rep. Exch. 575; Law Rep. 5 Ex. D. 277.

(c) *Letting rolling stock.*

10.—The lines of the T. Railway Company communicated with the lines of the E. and of the B. Railway Companies, and the only access of the T. Company to London was by and over the lines of the other two companies. In 1854 the T. company leased their undertaking for twenty-one years to P. & Co., who entered into an agreement with the E. Company, under which the E. Company supplied them with locomotives and rolling stock to work the T. line. In 1863 an Act was passed "to authorise arrangements between the T. Company, and the lessees of their undertaking, and the E. and B. Companies, with reference to the lease and working of the T. Railway, and for other purposes," which empowered the E. and B. Companies jointly or severally to take a lease, or a transfer of the existing lease, of the T. line; and also empowered them to enter into agreements with respect to the working of the T. line, and with respect to the apportionment of the traffic, and of the toll and fares; and also empowered them and the T. Company to enter into any contracts or agreements for effecting all or any of the purposes of the Act, or any objects incidental to the execution thereof. On the expiration of the lease in 1875 the E. Company, which in the meantime had, by amalgamation with the B. Company, become the G. Company, and had during the lease continued to supply P. & Co. with locomotives and rolling stock, entered into a deed of arrangement with the T. Company, under which the G. Company undertook to supply the T. Company with locomotives and rolling stock to work the traffic of the T. line, upon certain terms. An action having been brought by the Attorney-General, on the relation of certain manufacturers, against the G. Company, to restrain them from letting locomotives and rolling stock, the Master of the Rolls being of opinion that the G. Company had no statutory or other powers to enter into the deed of arrangement, and that the same was *ultra vires* on their part, granted a perpetual injunction against them in the terms asked for. On appeal,—Held (per James, L.J., and Bramwell, L.J., *dissentiente* Baggallay, L.J.), that the G. Company had power not only under the special Act of 1863, but also under the 87th section of the Railways Clauses Consolidation Act, 1845, to enter into the deed of arrangement; and further, that, even if the arrangement were *ultra vires*, there was no such injury to or interference with the rights of the public as called for the interference of the Court. Held also (per James, L.J., and Bramwell, L.J., *dis-*

*sentiente* Baggallay, L.J.), that the mere fact that the corporation is acting *ultra vires* does not warrant a suit on behalf of the Sovereign or the public to stop the act complained of, unless it is shewn that some plain and substantial public mischief is being done. Held (per Baggallay, L.J.), that the decision of the Master of the Rolls was right and ought to be affirmed, and that, whenever a corporation exceed their statutory powers, and thereby transgress the law, it is the duty of the Attorney-General, in the interests of the public, to take the necessary steps to enforce the observance of the law. *The Attorney-General v. The Great Eastern Railway Company* (App.), 48 Law J. Rep. Chanc. 428; Law Rep. 11 Ch. D. 469.

When, on motion for judgment, under Order XL. rule 11, upon the admission of fact in the pleadings, an order is made which, though interlocutory, amounts to final judgment, so that no further proceedings in the action are necessary, such order is appealable within a year. *Ibid.*

On appeal to the House of Lords,—Held, that the deed was expressly authorised by the special Act. *The Attorney-General v. The Great Eastern Railway Company* (H.L.), 49 Law J. Rep. Chanc. 545; Law Rep. 5 App. Cas. 472.

(d) *Contracts and agreements.*

(1) *Working agreement: "maintenance" of works.*

11.—The A. railway company were by an Act of Parliament authorised to construct a railway, and by a working agreement scheduled to and made part of the Act the B. railway company were empowered on certain terms to "work and maintain" the same in perpetuity. The line was accordingly constructed by the A. company and worked by the B. company. The A. company subsequently erected certain steps as an improved access to one of their stations, and these steps were removed by the B. company. In an action by the A. company for a mandatory injunction for the restoration of the steps and for an injunction to restrain any further interference therewith,—Held, that the effect of the working agreement was to entitle the B. company to the exclusive possession of the railway and works for the purpose of working and maintaining the same, that the erection of the steps was properly a work of maintenance, that the A. company had no right to enter upon the railway and works for the purposes of erecting the steps, and that the action must be dismissed with costs. The meaning of the term "maintenance" as applied to a railway discussed. *The Sevenoaks, Tunbridge and Maidstone Railway Company v. The London, Chatham and Dover Railway Company*, 48 Law J. Rep. Chanc. 513; Law Rep. 11 Ch. D. 625.

(2) *Agreement for running powers, determination of.*

12.—The usages and rules of law applicable to the determination of contracts for hiring, service or partnerships have no application to

contracts between railway companies. An agreement between railway companies not *ultra vires*, and by its terms unlimited in duration of time, can only be determined, failing mutual consent, by an Act of Parliament. *The Llanelly Railway Company v. The London and North Western Railway Company* (H.L.), 45 Law J. Rep. Chanc. 539; Law Rep. 7 E. & I. App. 550.

The L. Railway Company executed an agreement by which it conceded to the L. and N. W. Railway Company running powers over its line, subject to the company's by-laws and to the payment of certain dues. The agreement specified no limit as to its duration, nor that either company was to have power to determine it, but some of its terms indicated that it was intended to be permanent. It provided that, whether the running powers were exercised or not, there should be a complete system of through booking, and that the two companies should send by each other all traffic, not otherwise consigned, to or from stations on the lines of each whenever such lines formed the shortest route:—Held, that these provisions constituted a sufficient consideration to support the agreement, so that neither company could determine it without the consent of the other on the ground of want of reciprocity, although it neither gave to the L. Company any running powers over the lines of the L. and N. W. Company, nor laid any obligation on the latter company to exercise the powers conceded to it. *Ibid.*

The agreement provided that the L. and N. W. Company, in the event of their exercising their running powers, should be at liberty to have their own staff of clerks at the stations on the company's line, and should carry the local traffic of the L. Company if required to do so:—Held, that this was not a handing over of the management of the one company to the other such as would be contrary to the spirit of the Railway Acts if done without express Parliamentary sanction. *Ibid.*

(3) *Contractor's agreement: former and subsequent contract.*

13.—A contract for the construction of a railway provided that if the contractor should make default the company might enter and complete the works, and make use of the contractor's waggons, machinery and plant, and also have a lien on the same, with power of sale to reimburse themselves any loss or damage they might sustain by reason of such default. The contractor having become embarrassed, the company made a second contract with him, which provided that they should take to and complete the works, and for that purpose should be allowed the sum of 10,000*l.*, and the use of all the contractor's plant, &c., which should, on the completion of the works, be restored to the contractor in whatever state it might then be. And this second contract provided that, if it should then be found that anything was due to or from

the company from or to the contractor, the amount should be paid by the one to the other within three months after the engineer should have certified the amount that should be due. And it provided that "in all other respects the original contract should stand, except so far as it was altered by or should be inconsistent with the second contract." The contractor had made no default down to the date of the second contract. The company completed the works, and the engineer certified that a large sum was due to them from the contractor. The company thereupon refused to deliver up the plant to the contractor, and claimed power to sell the plant, and to reimburse themselves out of the proceeds:—Held, that they were not so entitled, for the provisions of the second contract were in substitution of the corresponding provisions in the first contract; the two instruments were not to be read as one, nor were the clauses of the first, conferring the lien and power of sale, to be taken as incorporated into the second contract. *Hunt v. The South Eastern Railway Company* (H.L.), 45 Law J. Rep. C.P. 87.

(c) *By-laws and regulations.*

(1) *Passenger travelling without ticket.*

14.—A by-law was made by a railway company, under the powers of their special Act, and of 8 & 9 Vict. c. 20, in these terms: "No passenger will be allowed to enter any carriage on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket, specifying the class of carriage and the stations for conveyance between which such ticket is issued. . . . Any person travelling without a ticket, or failing or refusing to shew or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of the journey:—Held, that in order to entitle the company to take proceedings under this by-law, a notice of demand for the fare due must have been first made to the passenger who refused or was unable to produce his ticket. *Brown v. The Great Eastern Railway Company*, 46 Law J. Rep. M.C. 231; Law Rep. 1 Q.B. D. 406.

15.—A by-law was made by a railway company under the powers of 8 & 9 Vict. c. 20, in the terms following:—"All passengers travelling without the special permission of some duly authorised servant to the company in a carriage or by a train of a superior class to that for which his ticket was issued, is hereby subject to a penalty not exceeding 40*s.*, and shall, in addition, be liable to pay his fare according to the class of carriage in which he is travelling from the station where the train originally started, unless he shews that he had no intention to defraud." The appellant was convicted under the above by-law of travelling in a first-class carriage between S. and B., with a second-class ticket. The Justices found, as a fact, that he had no intention to defraud:—Held, that the conviction was wrong, and that in order to con-

stitute an offence under the by-law, an intention to defraud must exist, inasmuch as otherwise the by-law itself would be unreasonable and repugnant to the provisions of 8 & 9 Vict. c. 20. *Bentham v. Hoyle*, 47 Law J. Rep. M.C. 5; Law Rep. 3 Q.B. D. 289.

16.—The respondent was charged, under 8 Vict. c. 20. s. 103, with travelling in a third-class carriage of the Great Western Railway without having previously paid his fare, and with intent to avoid payment thereof. The respondent was found at Neath on the 18th of November, 1878, in a third-class carriage on his way to New Milford, and produced to a ticket examiner at Neath the forward half of a tourist ticket, dated the 28th of September, 1878, and available for two months. The ticket in question, which was not transferable, had been issued from Ludlow to New Milford to A., from whom the respondent had purchased the forward half for a sum considerably less than he would have had to have paid for an ordinary single third-class ticket. There was evidence to shew that the respondent intended to defraud the railway company:—Held, that there had been a violation of the conditions under which the ticket was issued, and that the respondent was liable under the circumstances to be convicted under 8 & 9 Vict. c. 20. s. 103, for travelling without having paid his fare. *Langdon v. Homells*, 48 Law J. Rep. M.C. 133; Law Rep. 4 Q.B. D. 337.

17.—By 8 Vict. c. 20. s. 103, it is provided that if any person travel in a carriage of the company without having previously paid his fare, and with intent to avoid payment thereof, he shall forfeit a sum not exceeding forty shillings. By section 108 the company may make regulations for regulating the travelling upon the railway. By section 109 the company are empowered to make by-laws, provided such be not repugnant to the provisions of the Act. A railway company made a by-law, which provided that any person travelling without a ticket shall be required to pay the fare from the station whence the train originally started to the end of his journey, and under this by-law the company sued in the County Court for the amount of the fare from the place whence the train originally started, a passenger who had, without any intention to defraud, entered a train at an intermediate station, and travelled therein without a ticket:—Held (affirming the judgment of the Common Pleas Division, 47 Law J. Rep. C.P. 634; Law Rep. 3 C.P. D. 429), that the action could not be maintained, that a debt could not thus be created, and that the amount if claimed as a penalty could not thus be recovered. *The London, Brighton and South Coast Railway Company v. Watson* (App.), 48 Law J. Rep. C.P. 316; Law Rep. 4 C.P. D. 118.

18.—The holder of a season ticket, entitling him to travel over parts of the lines of two railway companies, refused to shew his ticket to the collector of the first company, after having completed his journey on their line, and as he was leaving their station to go to the

station of the second company. He had no fraudulent intention in so refusing. The first company summoned him under a by-law, which was in these terms: "Every passenger shall shew and deliver up his ticket (whether a contract or season ticket or otherwise) to any duly authorised servant of the company when required to do so for any purpose. Any passenger travelling without a ticket, or failing or refusing to shew or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey." He was convicted in the amount of the fare from the place whence the train by which he had travelled had originally started. On appeal against this conviction, —Held, that the penal clause of the by-law was *ultra vires* and void on the ground that the penalty imposed by it was variable. Held further (by Cockburn, C.J.), that section 108 of the Railways Clauses Consolidation Act, 1845, did not empower the company to make regulations with respect to persons travelling by the company's own carriages, but that even if it did, the refusal to shew a ticket could not be constituted an offence unless accompanied by an intention to defraud, and such by-law must not be carried beyond the scope of section 103. Secondly, that the by-law, being made under the powers of the 109th section, was inapplicable to the present case, for the appellant was not when he refused to shew his ticket "travelling upon the railway." Held further (by Lush, J.), that the by-law requiring a passenger to "deliver up his ticket," without any limitation as to time or purpose, was also unreasonable and void. *Saunders v. The South Eastern Railway Company*, 49 Law J. Rep. Q.B. 761; Law Rep. 5 Q.B. D. 456.

(2) *Season ticket: forfeiture of deposit.*

19.—Upon purchasing a passenger's season ticket from the defendants, the plaintiff agreed to be bound by certain conditions, of which one was that all benefit of the ticket, including a deposit of ten shillings paid with the price, should be forfeited on breach of any of the conditions; and another condition was that the ticket should be delivered up on the day after expiry. The plaintiff did not deliver up the ticket on the day after expiry, but delivered it up within a time which was found upon the trial to be a reasonable time. The defendants refused to return the deposit:—Held, that the defendants were justified, on the ground that compliance by the plaintiff with the stipulations of the contract was a condition precedent to his right to a return of the deposit. *Cooper v. The London, Brighton and South Coast Railway Company*, 48 Law J. Rep. Exch. 434; Law Rep. 4 Ex. D. 88.

(3) *Toll "not exceeding per ton per mile."*

20.—A railway company had power under their Act to impose tolls for the carriage of

goods "not exceeding" a certain amount "per ton per mile." Where the distance traversed was over four miles, they were authorised to charge for each quarter of a mile in excess of integer miles, and to treat as a quarter of a mile any fraction beyond an exact number of quarters of a mile. There was no provision as to fractions where the distance traversed was less than four miles. The company was also authorised to make "a reasonable charge for the expense of stopping" where the distance traversed was less than four miles:—Held (affirming the decision of the Court of Appeal), that the charge for stopping was not a toll within the meaning of the Railways Clauses Consolidation Act, 1845, ss. 93 and 95, requiring publication on a notice board. Held, by the Lord Chancellor (Earl Cairns) and Lord Selborne, in accordance with the decision of the Court of Appeal, that the company were entitled to charge rateably for fractions where the whole distance was less than four miles. Per the Lord Chancellor.—Where an Act grants a toll as payment for services rendered, it is not to be treated for purposes of construction as a taxing Act. Held, by Lord Penzance and Lord O'Hagan, that the Act ought to be treated as a taxing Act, and that the rule applied that in case of doubt that construction should be adopted which was most beneficial to the public; that power to charge for fractions, not having been expressly given, was not to be supplied by implication. *Pryce v. The Monmouthshire Railway and Canal Company (H.L.)*, 49 Law J. Rep. C.P. 130; Law Rep. 4 App. Cas. 197.

(f) *Right of company to compensation for telegraph purchased by Postmaster-General.*

21.—By the 31 & 32 Vict. c. 110. s. 7, a railway company possessing a beneficial interest in a telegraph open to the use of the public on the 1st of January, 1866, may, under certain circumstances, require the Postmaster-General to purchase such interest upon terms to be settled (failing agreement) by arbitration. By section 9, sub-section 11, an umpire is, in default of appointment by the arbitrators, to be nominated by the Chief Justice of the Common Pleas. The S. and D. Railway Company, which connected two portions of the London and South Western Railway, entered into an agreement in 1866, by which they undertook to complete all the works, including the telegraphs, and then to hand over, for the term of 1,000 years, their line to the South Western, who undertook to pay them forty-five per cent. of the "gross receipts from traffic conveyed by the railway." At the date of this agreement the S. and D. Railway had two telegraph wires along their line. In 1866 the South Western had made an agreement with the Electric Telegraph Company, by which the latter were to have the exclusive right of transmitting messages along the lines which the South Western then had or might afterwards acquire. After the passing of the Telegraph

Acts, the Postmaster-General acquired these telegraphs and paid compensation in respect thereof to the South Western. The S. and D. Railway Company then applied for compensation in respect of their telegraph and afterwards requested the Chief Justice of the Common Pleas to appoint an umpire, which he declined to do, on the ground that the S. and D. Company had no "beneficial interest" in a telegraph within the meaning of 31 & 32 Vict. c. 110. s. 7. On motion to make a rule absolute for a mandamus to compel such appointment to be made,—Held, that the S. and D. Railway have under the agreement with the South Western parted with the "beneficial interest" in their telegraph, that messages sent by the telegraph formed no part of "traffic conveyed by the railway," and that consequently they were not entitled to compensation under the Telegraph Acts. *Reg. v. Coleridge*, 45 Law J. Rep. Q.B. 649.

(C) LIABILITIES OF RAILWAY COMPANY.

(a) *As carriers.*

(1) *Of passengers and passengers' luggage.*

[See CARRIER, 3-20.]

(2) *Railway and Canal Traffic Act: undue preference.*

22.—The respondent carried on business as a brewer at B., and employed the appellants to convey goods for him by their railway. The respondents' premises were not connected by sidings with any railway. He was charged by the appellants a station to station rate for the carriage of goods to and from B. (inclusive of charge for station accommodation), and one shilling per ton for cartage. Three other firms at B. had premises connected with the Midland Railway by sidings, from which all goods forwarded or received were loaded and unloaded. The cost of cartage was thus saved, and in addition the Midland Railway Company allowed to these three firms a rebate of 9d. per ton, as representing the value of station accommodation, and other services which by reason of the connecting sidings were not required. The appellants, with the view to attract the custom of the three firms, carted goods for them gratuitously, and allowed to them also a rebate of 9d. per ton on the station to station rate. The result was that the respondent had to pay 1s. 8d. per ton more than the three firms for goods carried under the same circumstances:—Held (affirming the unanimous decision of the Queen's Bench Division, 46 Law J. Rep. Q.B. 289; Law Rep. 2 Q.B. D. 254, and of the Court of Appeal, 47 Law J. Rep. Q.B. 284; Law Rep. 3 Q.B. D. 134), that the transaction amounted to a breach of section 90 of the Railways Clauses Consolidation Act, 1845, as being a reduction of charges in favour of the three firms, and of section 2 of the Railway and Canal Traffic Act, 1854, as being an undue preference of the three firms, and that the respondent was entitled to recover back the

1s. 9d. per ton from the appellants. *Evershed v. The London and North Western Railway Company* (H.L.), 48 Law J. Rep. Q.B. 22; Law Rep. 3 App. Cas. 1029.

(3) *Just and reasonable condition.*

23.—A condition that a railway company will not be liable "in any case" for loss or damage to a horse or dog above certain specified values delivered to them for carriage unless the value is declared, being in its terms unconditional, and such as would, if valid, protect the company even in case of the negligence or wilful misconduct of their servants, is not just and reasonable within section 7 of the Railway and Canal Traffic Act, 1854. *Harrison v. The London, Brighton and South Coast Railway Company* (2 B. & S. 122; 31 Law J. Rep. Q.B. 113), deciding that such a condition is reasonable, is overruled by *Peck v. The North Staffordshire Railway Company* (10 H.L. Cas. 473; 32 Law J. Rep. Q.B. 241). *Ashendon v. The London, Brighton and South Coast Railway Company*, Law Rep. 5 Ex. D. 190.

24.—The defendants charged two rates for the conveyance of certain articles—one the ordinary parliamentary rate, when they take the ordinary liability of the carrier, and the other a reduced rate, in which case they make it a condition of carriage that the sender relieves them of all liability for loss or damage, except upon proof that such loss or damage arose from wilful misconduct on the part of the company's servants:—Held, that under these circumstances, the condition relieving the company when goods are carried at the lower rate is "just and reasonable," within section 7 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31). *Lewis v. The Great Western Railway Company* (App.), 47 Law J. Rep. Q.B. 131; Law Rep. 3 Q.B. D. 195.

The plaintiff's agent sent cheeses, one of the articles conveyed at the lower rate, from London to Shrewsbury. The cheeses were improperly packed into the train by the company's servants in London, and in consequence arrived at Shrewsbury in a greatly damaged condition:—Held, that though there was clear evidence that the cheeses had been in fact improperly packed, yet, as there was none to shew either that the packers knew that they were packing them in a manner likely to damage them, or that it had been brought to their knowledge that that mode of packing might lead to such damage, and that they had then packed the cheeses in that mode, careless whether it would result in such damage or not, there was no evidence of wilful misconduct on their part, so as to render the defendants liable. *Ibid.*

(4) *"Services incidental to business of carrier:" special Act: undue restrictions.*

25.—Under a special clause in a railway Act the directors were empowered to make a certain maximum charge for conveyance of coal along

their line, including tolls for the use of waggons, &c., "and every expense incidental to such conveyance, except a reasonable sum for loading, covering, and unloading of goods, and delivery and collection, and any other services incidental to the business of a carrier." Under another clause, the directors were empowered to make increased charges by agreement in respect of any special service performed by them. By a third clause, it was enacted that the company should "provide sufficient locomotive power when and as the same should be required, and as soon as an adequate and sufficient load should be in readiness, to convey all merchandise," &c. Under the Act, the company sought to impose additional charges on a colliery owner, in respect of taking his waggons to and from a siding belonging to the colliery owner. It appeared that whatever peculiar difficulty was experienced in this work arose from the position of the points joining the siding to the company's line. The company also sought to impose an additional charge, in respect of their allowing the coals of the colliery owner to be left on ground adjoining their line:—Held, that neither of these were "services incidental to the business of a carrier," within the meaning of the Act. Also, that the second-mentioned charge, being for an advantage obtained by the colliery owner, might have been made the subject of agreement. *The Lancashire and Yorkshire Railway Company v. Gidlow* (H.L.), 45 Law J. Rep. Exch. 625; Law Rep. 7 E. & I. App. 517.

The company had also refused to convey the coals of the colliery owner unless he had ready fifteen waggons containing a minimum load of forty tons each, while they conveyed the coals of others in smaller quantities:—Held, that this restriction was unreasonable, and not warranted by the Act. Also, that damages in respect of loss of custom to the colliery owner occasioned by the restriction were not too remote. *Ibid.*

Interest given for the time that execution had been delayed by the proceedings in error. *Ibid.*

(5) *Land and sea carriage.*

26.—The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31)—applying to the whole traffic on railways and not merely to passenger traffic, but only applying to railways or canals—is extended by the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 31, to steam vessels which railway companies own or work and the traffic carried thereby. The Railways Regulation Act, 1871 (34 & 35 Vict. c. 119), s. 12, is applicable to cases where a railway company, having contracted to carry passengers, animals or goods by sea, procures the same to be carried in a vessel, not belonging to, nor worked by, the company, and the company becomes liable for damage as if the vessel had been their property. The 7th section of 17 & 18 Vict. c. 31 did not allow of the limitation of liability of railway companies except by such conditions as should be held by



a Court or judge to be just and reasonable, and be embodied in a special contract signed by the owner of the goods. The word "servants" in the same section includes agents employed by railway companies to do work for them which they are under contract to execute. *Maohu v. The London and South Western Railway Company* (2 Exch. 416), approved. *Doolan v. The Midland Railway Company* (H.L. Ir.), Law Rep. 2 App. Cas. 792.

Where a railway company contracted to carry animals from a port in Ireland to a town in England, on through tickets which contained a condition "that with respect to any animals booked through by them or their agents for conveyance partly by railway and partly by sea, or partly by canal and partly by sea, such animals would only be so conveyed on condition that the company should be exempt from any liability for any loss or damage which might arise during the carriage of such animals by sea from the act of God, accidents by machinery, &c., and all and every other damages and accidents of the seas, rivers and navigation of whatsoever nature and kind, in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition; nor would the company be responsible for loss of or damage to animals arising from damages or accidents of the sea or steam navigation, the act of God, &c., jettison, barratry, collision, improper, careless or unskilful navigation, accidents connected with machinery or boilers, or any default of the master or any of the officers or crews of the company's vessels."—Held, that the words "master or crew of the company's vessels" applied to all such vessels as the company employed, and not merely the company's own vessels, and that the condition was unreasonable and void. *Ibid.*

A railway company which is guilty of unlawful acts by working steamboats cannot set up such illegality as a defence to a claim for damages arising out of the working of the steamboats. *Ibid.*

(b) *For negligent acts of servants.*

[See *CARRIER*, 16-20; *MASTER AND SERVANT*, 5, 10.]

(c) *For neglecting to fence land.*

27.—Surplus land separated from the adjoining land by means of an open post and rail fence four feet high, was let by a railway company to a tenant who planted the land with vegetables. By reason of the insufficiency of the fence, horses in the adjoining lands of the defendant did damage to the tenant's crops:—Held, that the defendant was not liable for the damage, as it was the duty of the railway company under 8 & 9 Vict. c. 20. s. 68, to fence the land. *Wiseman v. Booker*, Law Rep. 3 C.P. D. 184.

28.—The proprietors of a private railway  
DIGEST, 1875-1880,

on their private property, and used exclusively for their own purposes and not for passenger traffic, are not subject to rules as to gates and level crossings imposed by the Railway Acts, and they are not bound at common law to erect such gates. The proprietors of such a line were held not responsible for the killing of a horse which escaped on to their line by night at a level crossing where there were no gates or person in charge. *Matson v. Baird* (H.L. Sc.), Law Rep. 3 App. Cas. 1082.

(d) *Vendor's lien.*

29.—In an action by an unpaid vendor of land against a railway company to enforce his lien, the Court will not before judgment grant an injunction and receiver, even though the company admit their liability. *Latimer v. The Aylesbury and Buckingham Railway Company* (App.), Law Rep. 9 Ch. D. 385.

(e) *Action by judgment creditor: receiver and manager.*

30.—Under the Railway Companies Act, 1867, s. 4, whenever a judgment creditor of a railway company is unpaid, the appointment of a receiver, or if necessary a manager, is a matter of right, and amounts to a sort of equitable execution. The words "if necessary" point to the necessity of carrying on the business, and whenever a railway company is carrying on business in the ordinary way and conducting its own traffic, a manager is necessary within the meaning of the Act, and such manager should be appointed by the Court. In order to make "due provision" for the working expenses of the company required by the section, the Court will assume control over the management of the railway, and the power of seeing that the money spent is applied to the proper management of the railway. *In re The Manchester and Milford Railway Company; ex parte The Cambrian Railway Company* (App.), 49 Law J. Rep. Chanc. 365; Law Rep. 14 Ch. D. 645.

A receiver would be properly appointed when the railway is a leased line, or, under a working arrangement with another company, merely receives the rent and the tolls. *Ibid.*

As a general rule the directors, or some of them, would be appointed managers where they were acting fairly, and the order will generally be made without prejudice to any application by the directors to propose themselves or some of their number as managers. *Ibid.*

The only evidence requisite in support of a petition by a judgment creditor for a manager under that section is an affidavit verifying the fact that he is a judgment creditor, that his judgment debt is unpaid, and that the company is a going concern conducting its own business. *Ibid.*

(D) PASSENGER DUTY ACT.

31.—A "cheap train," to be within the meaning of 7 & 8 Vict. c. 85. s. 6 (the fares of pas-

sengers travelling in which are exempted from the payment of duty to Government), must necessarily be a train carrying third-class passengers at a uniform rate of one penny a mile, both for the whole distance between the termini of the railway on which it travels and for the intermediate distances between any one station and another on such railway. *The North London Railway Company v. The Attorney-General* (H.L.), 45 Law J. Rep. Exch. 315; Law Rep. 1 App. Cas. 148.

A "cheap train" must necessarily stop for the purposes of taking up and setting down passengers at every passenger station between each end of the trunk, branch or junction line on which it travels. *Ibid.*

The power conferred on the Board of Trade by section 8 of 7 & 8 Vict. c. 85, of dispensing with "any of the conditions hereinbefore required with regard to the conveyance of passengers," does not authorise the Board of Trade to dispense with either of the above-mentioned requisites. *Ibid.*

Decision in the Court of Exchequer in *The Attorney-General v. The North London Railway Company* (43 Law J. Rep. Exch. 223) affirmed. *Ibid.*

32.—Under 5 & 6 Vict. c. 79. s. 2, which imposes a duty of five per cent. upon all sums received or charged for the hire, fare or conveyance of passengers conveyed upon a railway, the Crown claimed from a railway company, empowered to demand maximum rates of charge for the conveyance of passengers, including every expense incidental to such conveyance except Government duty, duty upon a sum of five per cent. which, to cover the Government duty, the company charged to their passengers in addition to the rate of fare, whether maximum or not:—Held, that the Crown was entitled to duty upon the five per cent. added to cover the duty. Per Kelly, C.B.—Quære, whether the charge made by the company was lawful; but if the charge was unlawful, the Crown was nevertheless entitled to the duty. Per Hawkins, J.—It was unnecessary to decide whether, if the charge was shewn to be unlawful, the Crown would nevertheless be entitled to the duty; but seeme that it would. The Crown claimed also duty under the same enactment upon a sum charged by the company, in addition to the ordinary first-class fare, to passengers using sleeping carriages, who were provided with a couch, sheet, &c., a lavatory, &c., were left undisturbed upon arriving at their journey's end, and were waited upon in the morning by a servant to call them and bring them hot water:—Held, that the Crown was entitled to duty upon the sum charged for such extra accommodation. *The Attorney-General v. The London and North Western Railway Company*, 49 Law J. Rep. Exch. 670; Law Rep. 5 Ex. D. 241; affirmed on appeal, 50 Law J. Rep. Exch. 170; Law Rep. 6 Ex. D. 216.

### (E) ABANDONMENT.

33.—Claims in respect of expenses, and of work and labour done, incurred by a solicitor or engineer of a projected railway company, are debts which have been incurred "on account of the promotion of the company," and the Court may therefore, in the exercise of its discretion, under the 5th section of the Railways Abandonment Act, 1869, refuse to allow payment of such claims out of the money secured by the bonds given for the due completion of the railway. *In re The Barry Railway Company*, 46 Law J. Rep. Chanc. 206; Law Rep. 4 Ch. D. 315.

The words, "on account of the promotion of the company," in the same section, may include debts incurred by the company after incorporation in procuring extension Acts of Parliament. *Ibid.*

*In re The Brompton and Longtown Railway Company* (39 Law J. Rep. Chanc. 681) followed. *Ibid.*

### (F) BOARD OF TRADE, POWERS OF.

34.—Where an inspector of the Board of Trade reports under 5 & 6 Vict. c. 55. s. 6, that the works of a railway proposed to be opened are incomplete, giving his reasons, and the Board thereupon direct the postponement of the opening, their decision is final, and will be enforced by the Court, without regard to the question whether the reasons are sufficient, and even (per Baggallay, J.A., and Bramwell, J.A.), though the Court may consider them contradictory to the report. *The Attorney-General v. The Great Western Railway Company* (App.), 46 Law J. Rep. Chanc. 192; Law Rep. 4 Ch. D. 735.

*Railway, mandamus to, to comply with order of Board of Trade.* [See MANDAMUS, 4.]

### (G) RAILWAY COMMISSIONERS, JURISDICTION OF.

35.—The Railway Commissioners have no power to make an order on two railway companies to afford to the public facilities for conveyance by doing jointly acts which neither company could do separately. And where such an order was made, the High Court of Justice prohibited the commissioners from enforcing it. *Toomer v. The London, Chatham and Dover Railway Company and The South Eastern Railway Company*, 47 Law J. Rep. Exch. 276; Law Rep. 2 Ex. D. 450.

36.—Where it is enacted by a Special Act that in consideration of a guarantee by a railway company of a dividend on the capital of a canal company, the canal company shall not reduce the rates for the time being payable on the canal without the consent of the railway company, the railway commissioners have no power without the consent of the railway company, and without the railway company being

before them, to make an order establishing a through rate over that and other canals, and reducing the rates payable on that canal and others. *In re The Warwick and Birmingham Canal Company and others v. The Birmingham Canal Company; ex parte The Birmingham Canal Company and The London and North Western Railway Company*, 48 Law J. Rep. Exch. 550; Law Rep. 5 Ex. D. 1.

37.—The 2nd section of the Railway and Canal Traffic Act (17 & 18 Vict. c. 31) enacts that every railway company and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, &c.; and section 3 enacts that it shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of that Act, to apply to the Court of Common Pleas to hear and determine the matter of such complaint, and for that purpose to prosecute any enquiry the Court may deem necessary by engineers, barristers or other persons, after which the Court may issue a writ of injunction. By section 6 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), the Railway Commissioners had transferred to them all the jurisdiction conferred by section 3 of 17 & 18 Vict. c. 31, on the several Courts and Judges empowered to hear and determine complaints under that Act, with power to make orders of a like nature with the writs and orders authorised to be issued and made by the said Courts and Judges. The Railway Commissioners, having been applied to by the Corporation of Hastings, who complained of the want of sufficient accommodation for passengers, goods and cattle at the Hastings station of the South Eastern Railway Company, made an order upon the railway company requiring them to enlarge the platforms, to build new waiting-rooms, to add a refreshment-room, and a covered place under which carriages can set down; to make additional sidings for unloading goods, and to supply cattle pens:—Held (on demurrer to a declaration in prohibition, by Cockburn, C.J., and Manisty, J., *dis-sentiente* Lush, J.), that the Railway Commissioners have no jurisdiction to order structural works and additions to be executed by a railway company beyond those works contemplated when the capital of the company was fixed and sanctioned by Act of Parliament; and that a company cannot be forced, under the above-mentioned Acts, to find fresh capital for structural additions not within the scope of the original enterprise, simply because such constructions might be for the convenience of the public. *The South Eastern Railway Company v. The Railway Commissioners and the Mayor and Corporation of Hastings*, 49 Law J. Rep. Q.B. 273; Law Rep. 5 Q.B. D. 217; reversed on appeal, Law Rep. 6 Q.B. D. 586.

*Rating of railway company: borough rate.*  
[See PUBLIC HEALTH ACT, 14.]

## RAPE.

A man, who by fraudulently and falsely pretending to give medical advice to a female patient, and in pursuance of such advice to perform a surgical operation upon her, procures her submission to his medical treatment of her, under colour of which he has carnal connexion with her, she believing all the while that she was undergoing medical treatment, is guilty of a rape. *Reg. v. Flattery* (C.C.R.), 46 Law J. Rep. M.C. 130; Law Rep. 2 Q.B. D. 410.

## RATES.

### (1) POOR RATES.

- (A) WHO ARE RATEABLE.
  - (a) *Occupier of land: hoardings.*
  - (b) *Liability of outgoing occupier.*
- (B) RATEABILITY OF PARTICULAR PROPERTY.
  - (a) *Hospital.*
  - (b) *Society of Civil Engineers.*
  - (c) *Lead Mines.*
  - (d) *Moorings.*
  - (e) *Pier.*
  - (f) *Machinery and buildings in connection with valueless mine.*
  - (g) *Toll-house.*
  - (h) *Sporting rights.*
  - (i) *Market: stall.*
- (C) RATEABLE VALUE AND PRINCIPLE OF ASSESSMENT.
  - (a) *Racecourse.*
  - (b) *Canal: lands of a like quality.*
  - (c) *Shipyard: enhancement of value by machinery, &c.*
  - (d) *Waterworks.*
  - (e) *Deductions.*
    - (1) *From rent by tenant of mine.*
    - (2) *Payment of rates by landlord: notice to overseers.*
- (D) VALUATION LIST.
  - (a) *What hereditaments to be separately valued.*
  - (b) *Time for proceedings not imperative.*
  - (c) *Supplemental list: water company.*
  - (d) *Expense of preparing.*
  - (e) *Action against assessment committee.*
- (E) RECOVERY OF.
- (F) APPEALS.
  - (a) *Jurisdiction of Court of Appeal.*
  - (b) *Condition precedent to appeal.*

### (2) OTHER RATES AND ASSESSMENTS.

[Provisions made with respect to judicial proceedings in certain cases relating to rating. 40 & 41 Vict. c. 11.]

[Amendment of the Poor Rate Assessment and Collection Act, 1869. 42 Vict. c. 10.]

## (1) POOR RATES.

## (A) WHO ARE RATEABLE.

## (a) Occupier of land: hoardings.

1.—A licence in the nature of an easement to erect advertising hoardings upon land in the possession of the licensor does not create in the licensee an occupation of the soil so as to render him liable to be rated in respect of the hoardings. To constitute an occupation of land within the meaning of the Rating Acts by a person erecting hoardings upon the premises of another, there must be either a demise to him of the soil on which the hoardings rest, or the same must be permanently attached to the soil as a fixture, and give the actual and exclusive possession of such soil to him. *Reg. v. The Assessment Committee of the Parish of St. Pancras*, 46 Law J. Rep. M.C. 242; Law Rep. 2 Q.B. D. 581.

## (b) Liability of outgoing occupier.

2.—The 16th section of 32 & 33 Vict. c. 41, relieving the occupier who was in occupation at the time of making the rate, but who has gone out before it was wholly paid, from the rate except in proportion to the time he has occupied, applies only to the case where there is an incoming occupier, and not where the premises are left unoccupied. *The Overseers of St. Worburgh, Derby v. Hutchinson*, 49 Law J. Rep. M.C. 23; Law Rep. 5 Ex. D. 19.

## (B) RATEABILITY OF PARTICULAR PROPERTY.

## (a) Hospital.

3.—A hospital founded by royal charter as a house for the cure and healing of the diseased and infirm poor, brought to or received in the house, is within the principle of *Jones v. The Mersey Docks and Harbour Board* (35 Law J. Rep. M.C. 1), and is rateable to the poor under section 1 of 43 Eliz. c. 2, it being possible that a revenue might be derived from its occupation. *The Governors of St. Thomas's Hospital v. The Overseers of Lambeth* (H.L.), 45 Law J. Rep. M.C. 23; Law Rep. 7 E. & I. App. 477.

Semble, the hospital would also have been rateable had it, by charter or statute, been prohibited, strictly and expressly, from being made a source of profit. *Ibid.*

## (b) Society of Civil Engineers.

4.—A society known as "The Institution of Civil Engineers" was formed for the purpose of promoting the general advancement of mechanical science, and more particularly the acquisition of that species of knowledge which constitutes the profession of a civil engineer, being the art of directing the great sources of power in nature for the use and convenience of man, as the means of production and of traffic in states both for external and internal trade, as applied in the construction of roads, bridges,

&c., and in the art of navigation by artificial power for the purpose of commerce, and in the construction and adaptation of machinery, and in the drainage of cities and towns. The by-laws and regulations of the society stated, under the head of "Objects," that the institution was established for the general advancement of mechanical science, and more particularly for promoting the acquisition of that species of knowledge which constitutes the profession of a civil engineer. The institution consisted of three classes, namely, members, associates, and honorary members, with a class of students attached, and papers were read at the institution on various subjects:—Held, that the primary purpose of the institution was the edification and instruction of its members and students in sundry arts, with the view of enabling them the better to practise a particular profession, and consequently that such institution was not entitled to be exempted from rates under 6 & 7 Vict. c. 36, as a society established exclusively for the purposes of science, literature or the fine arts. *Reg. v. The Institution of Civil Engineers*, 49 Law J. Rep. M.C. 34; Law Rep. 5 Q.B. D. 48.

## (c) Lead mines.

5.—A lead mine was held under three leases, two of which granted the minerals to the lessees for the purpose of being worked. Within the land comprised in one of them, the shafts were sunk, which communicated with the surface and the underground workings, and ore was gotten from underneath such land, and the royalty or dues were reserved in kind or at the option of the lessors, in lieu thereof, the full value in money. No ore was got from under the land comprised in the other lease of which the reservation was a dead rent in addition to a like reservation to the one above mentioned. The lessors were different persons. The minerals comprised in the two leases adjoined one another. The lessees were rated in respect of the engines, machinery, workshops and buildings, and surface of land connected with the mine, and the lessor of the land whereon the shaft was opened and whereunder the minerals were worked was rated for a lead mine whereof the royalty or dues were reserved wholly in kind:—Held, that section 13 of the Rating Act, 1874, which provided that nothing in that Act should apply to a mine of which the royalty or dues were for the time being wholly reserved in kind, applied to this case and rendered the old law applicable; that the mine as rated was a mine distinct from the holding under the latter lease, and upon the authority of *Reg. v. St. Austell* (5 B. & Ald. 693), that the reservation of the royalty or dues was wholly in kind, notwithstanding the lessor's option; that the rate, therefore, was correct. *Van Mining Company v. The Churchwardens and Overseers of Llanidloes* (App. Div.), 45 Law J. Rep. M.C. 138; Law Rep. 1 Ex. D. 310.

(d) *Moorings.*

6.—The plaintiffs, by permission of the Thames Conservancy, lowered stones and ballast into the bed of the river Thames, so as to make permanent moorings, to which they attached by like permission certain floating hulks to be used for the loading and unloading of coal. The works were carried out under the superintendence of and by workmen employed by the Conservancy, but at the cost of the plaintiffs, and the hulks were to be used subject to regulations laid down by the Conservancy. A rent was to be paid by the plaintiffs to the Conservators for the accommodation, and the moorings were to be removable at the pleasure of the Conservators on a week's notice:—Held (affirming the judgment of the Court of Appeal, 45 Law J. Rep. M.C. 145; Law Rep. 1 C.P. D. 54), that the plaintiffs were in the exclusive permanent and beneficial occupation of the moorings, and rateable in respect of the same. *Cory v. Bristow* (H.L.), 46 Law J. Rep. M.C. 273; Law Rep. 2 App. Cas. 262.

(e) *Pier.*

7.—The appellants received tolls for the use of a pier, which extended from the shore into the sea for several feet beyond low water mark. The pier was constructed of a wooden deck resting on iron piles driven into the sands, so that the water flowed under it, and no alteration was made in the line of low water mark:—Held, that the part of the pier beyond low water mark, being beyond the realm, was not extra-parochial within the meaning of 31 & 32 Vict. c. 122, s. 27, and as such annexed to any other parish, nor was it an accretion from the sea, and that therefore that section did not enable it to be rated. *The Blackpool Pier Company v. The Assessment Committee of the Fylde Union and Overseers of Leyton with Warbreck*, 46 Law J. Rep. M.C. 189.

(f) *Machinery and buildings in connection with valueless mine.*

8.—The appellants were the owners and occupiers of a coal mine which had been drowned out some years ago, and was wholly unproductive. They constructed an engine and boilers, together with an engine-house and boiler sheds on certain lands they had taken for that purpose, and also made a railway on part of such lands for conveying coals for the boilers. The whole of the boilers, engines and plant were used only for the purpose of endeavouring to pump out the water from the mine, but since 1870 the water had remained at about the same level, and no coal had as yet been worked:—Held, that though the appellants were rateable to the relief of the poor for the surface lands they occupied, they were not so rateable for the buildings, boilers, engine and plant, and railway, as these were only part of a valueless colliery, and were not shewn to have any value apart from such colliery. *The Tyne Coal Company v.*

*The Overseers of Wallsend Parish*, 46 Law J. Rep. M.C. 185.

(g) *Toll-house.*

9.—The appellant was lessee of a toll-house, and of certain tolls levied on passengers over a bridge on the site of an ancient ferry. The value of the tolls was about 800*l.* per annum; the value of the toll-house as a building was 12*l.* A rate was laid generally on the "toll-house and tolls," stating the "gross estimated value, 800*l.*" and "rateable value, 700*l.*" The appellant, in accordance with the provisions of 27 & 28 Vict. c. 39, s. 1, gave notice of objection to the assessment committee, and was heard in support of it at their meeting a few days afterwards. The committee adjourned their decision, *sine die*, till after the judgment of a Superior Court, upon a case arising out of an appeal against a previous rate, and then pending, should be given. This judgment was not as a fact given till a year and a half afterwards, and did not then decide the point raised by the objection taken by the appellant. The appellant, without waiting for the decision of the assessment committee, gave notice of appeal to the next Quarter Sessions, and his appeal was then heard, and the rate amended by striking out his name altogether:—Held, first, that the appeal was premature; the condition precedent to the exercise of the right of appeal had not been fulfilled, the assessment committee not having given their decision, and the appellant therefore not having failed to obtain relief; secondly, that although the tolls were not themselves rateable, yet the toll-house was; and in assessing the latter, its value, as enhanced by the facility it afforded for collecting the tolls, was to be taken into account; thirdly, that under 41 Geo. 3. c. 23, s. 1, the Court of Quarter Sessions on the appeal had no power to strike out the name of the appellant altogether, as he was clearly liable in respect of the toll-house; they ought therefore to have amended the rate by striking out the part of the description relating to the tolls, and by altering the amount to that which would make the rate fairly represent the value of the toll-house enhanced in the manner above described. *Reg. v. The Assessment Committee of the Bodminster Union*, 45 Law J. Rep. M.C. 117; Law Rep. 1 Q.B. D. 508.

(h) *Sporting rights.*

10.—Where the owner of land occupies it himself and demises the right of sporting to another, the right of sporting is severed from the occupation of the land within the meaning of 37 & 38 Vict. c. 54, s. 6, sub-s. 2, so as to make the lessee of the right of sporting rateable. *Reg. v. Battle, Sussex* (36 Law J. Rep. M.C. 1; Law Rep. 2 Q.B. 8), distinguished. *Kenrick v. The Churchwardens and Overseers of the Parish of Guilefield*, 49 Law J. Rep. M.C. 17; Law Rep. 5 C.P. D. 41.

(i) *Market : stall.*

11.—The appellant rented two stalls in Bodmin market year by year at a rent payable weekly. The stalls in question had been put up to auction and were bought by the appellant and used by him on market days. The stalls thus rented were capable of being removed, and there was no agreement that they should always stand on the same identical spot, though the appellant had a right to retain the same relative position in the row:—Held, that there was no such occupation of the stall as rendered the appellant liable to be rated under 43 Eliz. c. 2, he having acquired only the right to a given stall in a given row, and not the right to place one on any definite portion of ground. *Spear v. The Guardians of the Bodmin Union*, 49 Law J. Rep. M.C. 69.

## (C) RATEABLE VALUE AND PRINCIPLE OF ASSESSMENT.

(a) *Racecourse.*

12.—In ascertaining the rateable value of land used as a racecourse, the assessment committee may call for the books of the racecourse proprietors, or give affirmative evidence of the amounts of the profits made, the profits being a material element, though not a test, in determining the rateable value. *Reg. v. Verrall*, 45 Law J. Rep. M.C. 29; Law Rep. 1 Q.B. D. 9.

[And see COLONIAL LAW, 51.]

(b) *Canal : lands of a like quality.*

13.—By 52 Geo. 3. c. 195. s. 101, it was enacted that the lands, whether covered with water or not, belonging to a canal company, should be rateable and chargeable to the maintenance of the poor, and to all other parochial rates and taxes in the several parishes and places where the same should be respectively situate, according to their quantity and quality, and should be charged and assessed in like manner as lands of a like quality in the respective parishes where the same should be situate were or should be assessed or charged. The canal was made, and at the time of the assessment appealed against all land adjoining the canal in the respondents' parish had been built upon except that in the Regent's Park. The appellants appeared in the valuation list in respect of their property described as "canal, towing-path, sloping banks and locks," being land of about twenty-one acres in extent. The respondents assessed the appellants at an amount calculated in the following manner: Assuming the area occupied by the canal and towing-path to be covered with buildings similar in rateable value to the buildings adjoining the canal, allowing for the necessary roads, access, &c., they took a proportionate part of such rateable value as representing the rateable value of the lands so covered as distinguished from the buildings standing upon them:—Held, that the mode of assessment adopted by the respondents was wrong; that the land

occupied by the canal was to be rated as land of a like quality; that is to say, as open land which never could be built upon, but which might perhaps have some enhanced value from its proximity to the canal and adjoining buildings, as applicable to any purpose except building purposes. *The Company of Proprietors of the Regent's Canal v. The Assessment Committee of St. Pancras*, 47 Law J. Rep. M.C. 37; Law Rep. 3 Q.B. D. 73.

(c) *Shipyard : enhancement of value by machinery, &c.*

14.—The occupier of a shipyard was rated to the relief of the poor in respect of the premises where he carried on the business of building and repairing ships, and on which was extensive machinery, consisting of engines, boilers, cranes, lathes, punching, shearing, riveting, drilling and planing machines, a steam hammer, saw benches, &c. Some of these machines were set in foundations built for them, some were bolted to the walls of buildings and some were retained in their places by their own weight merely. The whole could be removed without any disturbance or injury to the freehold, and if removed could be used on other similar premises, each machine being a separate and complete article in itself, but they were used and were intended to be permanently used in the shipbuilding and repairing business carried on in the yard, which was the subject of the assessment:—Held, that in assessing the shipyard, the machinery was to be taken into account as enhancing the rateable value of the premises, for the reason that the whole of it was essentially necessary to the business of building and repairing ships, to which the premises were devoted, and was intended to remain permanently attached to the premises so long as they were devoted to that purpose. *Laing v. The Overseers of Bishopwearmouth and Assessment Committee of Sunderland Union*, 47 Law J. Rep. M.C. 41; Law Rep. 3 Q.B. D. 299.

(d) *Waterworks.*

15.—In estimating the rateable value of waterworks, in a parish lying partly without and partly within a borough, carried on by the municipal corporation, as a local board under 11 & 12 Vict. c. 63 for the benefit of the inhabitants of the borough, any restrictions imposed by the statute, affecting the profits in the hands of such a public body exercising their powers properly for the benefit of the inhabitants of the borough, and *bona fide* making their rates so as to leave a small margin of profit, are to be regarded, though the statute does not expressly limit the power of rating to the water rate to the sum charged. It is the profitable occupation as it actually is, and not the amount which such a body as a trading company carrying on business solely for the purpose of profit without restriction might realise, which is to determine the rateable value. The decision below (45 Law J. Rep. M.C. 81) affirmed. *The Mayor, &c., of Worcester v. The*

*Assessment Committee of the Droitwich Union* (App.), 46 Law J. Rep. M.C. 241; Law Rep. 2 Ex. D. 49.

(c) *Deductions.*

(1) *From rent by tenant of mine.*

16.—The exception in section 8 of 37 & 38 Vict. c. 54 to the right of a tenant of a mine to deduct one-half of the rate newly imposed by that Act, and paid by him, from the rent payable to his lessor, "unless he has specifically contracted to pay such rate in the event of the abolition of the exemption," does not take effect in favour of the lessor, unless the lease has in terms anticipated the imposition of this new liability, and thrown it upon the tenant; and a covenant to pay the rent "free of and from all rates, taxes, tithe, rent charges, expenses and deductions whatsoever, parliamentary, parochial or of any other nature," will not deprive the tenant of his right to make the deduction given by the above section—affirming the decision of the Court below (46 Law J. Rep. Q.B. 96). *The Duke of Devonshire v. The Barrow Hematite Steel Company (Lim.)* (App.), 46 Law J. Rep. Q.B. 435; Law Rep. 2 Q.B. D. 286.

(2) *Payment of rates by landlord: notice to overseers.*

17.—It is a condition precedent to the overseers of a parish being empowered to make any abatement or deduction from a poor rate under section 4, sub-section 2, of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), that the owner of the rateable hereditaments should give notice to such overseers in writing that he is willing to be rated in respect of all such hereditaments of which he is owner, whether the same be occupied or not; and the giving of such notice is a matter which cannot be waived by the overseers who are in discharge of a public duty. Therefore where no such notice was given, but the owner (pursuant to an agreement with his tenant, the occupier), paid the poor rate made in respect of the house the tenant occupied, and was allowed by the overseers a deduction from the rate not exceeding the limit given by such section 4, sub-section 2, but which deduction was not authorised by any other clause in the Act, it was held that there had not been such a payment of poor rate as was by the Act to be deemed a payment of the full rate by the occupier for the purpose of the franchise, and, consequently, that such occupier was not entitled to the borough franchise under section 3 of the Representation of the People Act, 1867. *Bennett v. Atkins*, 48 Law J. Rep. C.P. 95; Law Rep. 4 C.P. D. 80.

(D) VALUATION LIST.

(a) *What hereditaments to be separately valued.*

18.—A valuer appointed by a Union Assessment Committee to prepare a valuation list, furnished a valuation list in which he valued a

farm, in one occupation, in its entirety:—Held, that this was a sufficient valuation under 27 & 28 Vict. c. 39, s. 4. *Rawlence v. The Guardians of Hursley Union*, 47 Law J. Rep. M.C. 31; Law Rep. 3 Ex. D. 44.

(b) *Time for proceedings not imperative.*

19.—Section 42 of 32 & 33 Vict. c. 67 is directory and not imperative, and non-compliance with its directions as to dates does not make a valuation list void, which was in fact signed and approved in time to be discussed and adjudicated upon, on the hearing of appeals against it at the General Assessment Sessions, and in such case the Justices cannot, under section 35, order another list to be made. *Reg. v. Ingall*, 46 Law J. Rep. M.C. 113; Law Rep. 2 Q.B. D. 199.

Quære, whether neglect on the part of those who have undertaken a public duty may not make them liable in an action at the suit of any one who has suffered damage through their non-compliance with the directions of the statute. *Ibid.*

(c) *Supplemental list: water company.*

20.—During the first year after a quinquennial valuation list in the metropolis had come into operation, some new houses were connected by means of service pipes with a water company's mains previously existing and assessed in the quinquennial list. Such connections caused an increase of the company's gross receipts arising from the additional rentals derived from the new houses; but no alteration was made in the mains themselves, the service pipes being the property of the owners or occupiers of the houses:—Held, that the increased rental so derived constituted an alteration of the matters stated in the valuation list, within section 46 of the Valuation of Property (Metropolis) Act, 1869, and was properly taken into account in a supplemental list made under that section, whereby the rateable value of the company's mains was assessed at a greater amount than it had stood at in the quinquennial list. *Reg. v. The Assessment Committee of the Parish of St. Mary, Islington*, 48 Law J. Rep. M.C. 123; Law Rep. 4 Q.B. D. 308 (*nom. Reg. v. The New River Company*).

(d) *Expense of preparing.*

21.—The 27 & 28 Vict. c. 39 (Union Assessment Committee Amendment Act, 1864), s. 7, enacts that when the overseers of a parish incur any expense in making out any valuation list or supplemental list, with the consent of the vestry, they may charge it to the poor rate:—Held, that the consent of the vestry need not be given before the expense is incurred. *Reg. v. The Overseers of Chorlton-upon-Medlock*, 45 Law J. Rep. M.C. 33; Law Rep. 1 Q.B. D. 62.

22.—The duties of a vestry clerk under section 7 of the Vestry Clerks Act (13 & 14 Vict. c. 57) do not include that of preparing a valua-

tion list under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67); but the overseers may employ the vestry clerk to prepare such list, and if they do so, may charge his reasonable remuneration therefor, not limiting it to his actual disbursements, upon the poor rate under the Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39. s. 7). *Reg. v. Cumberlege*, 46 Law J. Rep. M.C. 214; Law Rep. 2 Q.B. D. 366.

(e) *Action against assessment committee.*

23.—An assessment committee, being unincorporated and merely a select body of guardians, cannot be sued in an action as a committee, neither are the various members thereof personally liable for acts done by them as members of the committee. *The Leicester Waterworks Company v. The Assessment Committee of Barrow Union, and Nuttall*, 48 Law J. Rep. M.C. 41; Law Rep. 4 Q.B. D. 18.

The plaintiffs' company complained in 1872 of being over-assessed with reference to certain works which belonged to them, and which passed through some parishes in the Barrow Union; they accordingly brought appeals, which the assessment committee defended in the name of the guardians, in pursuance of 27 & 28 Vict. c. 39. s. 2. In 1872 the committee in question consisted of twelve, the defendant N. being chairman and S. vice-chairman of the committee. On the 8th of June, 1872, a meeting was held, at which the waterworks company were represented by the chairman, and the guardians of the B. Union by the assessment committee; and it was unanimously agreed that the question as to the rateable value of the plaintiffs' works should be settled by an arbitrator; and that, pending the negotiations, the appeals should be respite. An agreement was, on the 29th of June, accordingly drawn up and signed by the plaintiffs, and by the defendant N. "as chairman for, and on behalf of the assessment committee of the Barrow Union," by which the disputes between the parties were referred to arbitration, and the costs of the proceedings left in the discretion of the arbitrator. There was no Judge's order, or order of Sessions, ordering or authorising the reference. The reference was held, and the award published early in 1874, in favour of the plaintiffs, the costs of the reference being also given to them. Accordingly the plaintiffs now brought this action to recover the expenses connected with the reference, which they had been compelled to pay on taking up the award, but which the defendants declined to refund. It was admitted that the assessment committee in all their proceedings were acting with the approval and consent of the guardians of the union:—Held, that the defendants were not liable, and that the action, if maintainable at all, should have been brought against the guardians of the Barrow Union. *Ibid.*

Whether, in the absence of a Judge's order,

or order of Sessions, under Baines's Act (12 & 13 Vict. c. 45. ss. 12, 13), the guardians of the union would have been liable, under the circumstances above mentioned, if sued within the period limited by 22 & 23 Vict. c. 49. s. 2—*Quære. Ibid.*

(E) RECOVERY OF: DISTRESS WARRANT.

24.—A Justice of the peace sitting to issue a warrant of distress for the recovery of poor rates is not a Court of summary jurisdiction within the meaning of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and the provisions contained in that statute in no way affect or apply to proceedings for the recovery of poor rates. *Reg. v. Price*, 49 Law J. Rep. M.C. 49; Law Rep. 5 Q.B. D. 300.

(F) APPEALS.

(a) *Jurisdiction of Court of Appeal.*

25.—The decision of the Queen's Bench Division in the matter of a poor rate, first, is not a mere opinion but a judgment binding on the sessions; secondly, is an order within section 19 of the Judicature Act, 1873, as interpreted by section 100. It is therefore subject to appeal. *The Overseers of the Foreign of Walsall and the Mayor, &c., of Walsall v. The London and North Western Railway Company* (H.L.), 48 Law J. Rep. M.C. 166; Law Rep. 4 App. Cas. 467, reversing the Court below, 47 Law J. Rep. Q.B. 711; Law Rep. 3 Q.B. D. 457.

(b) *Condition precedent to appeal.*

26.—By the Union Assessment Committee Amendment Act (27 & 28 Vict. c. 39. s. 1) it is enacted that no person shall appeal to sessions against a poor rate made in conformity with the valuation list approved by the assessment committee, unless he shall have given to such committee notice of objection against the list, and shall have failed to obtain such relief in the matter as he deems just:—Held, that a person who has given notice of objection to a valuation list, and failed to obtain relief from the assessment committee, before a poor rate is actually made in conformity with the list, need not, under 27 & 28 Vict. c. 39. s. 1, make fresh application for relief to the assessment committee after the rate is made, as a condition precedent to an appeal against the rate. *Reg. v. The Justices of Wiltshire*, 48 Law J. Rep. M.C. 142; Law Rep. 4 Q.B. D. 326.

(2) OTHER RATES AND ASSESSMENTS.

*Borough rate: appeal: application to assessment committee.* [See MUNICIPAL CORPORATION, 19.]

*County rate: liability of borough to contribute to.* [See MUNICIPAL CORPORATION, 17.]

*Metropolitan district rate: inequality of benefit: exemption of part of a parish.* [See METROPOLIS, 17.]



*Paving rates.* [See METROPOLIS, 6-10; PUBLIC HEALTH ACT, 18-29.]

*Sanitary purposes in borough.* [See PUBLIC HEALTH ACT, 14.]

*Sewers rates.* [See METROPOLIS, 13-15; PUBLIC HEALTH ACT, 29, 30.]

# RATIFICATION.

*Infant, by, of contract made during infancy.* [See INFANT, 16-18; VOLUNTARY SETTLEMENT, 5.]

*Principal, by, of acts of agent.* [See COMPANY, A 2, D 25; MARINE INSURANCE, 5, 14; SHIPPING LAW, 8.]

# REAL SECURITIES.

*Investment.* [See TRUST, B 3.]

# RECEIPT.

*Actual, of goods sold.* [See FRAUDS, STATUTE OF, 4.]

*Bill of sale requiring registration.* [See BILL OF SALE, 3, 6.]

*Power to give, by anticipation.* [See TRUST, D 8.]

# RECEIVER.

## (A) APPOINTMENT OF.

- (a) *Jurisdiction to appoint.*
- (b) *When Court will appoint.*
- (c) *Interim receiver.*
- (d) *Receiver in lieu of sequestration.*
- (e) *When complete.*

## (B) POWERS AND DUTIES OF.

- (a) *Power to issue debtor's summons.*
- (b) *Receiver in debenture holder's action: payment of claims of strangers.*
- (c) *Writ of possession granted to.*
- (d) *Sequestration against: disobedience to four-day order.*

## (A) APPOINTMENT OF.

### (a) *Jurisdiction to appoint.*

1.—A receiver may now be appointed in a partnership suit at the instance of the defendant. *Sargant v. Reed*, 45 Law J. Rep. Chanc. 206; Law Rep. 1 Ch. D. 600.

2.—Circumstances under which the Court will, in the exercise of its discretion, appoint a receiver in an administration suit, notwithstanding that a receiver has been appointed in another suit instituted in the Lord Mayor's Court for the administration of the same estate. *Nothard v. Proctor* (App.), 45 Law J. Rep. Chanc. 302; Law Rep. 1 Ch. D. 4.

Seamble, a decree for administration may be made on a bill for a receiver *pendente lite* after probate. *Ibid.*

3.—The plaintiff was legal mortgagee over  
DIGEST, 1875-1880.

some property and equitable mortgagee over other, the properties being mixed, and the whole comprised in one security. On motion for the appointment of a receiver over the whole,—Held, that the Judicature Act, 1873, gave the Court power to appoint a receiver over the legal as well as the equitable property, where, as in this case, it was "just or convenient" to do so. *Pease v. Fletcher*, 45 Law J. Rep. Chanc. 265; Law Rep. 1 Ch. D. 273.

### (b) *When Court will appoint.*

4.—In cases of urgency the Court will appoint a receiver before service of the writ in an action. *In re H.'s estate. H. v. H.*, 45 Law J. Rep. Chanc. 749; Law Rep. 1 Ch. D. 276.

5.—Receiver and manager of the property of a limited mining company appointed on interlocutory application. *Peck v. The Trimisaran Coal, Iron and Steel Company*, 45 Law J. Rep. Chanc. 281; Law Rep. 2 Ch. D. 115.

6.—A petition was presented for winding up a company, and a winding-up order was made and a liquidator appointed. Between the date of the presentation of the petition and the date of the winding-up order an action was brought against the company by trustees for debenture holders, and upon an interlocutory application an appointment was made of two persons as receivers of the company's property. The Court now granted an application made by the liquidator, and discharged the order appointing the receivers on the ground that it was desirable to have one receiver and not three, and that the liquidator was the proper person to be receiver. *Campbell v. Compagnie Générale de Bellegarde*, 45 Law J. Rep. Chanc. 386; Law Rep. 2 Ch. D. 181.

7.—A member of the firm of solicitors acting for the plaintiff in an administration action cannot properly be appointed receiver in the action. *In re Lloyd. Allen v. Lloyd* (App.), Law Rep. 12 Ch. D. 447.

*Appointment of receiver and manager at instance of judgment creditor.* [See RAILWAY, 30.]

*On application of unpaid vendor against company in liquidation.* [See COMPANY, H 101.]

*On application of judgment creditor.* [See JUDGMENT, 3.]

### (c) *Interim receiver.*

8.—While an appeal is pending, by special leave of the Court of Appeal notice of motion may be given for the appointment of a receiver and manager under the Judicature Act, 1873, s. 25. sub-s. 8, without making an application to the Divisional Court or a Judge. Security need not be given under Order LII. rule 4. *Hyde v. Warden* (App.), Law Rep. 1 Ex. D. 309.

9.—Immediate appointment of interim receiver of chattels comprised in an agreement to execute a bill of sale in a case where there

was imminent danger of the mortgagor's bankruptcy. *Taylor v. Echorsley* (App.), 45 Law J. Rep. Chanc. 527; Law Rep. 2 Ch. D. 303.

10.—A receiver was appointed in an administration action, after the death of the sole defendant, an executrix, pending the appointment of a fresh personal representative of her testator. *Cash v. Parker*, 48 Law J. Rep. Chanc. 691; Law Rep. 12 Ch. D. 293.

[And see PARTITION, 7.]

(d) *Receiver in lieu of sequestration.*

11.—In an action and cross-action heard together the original plaintiff obtained judgment for payment to him by the defendant of his taxed costs in the cross-action, and on non-payment issued a subpoena for costs, but could not serve it, because he could not ascertain the defendant's address. The plaintiff then moved for a receiver of the dividends on certain funds (not the subject of the actions), standing in the names of trustees, and to which dividends the defendant was entitled for life. Between the date of the notice and the hearing of the motion, the defendant filed an affidavit disclosing her address, and alleging that she had never intended to evade service. The trustees, and various incumbrancers, having charging orders on the funds, were not before the Court:—Held (on the authority of *The Anglo-Italian Bank v. Davies*, 47 Law J. Rep. Chanc. 833), that the Court is empowered by section 25, sub-section 8, of the Judicature Act, 1873, to appoint a receiver in such a case, and that the application was one which ought to be granted. *Bryant v. Bull*. *Bull v. Bryant*, 48 Law J. Rep. Chanc. 325; Law Rep. 10 Ch. D. 153.

(e) *When complete.*

12.—When a receiver is appointed "upon giving security," his appointment does not take effect until the chief clerk has certified that the security is perfected. Till this has been done the receiver has no right to take possession, and an interference with his possession is not a contempt of Court. Decision of Malins, V.C., reversed. *Edwards v. Edwards* (App.), 45 Law J. Rep. Ch. 391; Law Rep. 2 Ch. D. 291.

(B) POWERS AND DUTIES OF.

(a) *Power to issue debtor's summons.*

13.—A receiver in Chancery has a right, without any authority or direction from the Court of Chancery, to issue a debtor's summons to compel payment of a debt due to him in his character of receiver. *Ex parte Harris; in re Lewis*, 45 Law J. Rep. Bankr. 71; Law Rep. 2 Ch. D. 423.

(b) *Receiver in debenture holder's action: payment of claims of strangers.*

14.—A summons in a debenture holder's action for an order directing the receiver in the

action to pay claims by strangers to the action for working expenses was dismissed for want of jurisdiction. *Brocklebank v. The East London Railway Company*, 48 Law J. Rep. Chanc. 729; Law Rep. 12 Ch. D. 839.

(c) *Writ of possession granted to.*

15.—Under Rules of Court, Order XLVIII, a writ of possession is now substituted for the writ of assistance, whether between parties or as against strangers to the action. *Hall v. Hall*, 47 Law J. Rep. Chanc. 680.

(d) *Sequestration against: disobedience to four-day order.*

16.—Sequestration may issue without leave of the Court under Order XLII. rules 2, 20, and Order XLVII. against the estate of a receiver or other person disobeying a four-day order of Court. *Sprunt v. Pugh*, Law Rep. 7 Ch. D. 567.

*Admiralty practice: co-ownership suit.* [See ADMIRALTY, 44.]

*Lands Clauses Act: rent charge: right of holder to enter as against receiver of undertaking.* [See LANDS CLAUSES ACT, 1.]

RECEIVING STOLEN GOODS.

On the 23rd of June a wife left her husband's house at Burslem, taking with her a quantity of money and other articles belonging to her husband. The prisoner, who was a policeman stationed in the same place at the time, called, and saw the husband a few days afterwards, and again about a week after that, and continued in the force at that place till the 24th of July. In the October following the prisoner and the wife were found together in Belfast, in possession of the husband's property. The prisoner had actual manual possession of a portion of the property. They were proved to have committed adultery at Chester in the preceding August. The prisoner was tried and convicted on the count in the indictment which charged him with receiving the goods knowing them to have been stolen:—Held, that there was no evidence of a taking of the goods by any one other than the wife; that a wife cannot be convicted of stealing her husband's goods alone, notwithstanding her adultery; and, therefore, that the prisoner could not be convicted of receiving from her goods taken by her alone, and without his participation. *Reg. v. Kenny* (C.C.R.), 46 Law J. Rep. M.C. 156; Law Rep. 2 Q.B. D. 307.

*Reg. v. Deer* (L. & C. 240) and *Reg. v. Featherstone* (Dears. C.C. 369) corrected by a reference to the Law Journal Reports in 32 Law J. Rep. M.C. 33, and 23 Law J. Rep. M.C. 127, respectively. *Ibid.*

RECITAL.

*Estoppel by.* [See BANKRUPTCY, M 36.]

*Mistake: will.* [See ADVANCEMENT, 6.]

*Vendor and purchaser: recital in deed more than twenty years old.* [See VENDOR AND PURCHASER, 85.]

RECOGNIZANCE.

[Recognizance to be taken out of Court under order of Court of summary jurisdiction. 42 & 43 Vict. c. 49. s. 42.]

*Notice to enter recognizance to try appeal.* [See ALBHOUSE, 3.]

RECONVERSION.

[See TRUST, E 1-7.]

RECOVERY OF LAND.

[See MORTGAGE, 40; PRACTICE, Q 2-6, U 11, W 37.]

RECTIFICATION.

*Lease: clerical error.* [See DEED, 3.]

*Register of shareholders.* [See COMPANY, D 56, 82, 93.]

*Settlement, of.* [See SETTLEMENT, 26-31.]

*Trade marks, of register of.* [See TRADE MARK, 5.]

REDEMPTION.

*Loan, of, by drawing of bonds.* [See BOND, 1.]

*Mortgage, of.* [See MORTGAGE, 21, 58-62.]

REDUCTION OF CAPITAL.

[See COMPANY, D 51-55.]

RE-ENTRY.

*Power of.* [See SPECIFIC PERFORMANCE, 19.]

REFEREE.

[See PRACTICE, Y.]

REFERENCE.

[See ARBITRATION, 1-10.]

REFORMATORY.

[Statutory provisions in reference to. 39 & 40 Vict. c. 79. s. 16; 40 & 41 Vict. c. 21. s. 52.]

The expense of providing a prisoner sentenced to be detained, after a term of imprisonment, in a reformatory school, with clothing suitable for his admission to the school, is an expense incurred for the "maintenance of a prisoner" to be borne by the Prison Commissioners, under section 4 of the Prison Act, 1877. *The Prison Commissioners v. The Corporation of Liverpool*

(App.), 49 Law J. Rep. Q.B. 431; Law Rep. 5 Q.B. D. 332, affirming the decision of the Court below, 48 Law J. Rep. Q.B. 436; Law Rep. 4 Q.B. D. 329.

REFRESHERS.

[See COSTS, 97.]

REFRESHMENT-HOUSE.

[See PUBLIC ENTERTAINMENT.]

[Provisions as to licensing, &c. 43 & 44 Vict. c. 20. ss. 40-48.]

REGISTRATION.

[The law in Ireland relating to the registration of births and deaths amended. 43 & 44 Vict. c. 13.]

[Further provisions for the registration of deaths, marriages and births, occurring out of the United Kingdom among officers and soldiers of H.M.'s forces and their families. 42 Vict. c. 8.]

*Notice: register: county.*

1.—A purchaser or mortgagee is not bound to make any enquiries with a view to the discovery of unregistered instruments, though he may be bound by actual knowledge of such instruments. Decision of the Master of the Rolls (reported 45 Law J. Rep. Chanc. 43) affirmed. *Lee v. Clutton* (App.), 46 Law J. Rep. Chanc. 48.

[And see MORTGAGE, 30.]

*Registration of his pendens.*

2.—Applications under the 30 & 31 Vict. c. 47, for vacating of the registration of a *lis pendens* after the determination of the litigation, should be made by motion or otherwise in the matter of the Act, and of the action, suit or proceeding. *Clutton v. Lee*, 45 Law J. Rep. Chanc. 684; Law Rep. 7 Ch. D. 541.

*Baptism in India, of: copies of, admissible.* [See EVIDENCE, 19.]

*Bill of sale, of.* [See BILL OF SALE, 1-30.]

*Company, of.* [See COMPANY, C.]

*Contract for fully paid-up shares, of.* [See COMPANY, D 56-62.]

*Copyright, of.* [See COPYRIGHT, 1.]

*Mortgage to director, of.* [See COMPANY, D 15.]

*Resolution for composition or liquidation, of.* [See BANKRUPTCY, K 2-15, L 1-7.]

*Shareholders of company, of.* [See COMPANY, D 73-82.]

*Ship: limitation of liability: unregistered vessel not entitled to.* [See SHIPPING LAW, E 7, 23.]

*Trade mark, of.* [See TRADE MARK, 1-13.]

*Voters, of.* [See PARLIAMENT, 7-80.]

## REHEARING.

[See PRACTICE, B 1, 4.]

## RE-INSURANCE.

[See MARINE INSURANCE, 3, 26.]

## RELEASE.

Where, in consideration of certain payments by an executrix, persons interested in the estate gave a release of all claims on the estate to the executrix, and it being afterwards discovered that property in which the testator was entitled to a share had during his life been sold at an undervalue, the executrix instituted a suit to set the sale aside, and recovered therein a large sum of money as part of the testator's estate:—Held, that the persons who gave the release were entitled to share in the money so recovered. *Homkins v. Jackson* (2 Mac. & G. 372) distinguished. *Turner v. Turner*. *Hall v. Turner*, Law Rep. 14 Ch. D. 829.

*Covenant, of, by statute.* [See PUBLIC HEALTH ACT, 32.]

*Debt due from legatee, of.* [See LEGACY, 4, 5.]

*One joint debtor, of.* [See BANKRUPTCY, D 15.]

## RELIGIOUS EDUCATION.

[See INFANT, 23, 24.]

## REMAINDER.

*Acceleration of.* [See WILL CONSTRUCTION, L 1.]

*Contingent or vested.* [See CONTINGENT REMAINDER.]

## REMOTENESS.

- (a) *Gift to mechanics' institution.*
- (b) *Contract to give right of pre-emption.*
- (c) *Annuity or absolute gift.*
- (d) *Gift to children of A. at twenty-five.*
- (e) *Gift to unborn children: cypres.*
- (f) *Gift to a class: members of class not all ascertainable within period.*
- (g) *Restraint on anticipation.*
- (h) *Forfeiture clause on change of religion.*
- (i) *Appointment under special power.*
- (k) *Shifting clause: leaseholds.*

(a) *Gift to mechanics' institution.*

1.—A gift to a building fund of a mechanics' institution established and maintained by subscriptions of its members to provide them with a library, reading-room, lectures, and the like, and capable of dissolution only by nine-tenths of the members present at a general meeting, is a gift tending to perpetuity and void. *In re Dutton: ex parte Peake*, 48 Law J. Rep. Exch. 850; Law Rep. 4 Ex. D. 54.

(b) *Contract to give right of pre-emption.*

2.—A. conveyed land to B., reserving the minerals, and covenanted that in case he, his heirs or assigns should at any time sell the minerals under the adjoining land, he, his heirs or assigns would offer to B., his heirs or assigns, the reserved minerals at the same price per acre:—Held, that the covenant was not obnoxious to the rules against perpetuities, and the offer must be made in writing. *The Birmingham Canal Company v. Cartwright*, 48 Law J. Rep. Chanc. 552; Law Rep. 11 Ch. D. 421.

(c) *Annuity or absolute gift.*

3.—Gift of an annuity to A. for life, and after her death to her children equally for life, and after the death of the survivor to X., Y. and Z. equally; A. having died without issue:—Held, that the gift to X., Y. and Z. was not void for remoteness, and that they took the capital absolutely as tenants in common. *Evans v. Walker*, Law Rep. 3 Ch. D. 211.

(d) *Gift to children of A. at twenty-five.*

4.—A testator gave all his estate and effects to trustees, upon trust for such of the children of his daughter A. as should attain the age of twenty-five. The eldest child attained twenty-five in the lifetime of the testator:—Held, that the gift was not void for remoteness, because the class to take was ascertained at the death of the testator. *In re Hoof. Picken v. Matthews*, 48 Law J. Rep. Chanc. 150; Law Rep. 10 Ch. D. 264.

5.—A testator devised real estate unto and to the use of trustees, their heirs and assigns, upon trust to permit his wife to receive the rents during her life; and after her decease, subject to certain trusts for accumulating the rents in the meantime so long as the same could legally operate, to stand possessed of the said real estate in trust for the youngest grandson of A. who should be living at the decease of his wife, and should then have attained, or should live to attain, the age of twenty-five years, for life; and after his decease, upon trust for his first and other sons in tail male. The widow of the testator died in 1879. At that time the youngest grandson of A. had attained twenty-one, but had not attained twenty-five:—Held, that there being no words in the will which would have the effect of vesting the property in the youngest grandson before he attained twenty-five, this gift was void for remoteness. The testator, by a codicil, gave an annuity of 100*l.* to E. S. during her life, and charged the same upon certain specified real estate, with usual powers of distress and entry in case the annuity should be in arrear:—Held, that the personal estate was the primary fund for payment of the annuity. *Patching v. Barnett*, 49 Law J. Rep. Chanc. 665.

(e) *Gift to unborn children: cypres.*

6.—A testator devised his freehold and copy-

hold estates to trustees, upon trust to pay the income to his unmarried daughter during her life, and after her decease, if she should marry and have children, to her children during their lives, and in like manner to their children, each family taking among them their father's or mother's shares. On a petition by the daughter, who was unmarried,—Held, that the limitation to her unborn children was not void for remoteness, and that she did not take an estate in fee, nor an immediate estate tail, but a life estate, and that her children, if she should have any, would take life estates also. *Hampton v. Holman*, 46 Law J. Rep. Chanc. 248; Law Rep. 5 Ch. D. 183.

The dictum in *Hayes v. Hayes* (4 Russ. 311) is not law. *Ibid*.

The Court has no jurisdiction to decide questions as to future rights, and therefore no decision was given on the effect of the ultimate limitation; but semble, the effect was to give an estate tail in remainder to the daughter of the testator. *Ibid*.

Observations on the cyprès doctrine of construction. *Ibid*.

(f) *Gift to a class: members of class not all ascertainable within period.*

7.—Testamentary gift of real and personal estate to trustees upon trust for testator's wife during widowhood, remainder for his children living at her death or second marriage, and the issue of any child who might have previously died, such issue to take the share of his or her deceased parent in equal shares, the shares of such of his children or grandchildren as should be a son or sons to become vested in and payable to them as they respectively attained twenty-four, and the shares of daughters or the female issue of any deceased child to be settled as therein mentioned:—Held, that the entire gift after the life interest was void for remoteness. *In re Moseley's Trusts* (40 Law J. Rep. Chanc. 275; Law Rep. 11 Eq. 499) not followed. *Hale v. Hale*, Law Rep. 3 Ch. D. 643.

8.—A gift to such of four persons as should survive twelve months after the death of persons in being, and the issue then living who should attain twenty-one or marry of any of the four persons who should have died, was held void altogether, as being a gift to a class the members of which were not ascertainable within twenty-one years after the death of persons in being. *Bentinch v. The Duke of Portland*, 47 Law J. Rep. Chanc. 235; Law Rep. 7 Ch. D. 693.

9.—The rule that a bequest to a class to be paid at twenty-one takes effect in favour of members of the class coming into existence before the eldest attains twenty-one applies, although the will creates a prior life interest which determines before any of the class attain twenty-one. *Kevern v. Williams* (5 Sim. 171) and *Berkeley v. Swinburne* (16 Sim. 275; 17 Law J. Rep. Chanc. 416) explained. *Emmet v.*

*Emmet*, 49 Law J. Rep. Chanc. 21 (App.), 295; Law Rep. 13 Ch. D. 484.

10.—A testator bequeathed a sum of 3,000*l.* in trust for his son for life, with remainder to the children of the son who should attain twenty-one years, and the issue of such as should die under that age leaving issue, which issue should afterwards attain the age of twenty-one years, or die under that age leaving issue, as tenants in common, if more than one; but such issue to take only the shares which their parents would have taken if living:—Held (on appeal from the Court of Appeal, Law Rep. 11 Ch. D. 555), that the words confining the gift to issue to such as should afterwards attain the age of twenty-one years could not be read as a superadded condition divesting the gift upon a contingency, but were to be treated as part of the description of the issue who were to take. Held also, that the gift to the children could not be severed from that to the issue of children. Held, consequently, that the whole gift to children and issue was void for remoteness. *Pearks v. Moseley* (H.L.), 50 Law J. Rep. Chanc. 57; Law Rep. 5 App. Cas. 714.

(g) *Restraint on anticipation.*

11.—Where a fund was given to a person for life, and after her decease to her children, but accompanied, as to daughters or female issue, with a restraint on anticipation,—Held, following *In re Teague's Settlement* (Law Rep. 10 Eq. 564), and other cases, that the restraint was void as infringing the rule against perpetuities; but quere whether those cases take a correct view of the law. *In re Ridley. Buckton v. May*, 48 Law J. Rep. Chanc. 563; Law Rep. 11 Ch. D. 645 (*nom. Buckton v. Hay*).

12.—A clause restraining anticipation in a gift to a class which may contain unborn persons is invalid.—*Dictum in Armitage v. Coates* (35 Beav. 1) followed. *In re Michael's Trusts*, 46 Law J. Rep. Chanc. 651.

13.—Where a sum was settled in trust for present and future children in equal shares with a restraint on anticipation of daughters' shares, and some daughters were *in esse*; in order to carry out the intention with regard to these, and avoid the rule against perpetuities, the gift was read as of the shares separately. *Wilson v. Wilson* (28 Law J. Rep. Chanc. 95; 4 Jur. N.S. 1076) approved. *In re Michael's Trusts* (46 Law J. Rep. Chanc. 651) and *In re Ridley* (48 Law J. Rep. Chanc. 563) observed upon. *Herbert v. Webster*, 49 Law J. Rep. Chanc. 620; Law Rep. 15 Ch. D. 610.

(h) *Forfeiture clause on change of religion.*

14.—The donee of an exclusive power of appointment amongst her children (given to her by the will of a testatrix) in exercise of the power appointed amongst her children, giving to two daughters life interests only; and directed that "if either during her lifetime or after her decease any son or daughter of hers should

marry a person who did not profess the Jewish religion, or should marry a person not born a Jew or Jewess, although converted to Judaism and professing the Jewish religion, or should forsake the Jewish religion and adopt the Christian or any other religion," then such son or daughter should forfeit all share in the appointed funds, and in case of forfeiture, the share forfeited should accrue and go over to the others or other of the children living at the time of the forfeiture. L., one of the daughters to whom a life interest was given, after the death of her mother, became a Christian and subsequently married a Christian. J., one of the sons, became a Christian in the lifetime of his mother, but without her knowledge. L. and J. were both unborn at the time of the death of the donor of the power:—Held, first, that the forfeiture clause was not void as being against public policy; secondly, that the clause, so far as it concerned J., was not void for remoteness and was effectual, and that therefore the share of J. was never vested in him; thirdly, that the forfeiture clause must be read together with the gift over, and so far as it applied to a forfeiture after the death of the appointor, was void for remoteness as to the shares of unborn children, whether given absolutely or for life only, and that, therefore, the share of L. was not forfeited. *Hodgson v. Halford*, 48 Law J. Rep. Chanc. 548; Law Rep. 11 Ch. D. 959.

(i) *Appointment under special power.*

15.—Marriage settlement in 1821 by which real estate was conveyed to trustees to the use of A. for life, and after his death to the use of all or any exclusively of the others of the children, grandchildren or other issue of A. (to be born before the appointment was made), as A. should by deed or will appoint. By will in 1867 A. appointed to his son B. in fee, but in case he should have no child who should attain twenty-one then over:—Held, that the executory gift over was void for remoteness. *In re Brown and Sibley's Contract*, Law Rep. 3 Ch. D. 156.

(k) *Shifting clause: leaseholds.*

16.—Where a testator settled freeholds with shifting clauses which would have been void for remoteness if applied to leaseholds, and bequeathed leaseholds to trustees upon such trusts as regard being had to the difference of tenure would best correspond with the uses of the freehold:—Held, that the trust being executory the shifting clause ought so to be modified as to render it valid. *Miles v. Harford*, Law Rep. 12 Ch. D. 691.

*Equitable contingent remainder: gift to such son as should first attain twenty-five: remainder vesting during particular estate.* [See CONTINGENT REMAINDER, 2.]

RENEWABLE LEASEHOLDS.

*Covenant for renewal: charity: powers of Charity Commissioners.* [See CHARITY, 23.]

*Fines for renewal: tenant for life and remainderman.* [See TENANT FOR LIFE, 15.]

*Purchase of reversion by tenant for life.* [See TENANT FOR LIFE, 13.]

*Surrender: limitations: time running against reversioner.* [See LIMITATIONS, STATUTE OF, 16.]

RENEWAL.

*Of lease.* [See LEASE, 8, 22.]

*Of public-house licence.* [See ALIHOUSE, 7.]

*Of registration of bill of sale.* [See BILL OF SALE, 16, 37.]

*Of writ.* [See PRACTICE, II 19-21.]

RENT.

[See APPORTIONMENT; LANDLORD AND TENANT, 10-14; LEASE; LIMITATIONS, STATUTE OF, 9.]

RENT CHARGE.

*Action for arrears: land in Australia: venue.* [See VENUE.]

*County vote, right of holder to.* [See PARLIAMENT, 8-11.]

*Lands of lunatic subject to: purchase of.* [See LANDS CLAUSES ACT, 4.]

*Lands Clauses Act: power of entry.* [See LANDS CLAUSES ACT, 1.]

*Discontinuance of receipt of.* [See LIMITATIONS, STATUTE OF, 9.]

*Sale in consideration of.* [See LANDS CLAUSES ACT, 1.]

RENUNCIATION.

[See PROBATE, 14.]

REPAIR.

*Covenant to keep premises in proper condition.* [See COVENANT, 13.]

*Forfeiture of lease for non-repair.* [See LEASE, 16.]

*Highway, of.* [See HIGHWAY, 3-11.]

REPEAL OF STATUTE.

[See STATUTE, 9.]

REPLEVIN.

In an action on a replevin bond, when judgment goes by default, such judgment is final and not interlocutory, and there is no necessity for a writ of enquiry. The old procedure is not altered by the Judicature Act. *Dix v. Groom*, 49 Law J. Rep. Exch. 430; Law Rep. 5 Ex. D. 91.

## REPLY.

[See PRACTICE, W 86-91.]

## REPORT.

*Of medical man: privilege.* [See PRODUCTION, 11.]

*Of referees: power of Court to review.* [See PRACTICE, Y 7.]

## REPRESENTATION.

*Chain of.* [See PROBATE, 18.]

*Of parties.* [See PRACTICE, W 12-16.]

## REPUBLICATION OF WILL.

[See WILL FORMALITIES, 21, 27.]

## REPUGNANCY.

[See WILL CONSTRUCTION, I 7.]

## REPUTED OWNERSHIP.

[See BANKRUPTCY, F 3-19.]

## REQUISITION ON TITLE.

[See VENDOR AND PURCHASER, 15.]

## REREDOS.

[See CHURCH AND CLERGY, 15, 16.]

## RES JUDICATA.

[See ACTION, 6: SCOTCH LAW, 20.]

*Action against one joint contractor.* [See PARTNERSHIP, 19.]

*Action: res judicata: first action brought by covin and collusion.* [See COVIN AND COLLUSION.]

*Alcouse: fresh application for licence.* [See ALEHOUSE, 1.]

*Award of compensation by magistrate: furious driving.* See MASTER AND SERVANT, 17.]

*Decision that cause within County Court jurisdiction.* [See COUNTY COURT, 1.]

*Divorce: previous proceedings.* [See DIVORCE, 37, 38.]

*Employers and Workmen's Act: proceedings first in County Court and then before justices.* [See MASTER AND SERVANT, 2.]

*Lis alibi pendens.* [See ADMIRALTY, 18.]

*Scotch sequestration.* [See SCOTCH LAW, 20.]

## RESCISSION OF CONTRACT.

[See CONTRACT, 24, 35; VENDOR AND PURCHASER, 20-24; SCOTCH LAW, 18.]

## RESERVATION.

*Easement, of.* [See LIGHT AND AIR, 5.]

*Implied, of right to light: apparent continuous easements.* [See EASEMENT, 4.]

*Minerals, of.* [See LAND TAX, 1; MINES, 1, 2; SCOTCH LAW, 15.]

## RESERVOIR.

[See PUBLIC BODY.]

## RESIDUARY GIFT.

[See WILL CONSTRUCTION, E.]

## RESIGNATION.

*Of benefice.* [See CHURCH AND CLERGY, 3.]

## RESOLUTION.

*For composition or liquidation.* [See BANKRUPTCY, K 2-15, L 1-7.]

*Of directors of company.* [See COMPANY, D 8-13.]

## RESPONSIVE PLEA.

*Duplex querela.* [See CHURCH AND CLERGY, 52.]

## RESTITUTION OF CONJUGAL RIGHTS.

[See DIVORCE, 20-22.]

## RESTITUTION OF PROPERTY.

[See SALE OF GOODS, 15.]

## RESTRAINT ON ANTICIPATION.

[See HUSBAND AND WIFE, 25-39; REMOTENESS, 11-13.]

## RESTRAINT OF MARRIAGE.

[See WILL CONSTRUCTION, O 6, 7.]

## RESTRAINT OF PRINCES.

[See MARINE INSURANCE, 16; SHIPPING LAW, D 2, 6.]

## RESTRAINT OF TRADE.

[See CONTRACT, 4-6; COVENANT, 2-4.]

## RESULTING TRUST.

[See PARLIAMENT, 11; TRUST, A 13, 14.]

## RETABLE.

[See CHURCH AND CLERGY, 21.]

## RETAINER.

*Of debt by administrator.* [See PROBATE, 25.]

*Of debt by executor.* [See EXECUTOR, 4-7.]

*Of solicitor by client.* [See SOLICITOR, 27, 28.]

## REVENUE.

[Amendment of the law relating to Customs and Inland Revenue. 39 Vict. c. 16.]

[Consolidation of the Duties of Customs. 39 & 40 Vict. 35.]

[Consolidation of the laws relating to Customs. 39 & 40 Vict. c. 36.]

[The laws relating to Customs and Inland Revenue amended. 41 Vict. c. 15.]

[The laws relating to Customs and Inland Revenue amended. 42 & 43 Vict. c. 21.]

[Alteration of certain Duties and amendment of the laws relating to Inland Revenue. 43 Vict. c. 14.]

[Consolidation of enactments relating to the management and regulation of the Duties of Land Tax, Inhabited House Duties and Property and Income Tax. 43 & 44 Vict. c. 19.]

[Malt Duties repealed, and certain other Duties granted and altered. 43 & 44 Vict. c. 20.]

[The law relating to the manufacture and sale of spirits consolidated and amended. 43 & 44 Vict. c. 24.]

*Income tax.* [See INCOME TAX.]

*Inhabited house duty.* [See INHABITED HOUSE DUTY.]

*Licence to deal in gold plate.* [See EXCISE.]

*Licence to keep carriage.* [See CARRIAGE.]

*Licence to keep dog.* [See DOG LICENCE.]

*Prerogative of Crown: revenue action: interference.* [See CROWN, 5.]

*Railway passenger duty.* [See RAILWAY, 31, 32.]

*Stamp duties.* [See STAMP.]

*Succession duty.* [See SUCCESSION DUTY.]

## REVERSION.

1.—A., who was entitled to a reversionary interest in a sum of 500*l.*, expectant upon the decease of his father (aged sixty-one), attained his majority in 1870. A. was then residing with his father. Shortly after attaining his majority A., acting under the influence of his father, sold the reversion for 326*l.* A. had no independent professional advice. In 1874 A. filed his bill to set aside the sale. The Master of the Rolls in Ireland dismissed the bill, but the Court of Appeal reversed that decision:—Held (in the House of Lords, by Lord Blackburn and Gordon), that there being no evidence of fraud or misconduct on the part of the purchaser, the bill could not be sustained. *Dissentiente* Lord Hatherley, who held that, as

A. had no independent professional advice, the case was within the established rule of equity protecting expectant heirs, and that the transaction could not stand. The decision of the Irish Court of Appeal was therefore reversed. *O'Rourke v. Bolingbroke* (H.L. Ir.), Law Rep. 2 App. Cas. 814.

2.—A sale of a reversionary interest by a young man of full age for a substantial purpose stands on the same footing as other contracts. *Judd v. Green*, 45 Law J. Rep. Chanc. 108.

Quære, whether the transferee for value of a mortgage without notice takes subject to an equity between the mortgagor and mortgagee to set aside the security. *Ibid.*

*Expectant heir: security for money actually advanced.* [See UNCONSCIONABLE BARGAIN, 2.]

*Mortgage of: recovery of interest.* [See LIMITATIONS, STATUTE OF, 12.]

*Sale of: conditions of sale: time of the essence.* [See VENDOR AND PURCHASER, 16.]

*Succession duty, on.* [See SUCCESSION DUTY, 1, 7.]

*Valuation of.* [See TENANT FOR LIFE, 19.]

*Wife's, whether bound by covenant or agreement to settle.* [See SETTLEMENT, 1, 21, 22, 27.]

## REVISING BARRISTER.

*Powers of.* [See PARLIAMENT, 30.]

## REVIVOR.

[See PRACTICE, U 30-37.]

## REVOCATION.

*Will, of.* [See WILL FORMALITIES, 16-24.]

## REWARD.

The defendants offered a reward for the apprehension of G. for felony "to any person giving such information to A. as will lead to the apprehension of G." G. presented himself to the plaintiff, a chief constable, and the plaintiff telegraphing to A., apprehended G., and he was ultimately convicted. The jury found that G. was not in custody at the time the telegram was sent, but could not agree as to whether or not G. had disclosed his name before the telegram was sent:—Held, that the plaintiff was not entitled to the reward. *Best v. The Wakefield, &c., Bank*, Law Rep. 4 C.P. D. 1.

## RIGHT OF WAY.

[See WAY.]

## RINK.

[See PUBLIC ENTERTAINMENT, 1.]



## RIVER.

- (A) DUTY OF CONSERVANCY BOARD.  
 (B) POLLUTION OR OBSTRUCTION OF: RIGHTS OF RIPARIAN OWNERS.  
 (C) RIGHT OF NAVIGATION.

[Provisions for the prevention of the pollution of rivers. 89 & 40 Vict. c. 75.]

[A defendant competent to give evidence on indictment for nuisance. 40 & 41 Vict. c. 14.]

## (A) DUTY OF CONSERVANCY BOARD.

1.—The conservancy board of a public river, acting under a statute by which they "shall be and are authorised and empowered, from time to time at their discretion, to cleanse, scour, &c., the river, and to remove all obstructions and impediments whatever to the navigation," are not liable for damage to a barge caused by a pile in a part of the river, the bed of which is not vested in them, and in respect of which they are not entitled to take tolls, although the pile was dangerous, and the board ought to have known the danger and were guilty of negligence. *Forbes v. The Lee Conservancy Board*, 48 Law J. Rep. Exch. 402; Law Rep. 4 Ex. D. 216.

## (B) POLLUTION OR OBSTRUCTION OF: RIGHTS OF RIPARIAN OWNERS.

2.—In an action by millowners, riparian proprietors, to restrain the discharge of water containing acid into a stream, where the defendants asked that damages, in lieu of an injunction, might be given, an injunction was granted. *Pennington v. The Brinsop Hall Coal Company (Lim.)*, 46 Law J. Rep. Chanc. 773; Law Rep. 5 Ch. D. 769.

3.—The rights and duties of persons having adjoining houses in a public street, or adjoining premises on a navigable river, considered. *The Original Hartlepool Collieries Company v. 64bb*, 46 Law J. Rep. Chanc. 311; Law Rep. 5 Ch. D. 713.

The plaintiffs were owners of a wharf, 125 feet long, on a navigable river, and of a collier boat, 176 feet long, which stopped there at intervals of time for the purpose of unloading, and while there necessarily projected over part of the defendant's wharf, close to the entrance of a dock where he carried on the business of repairing ships, the wharf itself not being used. The defendant moored a raft of timber used in his business in front of his own wharf, so as to interfere with the access of the collier to her berth:—Held, that the raft was an obstruction to the navigation; and that the collier had a right to come at reasonable times to, and remain a reasonable time alongside of the wharf of the plaintiff, although she projected over the defendant's wharf while doing so. *Ibid.*

4.—There is no distinction between the position of a riparian owner of land abutting on a tidal and that of an owner of land abutting on

a non-tidal stream, as far as regards right of access from the stream to his own land, and *vice versa*. *Lyon v. The Wardens, &c., of the Fishmongers' Company and the Conservators of the River Thames (H.L.)*, 46 Law J. Rep. Chanc. 68; Law Rep. 1 App. Cas. 662.

Such right of access is a private right distinct from the right of navigating the stream, which is common to the riparian owner and the rest of the public, and it is not to be interfered with by a licence to embank, under section 53 of the Thames Conservancy Act, 1857, 20 & 21 Vict. c. 147, but is protected by section 179 of that Act. *Ibid.*

## (C) RIGHT OF NAVIGATION.

5.—A public right of navigation is a right of way, and not a right of property. *Orr Erving v. Colquhoun (H.L. Sc.)*, Law Rep. 2 App. Cas. 839.

The owner of both banks of a non-navigable river may build a mill dam across the stream and divert the water, provided that he does not obstruct the flow so as to prejudice the riparian owners above him, and that he takes care to restore the water to its natural course before it enters the lands of the owners below him. *Ibid.*

*Canada, law of.* [See COLONIAL LAW, 13.]

*Foreshore: right to: navigable river.* [See CROWN, 2; FORESHORE, 2.]

*Obligation to fence tidal and navigable river: Glasgow Police Act, 1866.* [See SCOTCH LAW, 10.]

*Right to use water for engine.* [See WATER, 4.]

## ROGUE AND VAGABOND.

The imposture of exercising, with intent to deceive, a pretended power of holding intercourse with the invisible world, and of obtaining manifestations and communications from supernatural and invisible spirits, is an attempt to deceive by using "subtle craft, means or device by palmistry or otherwise," within section 4 of the Vagrant Act, 5 Geo. 4. c. 83. *Monk v. Hilton*, 46 Law J. Rep. M.C. 163; Law Rep. 2 Ex. D. 268.

It is not necessary, to constitute a man a rogue and vagabond within this section, that he should lead a wandering and vagabond life. *Ibid.*

## ROLLING STOCK.

*Hire of: ultra vires.* [See RAILWAY, 10.]

## ROMAN CATHOLIC.

*Mother: custody of child.* [See DIVORCE, 27; INFANT, 23.]

## ROYAL GRANT.

*To inhabitants of place for specified purposes.* [See CUSTOM, 1.]

## ROYAL WARRANT.

*Booty of war.* [See BOOTY OF WAR.]

## ROYALTY.

[See MINR.]

## RUBRIC.

[See CHURCH AND CLERGY, 19-23.]

## RULES AND ORDERS OF COURT.

*Rules of the Supreme Court, 1875.*

## Order I.

r. 2. [See INTERPLEADER, 5.]

## Order II.

r. 8a. [See PRACTICE, BB 20.]

r. 4. [See PRACTICE, BB 15, 17, 23.]

r. 5. [See PRACTICE, R 1; BB 23.]

r. 6. [See BILL OF EXCHANGE, 28.]

## Order III.

r. 6. [See BANKRUPTCY, M 25; PRACTICE, II 18.]

r. 9. [See PRACTICE, II 3.]

## Order IV.

r. 1. [See PRACTICE, BB 23.]

r. 3a. [See PRACTICE, C 4.]

## Order V.

r. 7. [See PERJURY, 2.]

## Order VII.

r. 1. [See PRACTICE, II 19, 20, 21.]

## Order IX.

r. 1. [See PRACTICE, BB 9.]

r. 2. [See BILL OF EXCHANGE, 28; PRACTICE, BB 1, 6, 7.]

r. 6. [See BILL OF EXCHANGE, 28; PRACTICE, BB 1.]

r. 6a. [See PRACTICE, BB 2.]

r. 13. [See ADMIRALTY, 26; PRACTICE, II 1.]

## Order XI. [See PRACTICE, BB 10.]

r. 1. [See PRACTICE, R 1; BB 11, 18, 22, 24.]

rr. 3, 5. [See PRACTICE, BB 23.]

## Order XII.

r. 6a. [See PRACTICE, C 4.]

## Order XIII. [See ADMIRALTY, 21.]

r. 9. [See PRACTICE, C 3; S 1, 5, 7.]

## Order XIV.

r. 1. [See BANKRUPTCY, M 25, 44; PRACTICE, B 30; II 4, 6, 8, 10, 11, 15, 16.]

r. 3. [See PRACTICE, II 14, 17.]

r. 4. [See BANKRUPTCY, M 25.]

r. 6. [See BANKRUPTCY, M 44.]

r. 21. [See COSTS, 34.]

## Order XV.

r. 1. [See DISTRICT REGISTRY, 1; MORTGAGE, 49.]

## Order XVI.

r. 1. [See DISTRICT REGISTRY, 1; LIBEL, 19.]

r. 2. [See COMPANY, E 3; COSTS, 26; PRACTICE, U 21, 24.]

r. 3. [See PRACTICE, U 2.]

r. 6. [See PRACTICE, W 77.]

r. 7. [See ADMINISTRATION, 32; PRACTICE, W 76.]

r. 8. [See COSTS, 66; PRACTICE, U 10.]

r. 9. [See PRACTICE, U 26.]

r. 10. [See PRACTICE, U 6.]

r. 13. [See ADMINISTRATION, 32; BILL OF EXCHANGE, 29; LEASE, 17; PRACTICE, U 17, 18, 19, 20, 23, 26, 28, 29; W 25; PROBATE, 28.]

r. 14. [See PRACTICE, U 28.]

r. 15. [See PRACTICE, F 1.]

r. 17. [See PRACTICE, U 17; W 51, 79, 81, ADMIRALTY, 8, 38.]

r. 18. [See BANKRUPTCY, N 1; COSTS, 35; PRACTICE, W 78, 82, 83, 84, 85; HH 28; SHIPPING LAW, T 5.]

r. 20. [See PRODUCTION OF DOCUMENTS, 26.]

r. 21. [See PRACTICE, W 82; HH 28.]

## Order XVII.

r. 2. [See MORTGAGE, 40; PRACTICE, Q 5.]

r. 5. [See PRACTICE, Q 1; W 71.]

## Order XIX.

r. 2. [See PRACTICE, W 72.]

r. 3. [See COSTS, 64; PRACTICE, W 49, 57; SOLICITOR, 23.]

r. 4. [See LIBEL, 16.]

r. 6. [See PRACTICE, C 1, 10; S 5, 7; U 36.]

r. 20. [See PRACTICE, W 89.]

r. 22. [See PRACTICE, W 9.]

r. 23. [See PRACTICE, W 45.]

r. 24. [See LIBEL, 16.]

## Order XX. [See COSTS, 23.]

r. 3. [See COSTS, 36; PRACTICE, W 1.]

## Order XXI.

r. 1a. [See PRACTICE, H 2.]

r. 4. [See PRACTICE, II 5.]

## Order XXII.

r. 1. [See PRACTICE, W 92.]

r. 5. [See PRACTICE, W 76, 79.]

r. 8. [See PRACTICE, W 69, 71.]

r. 9. [See PRACTICE, W 71, 72.]

r. 10. [See PRACTICE, W 73.]

## Order XXIII. [See ADMIRALTY, 43; PRACTICE, A 3.]

r. 1. [See ADMIRALTY, 27; MORTGAGE, 46; PRACTICE, G 3.]

rr. 25, 26. [See PRACTICE, I 2.]

## Order XXIV.

r. 1. [See PRACTICE, W 18.]

r. 2. [See PRACTICE, W 86, 90.]

## Order XXVII.

r. 1. [See COSTS, 27; LIBEL, 18; PRACTICE, A 3; W 3, 4, 6, 8, 11, 12, 22, 25, 27, 88, 89.]

r. 6. [See PRACTICE, U 28.]

## Order XXVIII.

r. 5. [See COVENANT, 2; PRACTICE, W 41.]

## Order XXIX.

r. 1. [See PRACTICE, B 53; H 2.]

r. 2. [See ADMIRALTY, 43.]

r. 10. [See PRACTICE, S 1, 5.]

## Order XXX. [See PRACTICE, W 12.]

r. 1. [See PRACTICE, V 1.]

r. 3. [See COSTS, 39; PRACTICE, HH 21.]

r. 4. [See PRACTICE, V 1.]

Order XXXI.

- r. 1. [See PRACTICE, P 13.]
- r. 5. [See PRACTICE, P 6, 11, 14, 16, 17.]
- r. 11. [See PRODUCTION OF DOCUMENTS, 6, 30.]
- r. 12. [See PRACTICE, GG 15; PRODUCTION OF DOCUMENTS, 17, 26, 28.]
- r. 14. [See PRODUCTION OF DOCUMENTS, 9.]
- r. 17. [See PRODUCTION OF DOCUMENTS, 32; COMPANY, H 79.]
- r. 18. [See PRODUCTION OF DOCUMENTS, 30.]
- r. 21. [See DEBTORS ACTS, 7; PRACTICE, BB 4.]

Order XXXIII.

- r. 1. [See PRACTICE, G 1.]

Order XXXIV.

- r. 2. [See PRACTICE, HH 7.]

Order XXXV.

- r. 1. [See DISTRICT REGISTRY, 1, 3, 6.]

Order XXXVI.

- r. 1. [See BILL OF EXCHANGE, 35; PRACTICE, HH 17, 30.]
- r. 3. [See PATENT, 33; PRACTICE, HH 4, 12, 13, 17, 18, 19, 23.]
- r. 4a. [See PRACTICE, H 6; W 92; HH 30.]
- r. 5. [See PRACTICE, Y 1, 5.]
- r. 6. [See PRACTICE, HH 11.]
- r. 8. [See PRACTICE, HH 17.]
- r. 16. [See PRACTICE, HH 17.]
- r. 21. [See COSTS, 94.]
- r. 22. [See COUNTY COURT, 13.]
- r. 26. [See PRACTICE, B 24; K 11; HH 5, 16, 17, 18, 21, 22.]
- r. 27. [See PRACTICE, HH, 17, 20.]
- r. 29. [See PRACTICE, B 24; HH 17, 30.]
- r. 29a. [See PRACTICE, HH 8.]
- rr. 30, 34. [See ARBITRATION, 16.]

Order XXXVIII.

- r. 1. [See PRACTICE, K 5, 7.]
- r. 3. [See PRACTICE, K 17.]

Order XXXIX.

- r. 1. [See PRACTICE, B 2; T 4, 6, 11, 12; HH 9.]
- r. 1a. [See PRACTICE, T 12, 13.]
- r. 3. [See MARINE INSURANCE, 19.]

Order XL.

- r. 1. [See COUNTY COURT, 13.]
- r. 3. [See ARBITRATION, 22.]
- r. 4. [See PRACTICE, B 2; T 3.]
- r. 7. [See COUNTY COURT, 13.]
- r. 10. [See PRACTICE, A 3; S 3, 4; T 14.]
- r. 11. [See PRACTICE, A 3; B 25; S 2, 5; W 16, 18.]

Order XLI.

- r. 6. [See PRACTICE, F 2.]

Order XLI. (a) [See COSTS, 37.]

Order XLII.

- r. 1. [See JUDGMENT, 2.]
- r. 2. [See PRACTICE, AA 1; RECEIVER, 16.]
- r. 14. [See ADMIRALTY, 31.]
- r. 20. [See ATTACHMENT, 1; PRACTICE, AA 1; RECEIVER, 16.]

Order XLIV.

- r. 2. [See COSTS, 42; PROBATE, 30; SHERIFF, 2.]

Order XLV.

- r. 1. [See ATTACHMENT, 1.]
- r. 2. [See ATTACHMENT, 1, 2, 11.]
- r. 7. [See ATTACHMENT, 9.]

Order XLVII. [See RECEIVER, 16.]

Order XLVIII. [See RECEIVER, 15.]

Order L. [See ACTION, 1.]

- r. 4. [See PRACTICE, U 31.]

Order LI.

- r. 1a. [See SOLICITOR, 24.]
- r. 2. [See PRACTICE, GG 3, 9, 12.]
- r. 2a. [See PRACTICE, GG 7.]

Order LII.

- r. 2. [See PRACTICE, O 1.]
- r. 3. [See COSTS, 38; PRACTICE, M 2; O 2.]

Order LIII.

- r. 2. [See PROBATE, 27.]
- r. 3. [See PRACTICE, L 4; PROBATE, 27; SHERIFF, 3.]

Order LIV.

- r. 4. [See PRACTICE, B 46, 53, 54.]
  - r. 6. [See PRACTICE, B 41, 42, 43, 44, 46.]
- Order LV. [See ARBITRATION, 23; COSTS, 1-13, 19, 20, 23, 58; LIVERPOOL PASSAGE COURT, 1; PRACTICE, B 14; V 1.]
- r. 2. [See COSTS, 62, 73.]

Order LVII.

- r. 2. [See BANKRUPTCY, M 10.]
- r. 3. [See BANKRUPTCY, M 11.]
- r. 6. [See COSTS, 19; PRACTICE, B 32, 53, 54.]

Order LVIII. [See PRACTICE, B 67.]

- r. 5. [See PRACTICE, K 21; COMPANY, D 74.]
- r. 6. [See ADMIRALTY, 59; PRACTICE, B 42, 53; II 21.]
- r. 8. [See PRACTICE, B 60.]
- r. 9. [See PRACTICE, B 27; TRUSTEE RELIEF ACT, 9.]
- r. 14. [See PRACTICE, B 29.]
- r. 15. [See BANKRUPTCY, M 21; COMPANY, H 76; COSTS, 68, 69; LANCASTER PALATINE COURT, 2; PRACTICE, B 24, 27, 32, 40, 45, 51, 52, 55; TRUSTEE RELIEF ACT, 9.]
- r. 17. [See PRACTICE, B 68.]
- r. 19. [See PRACTICE, B 63.]

Order LIX. [See PRACTICE, A 3; W 88.]

Appendix A.

- Pt. I. Forms 2, 3. [See PRACTICE, BB 20.]

*Additional Rules of Court, 1875.*

Order VI.

- r. 2. [See COSTS, 86.]
- r. 3. [See COSTS, 87.]
- r. 18. [See COSTS, 82, 84, 101, 102.]

*Rules of Supreme Court, March, 1879.*

- r. 7. [See PRACTICE, Z 4.]

*Cons. Ord. XXXI.*

- r. 11. [See ADMINISTRATION, 36.]

*Cons. Ord. XXXV.*

- r. 1. [See TRUSTEE ACT, 18.]

*County Court Rules, 1875.*

Order IX.

- r. 5. [See COUNTY COURT, 2.]

Order XX.

- r. 1. [See COUNTY COURT, 12.]

Order XXIV.

- r. 4. [See ATTACHMENT, 3.]

## SAILING RULES.

[See SHIPPING LAW, E 8-16.]

## SALE OF FOOD AND DRUGS ACT, 1875.

[See ADULTERATION OF FOOD.]

[Amendment of the law as to. 42 &amp; 43 Vict. c. 30.]

## SALE OF GOODS.

## (A) CONSTRUCTION AND EFFECT OF PARTICULAR CONTRACTS.

(a) Goods "to be shipped during months of March (and or) April."

(b) "Shipment by steamer or steamers."

(c) "Per vessel or vessels:" part performance.

(d) "Cargo:" condition precedent.

## (B) SALE OF SPECIFIC GOODS.

(a) Impossibility an excuse for non-performance.

(b) Implied warranty of fitness.

(1) Sale of dead rabbits.

(2) Carriage pole: latent defect.

(c) Sale of shares in company.

(d) Sale of horses.

## (C) SALE BY INSTALMENTS.

(a) Time for delivery.

(b) Notice of insolvency of vendee.

(c) Unexpired credit: time to sue.

## (D) PASSING OF PROPERTY.

(a) False pretences: bona fide purchase by third party.

(b) Goods shipped on account of vendee to vendee's order.

(c) Possession by sheriff.

## (E) DELIVERY AND ACCEPTANCE OF GOODS.

(a) Invalid tender of cargo.

(b) Failure to deliver within stipulated time: alteration of time for delivery.

## (F) RIGHT OF RESELL: BANKRUPTCY OF VENDOR.

## (G) VENDOR'S LIEN.

(a) Resale: bill of lading to shipper's order.

(b) Usage of trade: negotiability of warrants.

(c) Usage of trade: delivery order: broker and undisclosed principal.

(d) Delivery determining lien.

## (H) STOPPAGE IN TRANSITU.

(a) Duration of transitus.

(b) Assignment of bill of lading: effect of.

## (A) CONSTRUCTION AND EFFECT OF PARTICULAR CONTRACTS.

(a) Goods "to be shipped during months of March (and or) April."

1.—In an action for the non-acceptance of 600 tons (equal to 8,200 bags) of rice, "to be shipped during the months of March (and or) April," it appeared that 8,150 bags were put on board on or before the 28th of February, and

the remaining 50 bags on the 2nd of March, bills of lading being given, on the 23rd of February for 1,780 bags, on the 24th of February for 1,780 bags, on the 28th of February for 3,560 bags, and on the 3rd of March for 1,080 bags:—Held (reversing the decision of the Court of Appeal, *nom. Shand v. Bones*, 46 Law J. Rep. Q.B. 201; Law Rep. 2 Q.B. D. 112; on appeal from the Queen's Bench Division, 45 Law J. Rep. Q.B. 507; Law Rep. 1 Q.B. D. 470), that the bulk of the cargo having been completely shipped in February, the rice did not answer the description in the contract, and that the defendants were not bound to accept it. *Alexander v. Vanderzee* (Law Rep. 7 C.P. 530) distinguished. *Bones v. Shand* (H.L.), 46 Law J. Rep. Q.B. 561; Law Rep. 2 App. Cas. 455.

(b) "Shipment by steamer or steamers."

2.—The defendant agreed to buy from the plaintiff 4,500 quarters of Russian oats, "shipment by steamer or steamers" within a certain time, and the plaintiff shipped 1,139 quarters upon one steamer within the time, and the remainder upon another steamer after the time had elapsed; the defendant declined to accept the 1,139 quarters as well as the residue:—Held, that as the contract was for "shipment by steamer or steamers," the defendant was bound to accept any reasonably large quantity which was shipped by steamer within the period limited, and was therefore liable for non-acceptance of the 1,139 quarters. *Brandt v. Lawrence* (App.), 46 Law J. Rep. Q.B. 237; Law Rep. 1 Q.B. D. 344.

(c) "Per vessel or vessels:" part performance.

3.—By a contract dated the 19th of December for the sale by the plaintiffs to the defendants of about twenty-five tons, more or less, pepper, October and [or] November shipment, from Penang to London, per sailing vessel or vessels; the name of the vessel or vessels, marks and full particulars were to be declared to the buyers, in writing within sixty days from date of bill of lading. The plaintiffs declared on the 19th of January following on one vessel, but in three distinct parcels, and under three different bills of lading, twenty-five tons of pepper, only twenty tons of which satisfied the contract, the other five tons being a December shipment. The defendants refused to accept the whole quantity. The plaintiffs then, but after the expiration of sixty days from the date of the bill of lading, declared other five tons shipped in November on board the same vessel, in substitution for the five tons of December shipment previously declared. The defendants refused to accept these five tons also. On the arrival of the cargo in England in the following month of June, the plaintiffs formally tendered the samples of the twenty-five tons of November shipment, according to the substituted declaration, when the defendants refused to accept them or any part of them. In an action for

damages for non-acceptance, Lord Coleridge, C.J., on further consideration, after trial without a jury, held that the plaintiffs could not recover in respect of any part of the pepper; on appeal,—Held (affirming the judgment per Cotton, L.J., and Thesiger, L.J., *dissentiente* Brett, L.J.), that the plaintiffs could not recover, that the contract was not divisible, that the plaintiffs having declared and tendered as one entire whole shipment which was in part in accordance with the terms of the contract and in part not, the latter portion exceeding in quantity the margin provided for under the words "about" and "more or less," could not, when it was too late to remedy the defect, divide that shipment, and compel the defendants to accept that part which was good; but that the defendants were entitled to reject the whole. Per Brett, L.J., that the failure to deliver part of the pepper was only a breach of part of the consideration, that this could be compensated for in damages, and thus did not relieve the defendants from the duty of accepting that part of the shipment which was in accordance with the contract. *Brandt v. Lawrence* (see last case) discussed and distinguished. *Routier, Hufeland & Company v. Sala & Company* (App.), 43 Law J. Rep. C.P. 492; Law Rep. 4 C.P. D. 239.

(d) "Cargo": condition precedent.

4.—Where the defendant contracted to buy for the plaintiff "a cargo of from 2,500 to 3,000 barrels (seller's option)" petroleum at one shilling and three farthings per gallon weighed 8 lbs. delivered, to be shipped from New York within a certain time, and the terms of the contract shewed that the defendant was to have complete control over the destination of the vessel,—Held (affirming the decision of the Exchequer Division), that "cargo" meant an entire ship-load and not a shipment, and that it was a condition precedent that the 2,500 to 3,000 barrels tendered should be the whole cargo of the vessel, although the additional quantity shipped was kept distinct, and the defendant was not, in fact, deprived of the control of the vessel's destination. *Borroman v. Drayton* (App.), 46 Law J. Rep. Exch. 273; Law Rep. 2 Ex. D. 15.

(B) SALE OF SPECIFIC GOODS.

(a) Impossibility an excuse for non-performance.

5.—When, from the nature of a contract, the parties must from the beginning have known that it could not be fulfilled unless when the time for the fulfilment arrived some particular specified subject-matter continued to exist, no warranty that the subject-matter should so continue to exist is to be implied from the fact that the subject-matter was not in existence at the time of the making of the contract. The contract in such a case is therefore subject to the implied condition that the parties shall be excused if, before breach, performance becomes

impossible by the perishing of the subject-matter without default of the contractor. *Howell v. Coupland* (App.), 46 Law J. Rep. Q.B. 147; Law Rep. 1 Q.B. D. 258.

In March, 1872, the defendant agreed to sell to the plaintiff 200 tons of potatoes, grown on land belonging to the defendant at W., to be delivered in the following September and October. The defendant sowed a sufficient quantity of potatoes on lands belonging to him at W. to meet the contract in the ordinary course of husbandry. Before the time for the performance of the contract a large portion of the crop was destroyed by disease without any default on the part of the defendant, and the remainder was insufficient to meet the contract. In an action for non-delivery,—Held (affirming the judgment of the Court of Queen's Bench), that the contract was for the sale of a specific crop, without any warranty that the crop should continue to exist at the time of performance, and that the principle of *Taylor v. Caldwell* (32 Law J. Rep. Q.B. 164) applied. *Ibid*.

(b) Implied warranty of fitness.

(1) Sale of dead rabbits.

6.—B., a wholesale provision dealer in London, contracted to send weekly from London by railway to W., a retail tradesman at Brighton, a quantity of Ostend rabbits, the cost of the railway carriage as well as the price of the rabbits being paid by W.—Held, that there was an implied warranty by B. that the rabbits should be fit for human food, not only when delivered at the railway station in London, but when in the ordinary course of transit they should reach W. at Brighton, and until he should have had there a reasonable opportunity of dealing with them in the usual course of business. *Beer v. Walker*, 46 Law J. Rep. C.P. 677.

(2) Carriage pole: latent defect.

7.—In every sale of goods there is an implied warranty that the article sold shall answer the description in the contract, and, therefore, where it is sold for a specific purpose there is an implied warranty that it shall be reasonably fit for that specific purpose. And held that this implied warranty is absolute, and extends to latent as well as discoverable defects, overruling the decision below, 45 Law J. Rep. Q.B. 364. *Randall v. Newsom* (App.), 46 Law J. Rep. 259; Law Rep. 2 Q.B. D. 102.

In an action for damages for injury to the plaintiff's horses caused by the breaking of a pole supplied for the plaintiff's carriage by the defendant, the jury found that the pole was not reasonably fit for the purpose for which it was intended, but that the defendant had been guilty of no negligence in supplying it. A verdict was entered for the plaintiff for the value of the pole. The Court, in granting a new trial, said that the verdict should include such consequential damages as arose naturally from

the defect in the pole, as well as the value of the pole. *Ibid.*

(c) *Sale of shares in company.*

8.—A sale of shares in a company to be completed on a future day without mention of dividends passes dividends declared after the sale but before the day of completion. *Black v. Homersham*, 48 Law J. Rep. Exch. 79; Law Rep. 4 Ex. D. 24.

*Con: breach of warranty: damages.* [See DAMAGES, 23.]

(d) *Sale of horse.*

9.—In an action for breach of warranty of a horse, the statement of defence alleged that the horse was sold by the defendant to the plaintiff at a public auction held at the Royal City Repository, subject to a condition that "horses warranted quiet in harness, &c., not answering such warranty, must be returned before five o'clock, the day after the sale, shall then be tried by a competent person to be appointed by the proprietor of this establishment, and the decision of such person shall be final;" and that the plaintiff did not return the horse before five o'clock the day after the sale, in compliance with the condition:—Held, on demurrer, that the defence was a good answer to the action, because the condition substituted the right of returning the horse within the time fixed for the general remedy for breach of warranty which the buyer would otherwise have had. *Hinchcliffe v. Barwick* (App.), 49 Law J. Rep. Exch. 495; Law Rep. 5 Ex. D. 177.

10.—The plaintiff sold a horse to the defendant upon a condition that the horse should be tried by the defendant for eight days, and returned by him at the end of that time if he did not think it suitable for his purposes. The horse died within such eight days without fault of either party:—Held (by Denman, J.), that there was no absolute sale at the time of the horse's death, and, therefore, that the plaintiff could not recover the price. *Elphick v. Barnes*, 49 Law J. Rep. C.P. 698; Law Rep. 5 C.P. D. 321.

(C) SALE BY INSTALMENTS.

(a) *Time for delivery.*

11.—The plaintiffs, merchants at Bilbao, contracted to supply the defendants in England with 30,000 tons of ore at a certain price per ton, including freight and insurance. By the terms of the contract deliveries were to be made at the rate of from 800 to 1,300 tons per month, provided that tonnage could be procured by the plaintiffs at or under a certain rate; it was also provided that no responsibilities should attach to the plaintiffs for failing to deliver any portion of the ore through circumstances beyond their control. The delivery of a portion of the ore was delayed beyond the time agreed upon by the parties, owing to freights being above the

limit, while another portion could not be delivered in time, owing to warlike operations around Bilbao:—Held, that the plaintiffs were entitled to deliver any quantities of the ore which they had withheld while freights were above the limit, but not those which they were prevented from delivering by *vis major*. *De Oleaga & Company v. The West Cumberland Iron and Steel Company (Lim.)*, 48 Law J. Rep. Q.B. 753; Law Rep. 4 Q.B. D. 47.

*PER CURIAM.*—The limit of time within which the quantities so withheld must be delivered is a reasonable time, having regard to the contemplated duration of the contract. *Ibid.*

12.—The defendants contracted to buy from the plaintiff from 5,000 to 6,000 tons of iron ore, to be delivered at Cardiff "during the months of June, July, August and September." It appeared from the correspondence between the parties which led to the contract that the plaintiff had arranged with correspondents at Carthagena for the supply and shipment of the ore. By the 28th of July 4,623 tons of ore were delivered to and accepted by the defendants, and on the 29th of July the *Nero* arrived with 767 tons more, notice at the same time being given to the defendants of her readiness to discharge. There was considerable delay in discharging the *Nero*, she having made an exceptionally short voyage, and for her detention beyond the lay days, the plaintiff had to pay demurrage to the extent of 150*l.*, which he now sought to recover from the defendants. The jury found that the tender was a reasonable one, but the defendants contended that the quantity ought to have been distributed ratably over the four months, and that, not being bound to accept the *Nero's* cargo till September, they were not liable to pay the demurrage sued for:—Held (by Lush, J.), that the contract gave the option to either party to deliver or to demand the amount contracted for; and as no provision was made for exercising the option at any given time, whether in the first month or the last, the plaintiff could not tell, until the option was exercised, how many tons should be delivered in any month; also, that the circumstances shewed that the parties could not have contemplated equal monthly quantities. *Calaminus v. The Dowlais Iron Company (Lim.)*, 47 Law J. Rep. Q.B. 575.

(b) *Notice of insolvency of vendee.*

13.—By a contract dated the 27th of October, 1874, the C. Company contracted to sell to the P. Company 2,500 tons of pig iron, to be delivered over the next ten months in about equal monthly quantities. Payment by four months' bill net, or cash less 2½ per cent. discount, on the 10th of the month next following each delivery. In performance of this contract the C. Company, in November and December, 1874, and in January and February, 1875, made deliveries amounting to 852 tons. On the 24th of February the P. Company, requiring further

capital to carry on their business, called a meeting of their principal creditors, with a view to an arrangement being made for an extension of credit, and laid a statement of affairs before them, shewing that out of a nominal capital of 100,000*l.*, of which 80,000*l.* was paid up, the company had sustained losses to the extent of 40,000*l.* The creditors did not accept the propositions submitted to them, and the C. Company, considering the statement to be a declaration of insolvency, declined to make any further deliveries except for cash, and thereupon the P. Company cancelled the contract. Three months afterwards the P. Company was ordered to be wound up. Upon a claim by the C. Company for damages in respect of breach of the contract,—Held (by the Master of the Rolls, and affirmed on appeal), that the statement of affairs laid before the creditors on the 24th of February did not amount to a declaration of insolvency which justified the C. Company in refusing to deliver without cash payments, and the claim was disallowed. *In re The Phoenix Bessemer Steel Company (Lim.)*; *ex parte The Curnforth Hematite Iron Company (Lim.)* (App.), 46 Law J. Rep. Chanc. 115; Law Rep. 4 Ch. D. 119.

The rule laid down in *Ex parte Chalmers*; *in re Edwards* (42 Law J. Rep. Bankr. 2), only applies where there is something amounting to a declaration on the part of the purchasers that they will be unable to meet their engagements. *Ibid.*

(c) *Unexpired credit : time to sue.*

14.—The plaintiffs contracted to deliver iron of a certain quality to the defendants, and agreed to receive payment for each delivery, either in cash for discount within a month, or by bills at four months, according to the defendants' option. Upon application by the plaintiffs in July for payment of iron delivered in June, the defendants elected to pay by bill. Before, however, the bill was given, the defendants discovered that the iron which had been worked up into plates was of inferior quality to the sample, and useless to them. They therefore refused to accept any more bills, and the plaintiffs immediately, in August, brought an action to recover the contract price of the June delivery:—Held, that the contract having been broken by the plaintiffs delivering iron of inferior quality, and it being consequently their fault that the bill for the invoiced price was not given, and yet both parties having at the time, and up to the discovery of the quality of the iron, treated the delivery as made under the contract, and to be paid for under it, the period of credit had not expired, and the plaintiffs were not entitled to sue in this action, either for the contract price or on a *quantum valebant* for the reduced value of the goods. *Wayne's Northyr Steam, Coal and Iron Company v. Morewood & Company*, 46 Law J. Rep. Q.B. 746.

(D) PASSING OF PROPERTY.

(a) *False pretences : bona fide purchase by third party.*

15.—Goods were supplied by the plaintiffs to one Blenkarn, who had taken premises at 37 Wood Street, and in ordering the goods had signed his name in such a way as to induce the plaintiffs to believe that he was a member of a well-known firm of Blenkiron & Sons, in Wood Street. For this fraud Blenkarn was tried and convicted of obtaining the goods under false pretences. Before his conviction the defendants had honestly bought the goods in question from him, and had sold them again. In an action for conversion of the goods,—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. Q.B. 233; Law Rep. 2 Q.B. D. 96; on appeal from the Queen's Bench Division, 45 Law J. Rep. Q.B. 381; Law Rep. 1 Q.B. D. 348), that the property in the goods did not pass from the plaintiffs, who were consequently entitled to recover their value from the defendants. *Lindsay & Company v. Cundy* (H.L.), 47 Law J. Rep. Q.B. 481; Law Rep. 3 App. Cas. 459.

16.—The plaintiff had bought of one Wale, by a *bona fide* transaction, not in market overt, a flock of forty-nine sheep. It turned out that the sheep had been obtained from the defendant by Wale by false pretences, and that of this offence Wale was convicted. Subsequently to the conviction, the defendant went to the plaintiff's premises and retook possession of the sheep. No order for restitution had been made. The plaintiff now sought, in an action for converting them, to recover the value of the sheep:—Held, that the plaintiff was entitled to judgment; that the provisions of 24 & 25 Vict. c. 96. s. 100 apply only to cases in which possession has been obtained without the property passing; that there was no property in the defendant at the time of Wale's conviction, as it had been parted with by a contract which, though voidable, could not be avoided after the property had been sold to a *bona fide* purchaser for value, so as to entitle the defendant to take it out of the possession of such purchaser. *Moyce v. Norington*, 48 Law J. Rep. Q.B. 125; Law Rep. 4 Q.B. D. 32.

(b) *Goods shipped on account of vendee to vendee's order.*

17.—The plaintiff contracted to purchase a certain quantity of goods from P. & Co. P. & Co. purchased the goods from C, whom they paid, and shipped them from Cyprus to London for and on account of the defendants, and delivered the invoice to the plaintiff. They drew a bill on the plaintiff's firm in London to the order of C. C. discounted it with the defendants, and forwarded it to the defendants' London agents, together with bills of lading drawn to the order or assigns of P. & Co., with instructions that the plaintiff's London firm would be ready to accept and pay it at maturity

against delivery of the bills of lading. The bill being presented to the plaintiff, he refused to accept it without receiving the bills of lading. Thereupon the defendants took possession of the cargo, and, notwithstanding that the plaintiff offered to pay the bill of exchange, refused to deliver to him the bill of lading without payment of the bill, together with the freight and charges, and eventually sold the cargo for less than its value. On a special case, the arbitrator found, as a matter of fact, that the parties had intended that the property should pass to the plaintiff on shipment of the goods:—Held, that such finding was justified by the facts; that the property had passed to the plaintiff, on the tender of payment of the bill of exchange, and that as the defendants had no title to the goods, the plaintiff could maintain an action against them for the conversion thereof. *Mirabita v. The Imperial Ottoman Bank* (App.), 47 Law J. Rep. Exch. 418; Law Rep. 3 Ex. D. 164.

(c) *Possession by sheriff.*

18.—Possession of goods by a sheriff under a writ of *fiat facias* does not prevent the debtor from making an effectual sale of the goods by livery to a purchaser while the sheriff is in possession. *The Union Bank of London v. Lenanton* (App.), 47 Law J. Rep. C.P. 409; Law Rep. 3 C.P. D. 243.

*Pledges of goods: rights of: re-delivery obtained by fraud of pledgor: innocent transferee for value.* [See PLEDGE.]

*Specific appropriation of goods to answer bill of exchange: consignment of goods by agent to principal: property in goods passing to principal absolutely on shipment by agent.* [See BILL OF EXCHANGE, 21.]

(E) DELIVERY AND ACCEPTANCE OF GOODS.

(a) *Invalid tender of cargo.*

19.—Contract for the supply by the plaintiffs to the defendants of a cargo of maize, bill of lading to be dated between the 15th of May and the 30th of June, shipping documents attached as usual. The plaintiffs tendered the cargo of a ship of which the shipping documents had not arrived. The defendants refused to accept this cargo, and on an arbitration they were held to be justified in their refusal. The plaintiffs then tendered within the time named by the contract another cargo in every way satisfying the contract, but the defendants refused to accept it. The plaintiffs sold this cargo at a loss, and sued the defendants for the amount of loss incurred by their non-acceptance:—Held (reversing the decision of Denman, J.), that the plaintiffs were entitled to recover, that they had not elected to perform their contract by the tender of the first cargo, that being a bad tender, and were not thereby precluded from tendering the second cargo so as to bind

the defendants. *Borrowman v. Free* (App.), 48 Law J. Rep. Q.B. 66; Law Rep. 4 Q.B. D. 500.

(b) *Failure to deliver within stipulated time: alteration of time for delivery.*

20.—Where the vendor of goods under a contract valid within the Statute of Frauds, being ready to deliver within the agreed time, withholds his offer to deliver in consequence of a request by the vendee before the expiration of the agreed time, and where after the expiration of the agreed time, and within a reasonable time, the vendor proposes to deliver and the vendee refuses to accept, the vendor can recover damages; but if the alteration of the period of delivery is made at the request of the vendor, though such request be made during the agreed period for delivery, so that the vendor, in suing for the non-acceptance of an offer to deliver after the agreed period, is obliged to rely upon the assent of the vendee to his request, he cannot enforce his claim. *Plevins v. Downing*, 45 Law J. Rep. C.P. 695; Law Rep. 1 C.P. D. 220.

By a written contract, signed by the defendant, and dated June, 1874, he agreed to buy 100 tons of iron: "delivery, twenty-five tons at once, and seventy-five tons in July next." By the end of July the plaintiff had delivered and the defendant had accepted seventy-five tons. The defendant did not, before the end of July, request the plaintiff to withhold delivery till after the end of July. In October the defendant verbally requested the plaintiff to send him the remaining seventy-five tons, and the plaintiff did in October forward twenty-five tons addressed to the plaintiff, but the iron did not arrive at the defendant's works, and the defendant, on being informed by letter of the despatch of the iron, refused to accept it:—Held, that the plaintiff could not sue the defendant for non-acceptance of the twenty-five tons, and that there was no sufficient evidence of delivery and acceptance of the same under a new contract, so as to support an action for goods sold and delivered. *Ibid.*

(F) RIGHT OF RESALE: BANKRUPTCY OF VENDOR.

21.—Where a purchaser of goods whose unpaid acceptances have been given to the vendor files a liquidation petition, his trustee or sub-purchaser may elect to complete on paying cash, and if he does not so elect, the vendor may resell and prove in the bankruptcy for any difference on resale. *Ex parte Stapleton; in re Nathan* (App.), Law Rep. 10 Ch. D. 586.

(G) VENDOR'S LIEN.

(a) *Resale: bill of lading to shipper's order.*

22.—Upon a sale of goods, where the shipper takes and keeps in his own hands a bill of lading, making the goods deliverable to the shipper's order, with the intention to pro-



test himself, the effect of his so doing is to preserve to him a hold over the goods until the vendee has fulfilled, or has been ready and willing to fulfil, the conditions of the sale; and the hold so preserved is not merely a right to retain possession till those conditions are fulfilled, but involves in it a power to dispose of the goods on the vendee's default, so long at least as the vendee continues in default. *Ogg v. Skuter* (App.), 45 Law J. Rep. C.P. 44; Law Rep. 1 C.P. D. 47.

L., in France, contracted to sell to the plaintiffs in England a certain quantity of potatoes, to be shipped free on board at Dunkirk, cash against bill of lading, and took a bill of lading to his own order. On the arrival of the ship and tender of the bill of lading, the plaintiffs, erroneously believing that the full number of sacks had not been sent, made default in payment. The defendant, by order of L., resold the potatoes. After the resale the plaintiffs were ready and willing to pay the price, and demanded the potatoes:—Held, that the defendant was not liable in trover to the plaintiffs. *Ibid.*

(b) *Usage of iron trade: negotiability of warrants.*

23.—The defendants contracted to make and deliver rails by equal monthly quantities, to be paid for, as to part of the price, by the buyers' acceptances at four months' date; and at the request of the buyers gave to them, with each delivery, a warrant, which was expressed to be for rails, deliverable f.o.b. to the buyers or to their assigns by endorsement. The buyers pledged the warrants with the plaintiffs and afterwards became bankrupt:—Held, that by the usage of the iron trade the warrants in that form were a negotiable security, giving the holders priority over the defendants' lien as unpaid vendors. *The Merchant Banking Company of London v. The Phoenix Bessemer Steel Company*, 46 Law J. Rep. Chanc. 418; Law Rep. 5 Ch. D. 205.

Manufacturers at Sheffield contracted to deliver goods free on board at Liverpool, and would have sent the goods thither in their own name but for a subsequent arrangement with the purchasers, under which the goods were loaded in trucks sent by the purchasers, and on their arrival at Liverpool were warehoused in the name of the purchasers' agents there:—Held, under the circumstances, that the transit was at an end in law when the goods were loaded in the trucks. *Ibid.*

(c) *Usage of trade: delivery order: broker and undisclosed principal.*

24.—According to the usage of the London dry goods market, a broker who buys for an undisclosed principal is personally liable to the seller for the price of the goods. *The Imperial Bank v. The London and St. Katherine's Dock Company*, 46 Law J. Rep. Chanc. 385; Law Rep. 5 Ch. D. 195.

D., a broker, bought of C. for undisclosed principals a quantity of gum sandrac then lying at the St. Katherine's Dock, to be paid for on Saturday, the 18th of March, and obtained a delivery order from C., which he gave to his principals on the faith of their representation that the goods were wanted for immediate shipment. D.'s principals, however, pledged the delivery order with a bank, and on the evening of the 17th of March they stopped payment. On the morning of the 18th of March the bank sent the delivery order to the dock office in the city with a request for a warrant, which they were told would be ready on Monday. Notice of the delivery order having been lodged was sent by the dock company in due course to their warrant office at the dock, where through a mistake of the messenger, it did not arrive until three p.m., and in the meantime a clerk of D., who had, in accordance with the usage of the trade, paid the price of the goods to C. that morning, applied at the warrant office in C.'s name for a warrant for the goods, which was made out and given to him, as the goods were clear in the cargo ledger. C. endorsed the warrant to D., and in consequence of what had happened, the dock company on the Monday refused to act on the bank's delivery order. In an action by the bank against the dock company, D. and C.,—Held, that D. was entitled to the goods, for the bank had never obtained either actual or constructive possession of the goods, and that D., having paid the price of the goods as surety for his principals, was, notwithstanding his prior application for the delivery order and endorsement thereof, entitled, by virtue of section 5 of the Mercantile Law Amendment Act (19 & 20 Vict. c. 97), to the benefit of the unpaid vendor's lien subsisting in C. *Ibid.*

Whether an action for negligence would have lain by the plaintiffs against the dock company, *quære*. *Ibid.*

(d) *Delivery determining lien.*

25.—A vendor has a lien on goods for the price until actual possession by a vendee. *Grice v. Richardson*, 47 Law J. Rep. P.C. 48; Law Rep. 3 App. Cas. 319.

The appellants sold goods to W., and, being warehousemen, the goods remained at their warehouse, at a rent, deliverable to the order of W. Before the goods were paid for, W. became insolvent:—Held, that there had been no actual delivery of the goods to W., and that the appellants had a lien on the goods for the price. *Ibid.*

(H) STOPPAGE IN TRANSITU.

(a) *Duration of transitus.*

26.—Goods were sent by G. from Charleston to an agent, B., at Liverpool, for the use of W., who were manufacturers in Yorkshire. A bill of lading was sent with the goods, and a bill of exchange for the amount. The arrangement

between G. and W. was that, on the acceptance of the bill of exchange by W., the bill of lading was to be sent by B. to W. This was done, and W. forwarded the bill of lading to a gentleman who was the agent of the L. and Y. Railway Company in Liverpool, with directions to forward the goods to W. The goods were sent as directed, and such of them as were wanted by W. for use in his mill were taken from the trucks and used; the rest remained on the trucks in the possession of the railway company. W. filed a petition for liquidation, and G.'s agent gave notice to the company, and claimed against the trustee a right of stoppage *in transitu* as to the goods not yet taken into use by W.:—Held, that G.'s right to stoppage *in transitu* ceased on arrival of the goods at Liverpool, and the handing of the bill of lading to W. in return for the accepted bill of exchange. Semble, that the selection from and taking away of part of the goods from the trucks was constructive possession of the whole. *Ex parte Gibbs*; *in re Whitworth*, 45 Law J. Rep. Bankr. 10; Law Rep. 1 Ch. D. 101.

27.—By an agreement between L., a merchant, and W., a manufacturer, for the supply of goods by W. to L., under which L. was to give bills of exchange to W. & Co. for the invoice price of all goods supplied to him, it was agreed that L. should ship all goods so supplied to R. & Co., of Shanghai, for sale on his account, that the bills of lading for such goods should be sent by L. immediately on receipt to R. & Co., to whose order they were to be made out, and that W. should have a lien upon such bills of lading and each shipment of goods in transit outwards, or in the hands of the consignees or any other persons. In pursuance of this agreement goods were accordingly shipped, and the bills of lading which, by L.'s directions, were made out to the order of himself or his assigns, were signed but retained by the ship-owners by reason of the freight not being paid. W. telegraphed to R. & Co., at Shanghai, to whose order the bills of lading should have been made out, stopping the goods:—Held (reversing the decision of one of the registrars sitting as Chief Judge), that the *transitus* of the goods continued from the time of their leaving W.'s hands till their arrival at Shanghai, that they had been effectually stopped *in transitu*, and that W. was therefore entitled to be paid his purchase-money out of the proceeds of sale. Held also, that the agreement, giving to W. a lien upon the bills of lading, &c., was not a bill of sale within the meaning of the 17 & 18 Vict. c. 36. *In re Love*; *ex parte Watson* (App.), 46 Law J. Rep. Bankr. 97; Law Rep. 5 Ch. D. 35.

28.—The appellants, merchants in London, sold goods to one Worsdell, a trader at Falmouth; and forwarded the goods by steamer to Worsdell, Killigrew-street, Falmouth; and they also sent by post to the purchaser an invoice which stated that the goods were sent by steamer. On the 31st of October the goods

were discharged at Falmouth and placed by the company's agents in a warehouse belonging to the company. The course of business of the Falmouth agents was to hold the goods subject to the order of the consignee on his paying freight and warehouse rent. On the 30th of October Worsdell committed an act of bankruptcy by absconding from Falmouth, and no notice of the arrival of the goods could be given to him. He was adjudicated bankrupt on the 4th of November, and a receiver appointed, and on the same day the goods not having been paid for and not having been claimed on behalf of the consignee, the appellants telegraphed to the company's agents to stop delivery:—Held, that the transit was not at an end when the goods were stopped, nothing having taken place to constitute the company's agents at Falmouth bailees for the consignee. *Ex parte Barron*; *in re Worsdell*, 46 Law J. Rep. Bankr. 71; Law Rep. 6 Ch. D. 783.

Semble, that a wharfinger holding goods *in transitu* cannot turn himself into an agent for the consignee so as to put an end to the *transitus* without the express authority of the consignee. *Ibid*.

29.—The transit is not at an end until the goods are in the actual possession of the purchaser, and it can make no difference that in the contract between the vendor and purchaser the port of destination is not mentioned or is left uncertain, or is changed after the contract. The distinction taken is between a constructive delivery and actual delivery to the purchaser. If there is only a constructive delivery by reason of a delivery to a carrier, the transit is not at an end until actual delivery by the carrier to the purchaser or his agent. *Ex parte The Rosevear China Clay Company*; *in re Cook* (App.), 48 Law J. Rep. Bankr. 100; Law Rep. 11 Ch. D. 560.

Delivery of goods by the vendor to a carrier, even though nominated by the purchaser, is still only constructive delivery to the purchaser, as the contract with a carrier to carry goods does not make the carrier the agent or servant of the person contracting with him, whether he be vendor or purchaser of the goods. *Ibid*.

C. entered into a contract with the R. company to purchase china clay, to be delivered on board at Fowey, and to be paid for by an acceptance of C. C. did not communicate the destination of the clay to the R. company. C. verbally chartered a ship, and gave notice to the R. company of the name of the ship, who sent the clay to Fowey, and delivered it on board the specified ship. Before the ship left harbour, the R. company heard that C. was insolvent, and gave notice to the master of the ship to stop the clay *in transitu*. No bill of lading was signed, nor had C. given his acceptance for the price of the clay:—Held (by the Court of Appeal, reversing the decision of the Chief Judge), that the clay being in possession of the captain only as carrier, the transit was not at an end when the clay was put on board,

and that the vendor's right to stop *in transitu* still continued. *Ibid.*

30.—On the 30th of July a cargo of 114 tons of iron castings was shipped and consigned to M., a merchant carrying on business by himself in London, by a Scotch firm at Alloa, in which M. was a partner. The bill of lading was made out to M. and his assignees, he or they paying the freight. The ship arrived in London on the 7th of August, and M.'s manager in London began to unload the cargo, and thirty tons were on the same day discharged into M.'s barges. M. made certain payments in respect of the freight, which more than covered the amount due for the thirty tons. On the 8th of August M., who was then at Alloa, finding himself practically insolvent, telegraphed to his manager directing him not to commence unloading, or if he had, to stop. The manager accordingly stopped, and on the 12th of August M. came to London, and arranged with the captain to stop any further delivery of the cargo. On the 19th of August M. filed a liquidation petition, and a trustee was appointed. On the 21st of September a sequestration was issued against the Scotch firm. *In re M'Laren; ex parte Cooper* (App.), 48 Law J. Rep. Bankr. 49; Law Rep. 11 Ch. D. 68.

The English trustee and the Scotch sequestrator both claimed the undischarged balance of the cargo:—Held (affirming the decision of the Registrar), that at the time when M. directed the delivery to be stopped, the goods were in the hands of the shipowner as carrier, and that the *transitus* was not at an end; that accordingly the vendors could exercise their right of stoppage *in transitu*; and that the delivery of the thirty tons was not such a constructive delivery of the whole cargo as to prevent the exercise of that right, or to make the act of M. in refusing to accept delivery a fraudulent preference of the Scotch firm. That the fact that M. was also a partner in the Scotch firm made no difference. *Ibid.*

Per Brett, L.J.—Part delivery of a cargo or of the bulk of the goods is not *prima facie* delivery of the whole. *Ibid.*

Per Curiam.—When goods are placed in the possession of a carrier to be carried and delivered, the *transitus* is not at an end so long as the carrier continues to hold the goods as carrier, and is not at an end until the carrier by agreement between himself and the consignee agrees to hold the goods for the consignee, not as carrier, but as his agent; and the same principle will apply to a warehouseman or wharfinger. *Ibid.*

31.—The right of the original vendor of goods to stop them *in transitu* is not destroyed, nor the duration of the *transitus* ended, merely because the purchaser of the goods has resold them, and the bill of lading has been made out in the name of the sub-purchaser. An unpaid vendor, who has given a valid notice to stop *in transitu* before the purchaser has received the

purchase-money of the goods from his sub-purchaser, is entitled, on the principle of *Spalding v. Ruding* (6 Beav. 376), to have the original purchase-money satisfied out of the unpaid purchase-money of the sub-purchaser. *Ex parte Golding, Davis & Company (Lim.)*; *in re Knight* (App.), Law Rep. 13 Ch. D. 628.

32.—On the resale of goods by the purchaser, though the vendor loses the right to stop the goods themselves *in transitu*, he is entitled, if he gives that which would, had there been no resale, have been a valid notice of stoppage *in transitu*, to intercept, to the extent of his own unpaid purchase-money, so much of the sub-purchaser's purchase-money as remains unpaid by him. The last case approved and followed. Observations of Bramwell, L.J., on *Slubey v. Heyward* (2 H. Bl. 504) and *Hammond v. Anderson* (1 B. & P. (N.R.) 69). Semble, notice of stoppage *in transitu* given to a shipowner imposes no duty on him to communicate the notice to the master of the ship, and is not effectual until it is communicated to the master. *Ex parte Falk; in re Kiell* (App.), Law Rep. 14 Ch. D. 446.

(b) *Assignment of bill of lading: effect of.*

33.—The vendee of goods may, by assignment of the bills of lading to a *bona fide* transferee, defeat the vendor's right to stop them *in transitu* in case of the vendee's insolvency, although the consideration for which the assignment is made is a past one, and has not been got by means of the bills of lading. *Rodger v. The Comptoir d'Escompte de Paris* (38 Law J. Rep. P.C. 30) dissented from. The judgment of the Court below (46 Law J. Rep. Q.B. 329) reversed. *Leask v. Scott* (App.), 46 Law J. Rep. Q.B. 576; Law Rep. 2 Q.B. D. 376.

*Business, sale of: validity as against creditors.*  
[See COMPANY, H 106.]

*Proof in bankruptcy: trade or cash discounts.*  
[See BANKRUPTCY, D 1.]

*Ship: commission on sale of: authority of managing owner.* [See SHIPPING LAW, S.]

## SALFORD HUNDRED COURT.

A defendant in an action in the Salford Hundred Court may obtain a writ of prohibition notwithstanding that he has not pleaded to the jurisdiction, although the Act regulating the procedure in that Court enacts that "no defendant shall be permitted to object to the jurisdiction of the Court otherwise than by special plea, and if the want of jurisdiction be not so pleaded, the Court shall have jurisdiction for all purposes." *Jacobs v. Brett* (44 Law J. Rep. Chanc. 377) followed. *Oram v. Brearey*, 46 Law J. Rep. Exch. 481; Law Rep. 2 Ex. D. 346.

## SALMON FISHERY.

- (A) SALMON FISHERY ACTS.  
(B) RIGHT TO SALMON FISHING.

## (A) SALMON FISHERY ACTS.

1.—A fishing mill dam, having been constructed originally partly for the purpose of fishing, and partly for the purpose of supplying water to a mill, had been used for both purposes for many years previously to the passing of the Salmon Fishery Act, 1861, and was so continued after the Act, until the occupier removed all the machinery and appliances for catching fish in the dam sluice, and ceased to use it for fishing purposes. Upon a subsequent information against him, under section 20, for not removing all obstructions to the free passage of fish, it was proved that the fenders at the sluice still remained, and were raised and lowered by the occupier solely for the purpose of regulating the supply of water at the mill, and irrespective of the close season or the passage of fish:—Held, that, assuming the abandonment of the fishery and removal of the machinery and appliances to have been *bona fide*, notwithstanding its not having been done till after the passing of the Act, such abandonment prevented the application of section 20, as the structure was not, when the complaint arose, a fishing mill dam, but had been converted into an ordinary mill dam. *Rositer v. Pike*, 48 Law J. Rep. M.C. 81; Law Rep. 4 Q.B. D. 24.

2.—The Salmon Fishery Act, 1861, s. 21, prohibits fishing for, catching or killing by any means other than a rod and line, any salmon between noon of Saturday and Monday six a.m., and forfeits all fish taken by any person acting in contravention of this section, and any "net used by him in taking the same," and in addition thereto imposes a penalty. By the Salmon Fishery Act, 1873, s. 36, any water bailiff appointed under the Salmon Fishery Acts may seize all articles forfeited in pursuance of these Acts, and has all the powers of a constable at common law or by statute for enforcing the Acts. A water bailiff was resisted in his attempt to seize the nets of some fishermen found by him fishing in contravention of the Act, but who had actually caught no salmon:—Held, that the forfeiture clause applied to nets used in fishing for salmon in contravention of the Act, though no salmon had been actually caught on the occasion. *Rutter v. Harris* (App. Div.), 45 Law J. Rep. M.C. 103; Law Rep. 1 Ex. D. 97 (*nom. Ruther v. Harris*).

## (B) RIGHT TO SALMON FISHING.

3.—Where a piece of land on the banks of a tidal river is exchanged, but with a reservation or exception of the right of salmon fishing therein, a grant of that salmon fishing in 1873 from the Crown will not deprive the prior owner

of his right. *Richardson v. Gray. Fleming v. Gray* (H.L. Sc.), Law Rep. 3 App. Cas. 1.

4.—Where the proprietor of salmon fishing in an estuary opposite his estate, for the purpose of protecting the shore, and not as a device to catch fish, restored the foreshore by an embankment sixteen inches higher than the original bank, which had been swept away by the tide, and thereby the salmon, though not substantially impeded or obstructed, became easier of capture by the proprietor:—Held, not an illegal obstruction within the Salmon Fishery Acts. *The Duke of Sutherland v. Ross* (H.L. Sc.), Law Rep. 3 App. Cas. 736.

5.—The Crown granted to L. in 1774 a barony charter to lands almost continuous on both sides of a river, including older baronies containing express grants of salmon fishing to parts of the river, some above and some below certain falls, also an ancient barony grant giving the fishing on the Water of Forne (which was alleged to be the old name of the whole river from its source to the sea), and from time immemorial L. had exercised his possession down to 1862, taking all the fish in the whole river by means of close cruives just below the falls, which stretched right across the river, and which were narrower than then allowed by law. He asserted his right above the falls by occasionally fishing there, by having watchers during the spawning season, and by binding his tenants in their leases to protect the fishing, and prevent all others from fishing. This had been done for a period much longer than forty years. After 1862, when close cruives were abolished, L. had regularly fished above the falls with net and coble. No objection had ever been made to L.'s entire possession of the whole salmon fishing in the river, but the Crown now, while admitting L.'s right to the salmon fishing below the falls to be incontestable, claimed, *de jure coronæ*, all the fishing above the falls:—Held, that the river here, being one continuous and connected subject, L.'s entire control and enjoyment of the whole profit of the fish in the whole river, for a time far beyond the period of prescription, coupled with his titles, gave him the right to the salmon fishing within the limits and *ex adverso* his barony lands wherever situated:—Held, also, that this decision was without prejudice to any right of the Crown or its grantees to the salmon fishing *ex adverso* the ancient barony lands of C., which were lands on the banks of the above-mentioned river intermixed with the lands of L.'s barony. *The Lord Advocate v. Lord Lovat* (H.L. Sc.), Law Rep. 5 App. Cas. 273.

## SALVAGE.

[See ADMIRALTY, 9, 20, 31-33; SHIPPING LAW, T.]

## SANITARY RATE.

[See PUBLIC HEALTH ACT, 14.]

## SATISFACTION.

*Advancement: annuity granted in intestate's lifetime.* [See ADVANCEMENT, 1.]

*Advancement: hotchpot clause.* [See WILL CONSTRUCTION, M 2.]

*Debt, of, by legacy.* [See LEGACY, 4-6.]

*Dower, of, by annuity.* [See DOWER.]

*Hotchpot: advancement: release of debts owing from son.* [See ADVANCEMENT, 4.]

*Portions, of.* [See PORTIONS, 1-4.]

## SAVINGS BANK.

[The Savings Banks Acts amended. 43 & 44 Vict. c. 36.]

## SCANDAL.

[See PRACTICE, Z 5.]

## SCAVENGER.

[See METROPOLIS, 18-21.]

## SCHEME OF ARRANGEMENT.

[See BANKRUPTCY, K 20; COMPANY, I.]

## SCHOOL.

*Bequest in aid of.* [See CHARITY, 3.]

*Endowed.* [See ENDOWED SCHOOLS ACT.]

*Scheme: qualification of candidate: "parishioner."* [See CHARITY, 26.]

*Scheme: transfer to School Board.* [See CHARITY, 27, 31.]

## SCHOOL BOARD.

[See ELEMENTARY EDUCATION ACTS.]

[The powers of School Boards in relation to Industrial Schools amended. 42 & 43 Vict. c. 48.]

*By-laws: children employed in factory: compulsory attendance.* [See ELEMENTARY EDUCATION ACT, 5.]

## SCIENTER.

*Care of animals.* [See AGISTMENT; NEGLIGENCE, 1.]

*"Soll knowingly."* [See COPYRIGHT, 6.]

## SCIRE FACIAS.

*Writ of, against shareholder.* [See COMPANY, F.]

## SCOTCH LAW.

(A) APPEAL.

(B) BANKRUPTCY: SET-OFF.

(C) CHURCH AND CHURCHYARD.

(D) CONTRACT.

(E) CONVEYANCE.

(F) DEED: PROPERTY PASSING BY: EVIDENCE OF INTENTION.

(G) ENTAIL.

(H) GLASGOW POLICE ACT, 1866.

(I) HARBOUR: BEACHING FISHING BOATS.

(K) LEASE.

(a) *Conveyancing Act*, 1874.

(b) *Fiatures: descent.*

(L) MARRIAGE.

(M) MINES AND MINERALS.

(N) NUISANCE.

(O) PATENT.

(P) PUBLIC HEALTH ACT: PUBLIC WELL.

(Q) RES JUDICATA.

(R) RIPARIAN OWNERS.

(S) SUPERIOR AND VASSAL.

(a) *Recovery of casualty.*

(b) *Subdivision of feu.*

(c) *Feu contract: clause of relief from public burdens.*

(T) TEINDS.

(U) TRAMWAY.

(V) TRUSTEES.

(W) WILL: CONSTRUCTION.

(a) *Cumulative legacy: words in margin.*

(b) *Accruer of share.*

## (A) APPEAL.

1.—No appeal lies to the House of Lords from a sentence or order of the High Court of Justiciary in Edinburgh. *Mackintosh v. The Lord Advocate for Scotland* (H.L. Sc.), Law Rep. 2 App. Cas. 41.

## (B) BANKRUPTCY: SET-OFF.

2.—The Scotch law of compensation and retention in bankruptcy is nearly, if not quite, identical with the English law of mutual credit. *McKinnon v. Armstrong* (H.L. Sc.), Law Rep. 2 App. Cas. 531.

The right of a creditor to compensation or set-off is not destroyed by the circumstance of such creditor having a collateral security for his debt. *Ibid.*

If the indorser of a bill becomes a party to the bill before the bankruptcy he may set it off on becoming holder afterwards. *Ibid.*

## (C) CHURCH AND CHURCHYARD.

3.—In the allocation of area and seats specific legal rights previously established will be duly regarded and preserved. *The Duke of Roxburgh v. Millar* (H.L. Sc.), Law Rep. 3 App. Cas. 14.

Where a parish is disjoined *quoad sacra*, the heritors of such parish still retain their original civil rights, and still continue subject to their original civil liabilities. *Ibid.*

4.—Where an order of Presbytery for the enlargement of a churchyard has been sufficiently notified to the landowner and others affected, such order will not be impeached on

the ground of mere informality. *Walker v. The Presbytery of Arbroath* (H.L. Sc.), Law Rep. 2 App. Cas. 79.

#### (D) CONTRACT.

*Building contract: extra work: written order: acquiescence.* [See CONTRACT, 33.]

*Ship's survey expenses: construction of contract: deleted words: evidence of intention by previous communing.* [See CONTRACT, 28.]

#### (E) CONVEYANCE.

5.—Articles of roup of certain lands expressly stipulated that the purchaser was to take the property with all risks of error in the particulars. A., by missives attached to the articles, agreed to buy the estate, and a conveyance was executed containing a clause of warrandice in usual general terms, but neither the disposition nor the articles contained any information as to tenure. In the particulars it was stated "The lands hold of the Crown," and in answer to an enquiry on A.'s behalf before sale, the seller's agents referred A. to the note of particulars, adding, "The proprietors (B. & C.) are not entered with the Crown, but you are aware the Crown never asks for an entry." The belief that the lands were held direct of the Crown was grounded on a decree of tinsel, dated 1813, directed against the heir of the line of the last superior, and a decree of forfeiture of the mid-superiority, dated in 1849, followed by a Crown charter. Since the year 1813 there had been no assertion of a contrary right. Before the sale the agents for D., the disponee of the last superior, wrote to B. & C.'s agents claiming the right of mid-superiority, but this claim being disputed and not further persevered with, B. & C.'s agents did not intimate the claim to A., but two years later D.'s agents renewed the claim, and ultimately raised an action against A., claiming a year's rent as composition on his entry. A., being held liable, and the decree of forfeiture reduced, raised this action against B. & C. for repetition of the sum paid, the expenses of the litigation, and a sum equal to one and a half times the casualty of composition, on the ground, first, of warrandice, and, second, misrepresentation and concealment on the part of B.'s agents:—Held, that there had been no breach of warrandice; and that the representation was perfectly true according to the knowledge and belief of those who made it, and, that being so, any error therein was covered by the express contract of the purchaser to take the property with the risks of errors in the particulars. *Brownlie v. Campbell* (H.L. Sc.), Law Rep. 5 App. Cas. 925.

#### (F) DEED: PROPERTY PASSING BY: EVIDENCE OF INTENTION.

6.—General words of disposition in a *mortis causa* deed are, in the absence of proof of con-

trary intention, sufficient to pass heritable property vested at the date of the deed in the disponent with a special destination to heirs substitute. *Campbell v. Campbell* (H.L. Sc.), Law Rep. 5 App. Cas. 787.

By Scotch law evidence of contrary intention is admissible, which by English law would be inadmissible. *Ibid.*

Prior decisions considered. *Ibid.*

#### (G) ENTAIL.

7.—Case in which a royal charter, not original, but by progress and unrecorded, was held not to have given substitute heirs of entail the benefit of the Act, 1690, c. 33, which would otherwise have saved them from the penalties of their predecessor's treason. *The Earl of Perth and Melfort v. Lord Elphinstone* (H.L. Sc.), Law Rep. 3 App. Cas. 297.

8.—By a disentailing agreement between a father and his eldest son it was agreed that money was to be placed by the father in the hands of trustees, who were to "hold it for the son's behoof" in life rent only, and for the issue of his body in fee, whom failing to his nearest heirs. The money was deposited by the father under a deed of declaration which restricted the son's interest in it to alimentary life rent, and failing his issue the fee was given to his aunt. On the death of both father and son, the latter leaving a widow and no children, the money was by deed left to his widow, and the destination in the declaration of trust was revoked. The aunt claimed the money:—Held, that the widow was entitled to it. *Wightman v. Custine* (H.L. Sc.), Law Rep. 4 App. Cas. 228.

9.—The heir in possession of an entailed estate in Scotland having petitioned under the statutes for disentail, the first heir substitute gave his consent, but the second and third refused. The second and third heirs alleged that the first heir (who refused to be examined medically) had suffered from ailments which tended to reduce the probable duration of his life greatly below the average of persons of his age, and accordingly in valuing the interest of the second and third heirs, under the 5th section of the Entail Amendment (Scotland) Act, 1875, the questions arose whether the probable duration of the life of the first heir substitute should be taken from the tables on the basis of his actual age, or whether his actual state of health should be ascertained by enquiry; and whether, there being only one other heir in the entail existing, the second and third heirs' chance of succeeding to the fee simple by surviving all the other heirs of entail should be taken into account:—Held (reversing the decision of the Court below), that all the facts tending to reduce the first heir's life below the average ought to be taken into consideration; and that the valuation ought to include the chance of succeeding to the fee simple. *M'Donald v. M'Donald* (H.L. Sc.), Law Rep. 5 App. Cas. 519.

## (H) GLASGOW POLICE ACT, 1866.

10.—By the Glasgow Police Act, 1866 (29 & 30 Vict. c. 278), s. 384, the master of works may by notice "require any proprietor or occupier of a land or heritage" within the city of Glasgow to fence the same, or repair any chimney-stalk or flue, or chimney head or can, or any stone, signboard, or other thing connected with or appertaining to any building thereon, which appears to be dangerous:—Held, that the master of works is not authorized to compel a riparian owner to fence his land off from a tidal and navigable river, notwithstanding that a public right of way along the river bank, fenced on the land side, is alleged to be insecure and dangerous on account of the proximity of the river. *Iang v. Kerr Anderson & Company* (H.L. Sc.), Law Rep. 3 App. Cas. 529.

## (I) HARBOUR: BEACHING FISHING BOATS.

11.—By immemorial custom the fishermen of a sea village had, in winter-time, beached their boats on ground adjoining a harbour. The proprietor subsequently obtained a local Act authorizing a levy of five shillings per annum for each boat beached:—Held, that the rights of the fishermen could be enforced against such proprietor, and that he could not exclude them from the ground used for beaching without assigning to them other ground equally suitable. *Aiton v. Stephen* (H.L. Sc.), Law Rep. 1 App. Cas. 456.

## (K) LEASE.

## (a) Conveyancing Act, 1874.

12.—The statute 1896, c. 15, in effect requires that where a deed consists of more than one page, each page shall be attested in the same manner by the grantor with his usual and accustomed form of signature, and therefore where an agreement for a lease dated the 7th of June, 1873, consisted of two sheets of paper written bookwise on seven pages, and only the last page was subscribed by the full names of the grantors, the previous six pages being merely initialed:—Held, that such agreement was improbable under the statute. *Gardner v. Lucas* (H.L. Sc.), Law Rep. 3 App. Cas. 582.

Sections 38 & 39 of the Conveyancing (Scotland) Act, 1874 (dispensing with certain requirements to the validity of writs in Scotland under previous legislation), are not retrospective. *Ibid.*

## (b) Fixtures: descent.

13.—A Scotch lease is heritable and descends to the heir of the lessee, whether it be a lease in perpetuity or for a term. Machinery annexed to the leasehold soil for the working of coal descends to the heir along with the soil. *Bain v. Brand* (H.L. Sc.), Law Rep. 1 App. Cas. 762.

## (L) MARRIAGE.

14.—Regular marriages in facie ecclesie must be preceded by banns, as the proclamation of

banns is *inter sacra* and forms part of the discipline of the Church, and in this respect the civil power supports the ecclesiastical. Where a severed district has been constituted a parish *quoad sacra*, the proclamation of banns for those resident in it must be pronounced in the church of the parish *quoad sacra*. *Hutton v. Harper* (H.L. Sc.), Law Rep. 1 App. Cas. 464.

15.—Where the parties underwent a matrimonial ceremony, believing the same to be valid (which it was not), and afterwards lived together as husband and wife, and were regarded as such,—Held, that a marriage by habit and repute was established without any evidence of mutual consent by verbal declaration. *De Thoren v. The Attorney-General* (H.L. Sc.), Law Rep. 1 App. Cas. 686.

Observations on the Scotch doctrine of habit and repute as to marriage. *Ibid.*

16.—A suit for declaration of marriage brought in 1842 against a lady was dismissed after trial in 1846. The lady having died, a second suit was brought in 1875 for declarator of the same marriage, and reduction of the former decree:—Held, that the principle of *res judicata* applied, and that the second suit was barred. *Lockyer v. Ferryman* (H.L. Sc.), Law Rep. 2 App. Cas. 519.

Observations of their lordships explanatory of the principle of *res judicata* and its especial applicability to suits of this description. *Ibid.*

*Irregular marriage: twenty-one days' residence.*

[See DIVORCE, 12.]

*Presumption of paternity.* [See PRESUMPTION, 3.]

## (M) MINES AND MINERALS.

17.—Where a reservation of minerals in a grant simply related to coal under the surface,—Held, that the grantor would have no power to carry under the lands coals or minerals worked or won from other lands, but *secus* where the reservation included power to search for work and carry away the minerals. *Ramsay v. Blair* (H.L. Sc.), Law Rep. 1 App. Cas. 701.

Whether the right of the grantor in such a case can be properly described as a "privilege, servitude, or easement," *quære*. *Ibid.*

*Railway: mines and minerals: notice and counter-notice as to working*, 8 & 9 Vict. c. 33. ss. 70-72. [See LANDS CLAUSES ACT, 3.]

[And see MINES, 11.]

## (N) NUISANCE.

18.—In nuisance cases the several sufferers may combine and bring a joint action against the several authors asking a declarator and interdict, but not claiming damages. *Cowan v. Duke of Buccleuch* (H.L. Sc.), Law Rep. 2 App. Cas. 344.

Observations on the difference of the Scotch and English law and practice in this respect. *Ibid.*

On points of practice the House of Lords will not interfere with a unanimous decision of the Court below, unless perfectly satisfied that such decision is wrong in principle. *Ibid.*

### (O) PATENT.

*Infringement: appeal: practice.* [See PATENT, 35.]

### (P) PUBLIC HEALTH ACT: PUBLIC WELL.

19.—A well situated on private ground, the water of which had been used gratuitously for domestic purposes by the neighbouring inhabitants for the prescriptive period:—Held, to be a public well within the Public Health (Scotland) Act, 1867, s. 89. sub.-s. 4, and that the local authority can enter on the land and do all things necessary to maintain and continue the well. *Smith v. Archibald* (H.L. Sc.), Law Rep. 5 App. Cas. 489.

### (Q) RES JUDICATA.

20.—Consideration of the principle of *res judicata*. *The Phosphate Sewage Company v. Molleson* (H.L. Sc.), Law Rep. 4 App. Cas. 802.

Where a decision has been pronounced against a claim based on the ground of fraud, new allegations of fraud not raising a separate and independent case, will not prevent such decision from being *res judicata*; and especially so if the new facts were all along in the knowledge of the party alleging them. *Ibid.*

[And see Nos. 16 supra and 25 infra.]

### (R) RIPARIAN OWNERS.

21.—Two lochs in Scotland, D. and F., were separated by a narrow channel (which was not a river), and also by a causeway of stones erected more than forty years before. In an action for declarator of common right in the fishing, fowling, and boating over both the lochs, on the ground that they were one, by a riparian owner on F. against the owner of all the land round D.:—Held, that the lochs were separate and distinct by reason of the difference of the name, the configuration of the ground, and the existence of the causeway. *Mackenzie v. Bankes* (H.L. Sc.), Law Rep. 3 App. Cas. 1324.

### (S) SUPERIOR AND VASSAL.

#### (a) Recovery of casualty.

22.—Lands were conveyed by a trust disposition to trustees for certain purposes, and afterwards to be entailed upon A. The trustees became infert, and the superior claimed a casualty of composition of a year's rent on the ground that they were singular successors: but the trustees contended they were not liable, and that they could only be liable for a casualty payable by an heir. A. was willing to enter and pay a casualty of relief:—Held, that the superior could recover the casualty of a year's rent. *Rankin v. Lamont* (H.L. Sc.), Law Rep. 5 App. Cas. 44.

#### (b) Subdivision of feu.

23.—Where part of a feu created prior to 37 & 38 Vict. c. 94, s. 15 has been alienated, the casualties of superiority incident to the entire feu need not be redeemed, but those incident to each part alienated may be redeemed separately. *Edinburgh v. The Edinburgh Roperies, &c., Company* (H.L. Sc.), Law Rep. 4 App. Cas. 87.

#### (c) Feu contract: clause of relief from public burdens.

24.—A feu contract in 1823 of land feued out to a society to form a harbour and erect buildings contained a clause as follows: "Sir B. D. (the superior) binds and obliges himself and his forebears to free and relieve the said society of the whole cess or land tax, feu duties, or other duties payable to his superiors of the said lands, ministers' stipends, schoolmasters' salaries, and other public burdens due and exigible out of the whole lands and subjects hereby feued, or that may become due and payable for or from the same in all time coming:—Held, that the superior was bound to relieve the vassal of the whole of the poor rates payable in respect of the lands and buildings under the Poor Law Amendment Act, 1845, and not merely the proportion of assessment effeiring to the feu contract or to the amount of the feu duty:—But held, that he was not bound to relieve the vassal of the road assessments under Local Acts in 1830, 1838, and 1860. *Dunbar's Trustees v. British Fisheries Society*, Law Rep. 3 App. Cas. 1298.

### (T) TEINDS.

25.—The minister of B. in the year 1795 raised an action of augmentation of stipend, and produced a rental of the whole parish, including 81 acres of land belonging to B. These 81 acres were struck out of the rental by order of the Court, but the proceedings were never carried to a final decree. The same minister in 1867 raised a new action of augmentation which was carried to a final decree, but the 81 acres were not included in the scheme. The respondent, a subsequent minister of B., raised an action of augmentation and included the 81 acres:—Held, that he could not do so, as the matter was *res judicata*. *Dundas v. Waddell* (H.L. Sc.), Law Rep. 5 App. Cas. 249.

26.—Where one heritor pays a larger share of minister's stipend or augmentation of stipend than he is lawfully bound to pay, and another heritor a smaller share, the latter is liable in repetition to the former; but if such underpaying heritor ceases to be so, by death or sale, he and his representatives are discharged by the long period of negative prescription after forty years from the time when he so ceased, unless the overpaying heritor or his representatives take steps in the meantime to interrupt the prescription. *Davidson v. Sinclair* (H.L. Sc.), Law Rep. 3 App. Cas. 765.



## (U) TRAMWAY.

27.—Where a tramway company, who by their Act of Parliament were under distinct agreements with municipal authorities not to charge more than a certain fixed fare, subsequently obtained statutory power to substitute omnibuses in lieu of the tramways on certain routes, and to charge a higher fare on those routes:—Held, that the company had no power to increase the fare of the passengers using the tramways only. *The Edinburgh Street Tramways Company v. Torbain* (H.L. Sc.), Law Rep. 3 App. Cas. 58.

## (V) TRUSTEES.

28.—Where trustees have an unlimited discretionary power to postpone the payment of shares of a residuary fund, and as to the time and manner of exercising such power, the trustees can, even after action raised by arresting creditors, defeat the rights of such creditors by exercising the power, and executing a deed applying the fund as an alimentary provision for the behoof of beneficiaries. The powers of such trustees are in no wise impaired or abridged by proceedings by the creditors of the beneficiaries. *Chambers v. Smith* (H.L. Sc.), Law Rep. 3 App. Cas. 795.

29.—Trustees who, as ostensible owners of the trust property, acquire a benefit, must hold such benefit for the persons for whom they are trustees. So held, where trustees as owners had acquired from the Crown a right of salmon fishing in the adjoining sea. *The Aberdeen Town Council v. The Aberdeen University* (H.L. Sc.), Law Rep. 2 App. Cas. 544.

Cause remitted back to the Court of Session upon the question of retrospective accounting. *Ibid.*

## (W) WILL CONSTRUCTION.

## (a) Cumulative legacy: words in margin.

30.—Bequest to R. K. of 2,000*l.*, and "to each of his brothers 1,000*l.*," and bequest of the residue to Sir T. K. and B. Sir T. K. was the eldest brother of R. K.:—Held, that he was entitled to the 1,000*l.* in addition to his share of residue. *Kirkpatrick v. Bedford* (H.L. Sc.), Law Rep. 4 App. Cas. 97.

Along the margin of a holograph will the testator wrote "all free of legacy duty" opposite to certain legacies. There was no mark to shew where the words were intended to be read:—Held, that all the legacies were duty free. *Ibid.*

## (b) Accruer of share.

31.—A testator directed his trustees to hold the residue of his estate for behoof of his nieces and their children, in certain proportions, namely, one-third to A. in life rent and to her children in fee; one-third to B. in life rent, and to her children in fee; and one-third to C., D., E. and F. equally in life rent, and their children equally *per stirpes* in fee. The testator further

directed that in case A. and B. died unmarried, or without issue, or in the event of such issue existing but afterwards deceasing before attaining majority or being married, then the two third shares destined to them and their issue should fall and accrue to C., D., E. and F., and their children respectively in life rent, and in fee equally *per stirpes*, as directed with respect to their own shares of the residue. A. and B. died without issue, and C. died leaving one child married and of age, but who died without issue before A. and B.:—Held, that the representatives of the child of C. were entitled to share in the division of the fee of the two third shares life-rented by A. and B. *Taylor v. Graham* (H.L. Sc.), Law Rep. 3 App. Cas. 1287.

Semble, the decision of such a case is governed by the same principles as those of the English law. *Ibid.*

*Scotch testator: Scotch assets: Scotch domicile: general administration: jurisdiction.* [See ADMINISTRATION, 30.]

*Scotch settlement: action to administer trusts of.* [See PRACTICE, BB 21.]

*Winding up: Scotch company: order to enforce calls.* [See COMPANY, H 70.]

## SCRIP CERTIFICATE.

1.—A banking company issued four scrip certificates to the plaintiff, which purported to entitle the bearer, upon payment of certain instalments, to be registered as the holder of ten shares in the undertaking. Similar scrip had for many years been largely dealt in by bankers, money dealers and members of the Stock Exchange as negotiable instruments transferable by delivery. After the first instalments had been paid the certificates were deposited by the plaintiff with C., a broker, for the purpose of paying the remaining instalments due thereon, and dealing with them as the plaintiff might direct. C. fraudulently deposited them with the defendants as a security for a loan due from him to them:—Held, that scrip certificates were negotiable instruments, and that the defendants were entitled to retain them as against the plaintiff; also, that the plaintiff, by depositing with C. a security purporting on the face of it to be transferable by delivery, could not recover it back from a *bona fide* holder for value. *Rumball v. The Metropolitan Bank*, 46 Law J. Rep. Q.B. 346; Law Rep. 2 Q.B. D. 194.

2.—Scrip was issued in England by the agent of a foreign Government, and such scrip purported to entitle the bearer, upon payment of 100*l.* in instalments, to receive a definitive bond for 100*l.* G. purchased scrip on the open Stock Exchange, and entrusted it to a broker, who pledged it to his bankers as a security for his private debt. All the instalments of the 100*l.* had been paid. In an action of trover by G. against the bankers for the value of the scrip,—Held (affirming the decision of the Exchequer Chamber, 44 Law J. Rep. Exch. 157; Law Rep.

10 Exch. 337), that G. had, by purchasing the scrip and entrusting it to the broker, estopped himself from contending that it was not negotiable like a bank note. Also, that the scrip was in fact negotiable in the same manner as the bond itself would have been negotiable under the authority of *Gorger v. Miorille* (3 B. & C. 45). And per Lord Selborne.—The scrip was a foreign contract, purporting by its terms to be negotiable in this country, and was to be so construed. *Goodwin v. Roberts* (H.L.), 45 Law J. Rep. Exch. 748; Law Rep. 1 App. Cas. 476.

## SEA.

[Statutory regulations as to offences committed on sea, &c. 41 & 42 Vict. c. 67. s. 3. sch. 1; 41 & 42 Vict. c. 73.]

## SEAL.

*Contract: local board of health.* [See PUBLIC HEALTH ACT, 9.]

## SEALING OF PATENT.

[See PATENT, 26.]

## SEA-SHORE.

*Crown: prerogative: shingle: damnum absque injuria.* [See CROWN, 2.]

## SEA WALL.

Owners and occupiers of lands next the sea are not liable at common law to maintain the sea walls along their frontage for the benefit of adjoining owners. Nor is the fact that a frontager has from time immemorial repaired a sea wall along his frontage, and that adjoining owners have taken no steps to protect themselves in case he should cease to do so, enough to support a prescriptive liability on the part of the frontager to repair. *Hudson v. Tabor* (App.), 46 Law J. Rep. Q.B. 463; Law Rep. 2 Q.B. D. 290; on appeal from the Queen's Bench Division, 45 Law J. Rep. Q.B. 190; Law Rep. 1 Q.B. D. 225.

## SEAWORTHINESS.

[See MARINE INSURANCE, 23, 24; SHIPPING LAW, D 14.]

## SECRET PROCESS.

[See TRADE MARK, 27.]

## SECRET TRUST.

[See CHARITY, 19; TRUST, A 5.]

## SECURED CREDITOR.

[See ADMINISTRATION, 10, 11; BANKRUPTCY, D 22-25; COMPANY, H 41-43, 46.]

## SECURITY FOR COSTS.

[See COSTS, 58-76.]

## SEEDS ADULTERATION ACT.

[See ADULTERATION OF SEEDS.]

## SEISIN.

*Meaning of word.* [See WILL CONSTRUCTION, D 7.]

## SEPARATE ESTATE.

[See HUSBAND AND WIFE, 25-43.]

## SEPARATION DEED.

[See DIVORCE, 20; HUSBAND AND WIFE, 60.]

## SEQUESTRATION.

Per James, L.J., and Cotton, L.J. (*dissentiente* Brett, L.J.), the effect of section 88 of the Bankruptcy Act, 1869, is only to give priority to a sequestration issued by the trustee in the bankruptcy of a beneficed clergyman over a sequestration issued by an individual creditor in respect of a debt provable in a bankruptcy. The section has no application as between sequestrations issued by the trustees in two different bankruptcies:—Held, by the whole Court, that the fact that a bankrupt beneficed clergyman has obtained an order of discharge does not prevent the trustee in the bankruptcy from issuing a sequestration of the profits of the benefice which the bankrupt held at the time of the bankruptcy. *Ex parte Chick. In re Meredith* (App.), Law Rep. 11 Ch. D. 731.

*Ecclesiastical Dilapidations Act: liability of sequestrator for dilapidations.* [See CHURCH AND CLERGY, 6.]

*Leave to issue unnecessary: receiver.* [See PRACTICE, AA 1.]

*Pension of County Court Judge.* [See PRACTICE, AA 2.]

*Pension of civil servant.* [See DIVORCE, 40.]

*Scotch: res judicata.* [See SCOTCH LAW, 20.]

*Secured creditor: Bankruptcy Act, 1869, s. 16, sub-s. 5.* [See BANKRUPTCY, D 25, F 20.]

*To enforce alimony and costs.* [See DIVORCE, 40.]

## SERVICE.

*Bankruptcy proceedings.* [See BANKRUPTCY, M 40-42.]

*Divorce Court, proceedings in.* [See DIVORCE, 22.]

*Garnishee order nisi, of: effect of: priority.* [See SOLICITOR, 42.]

*Jurisdiction, out of.* [See PRACTICE, BB 9-25.]

*Petition, of, under Confirmation of Sales Act.* [See CONFIRMATION OF SALES ACT.]

*Under Settled Estates Act.* [See SETTLED ESTATES ACT, 4-6.]

*Under Trustee Relief Act.* [See TRUSTEE RELIEF ACT, 8.]

*Winding-up petition.* [See COMPANY, H 72.]

*Petition by solicitor to enforce charge for costs.* [See SOLICITOR, 46.]

*Public Worship Regulation Act, under.* [See CHURCH AND CLERGY, 28.]

*Substituted.* [See PRACTICE, BB 1-8.]

### SESSIONS.

[Regulations as to appeals to sessions: summary jurisdiction. 42 & 43 Vict. c. 49.]  
[See ALHOUSE, 1, 3, 12; CERTIORARI; JUSTICE OF THE PEACE.]

### SET-OFF.

- (A) COSTS: AWARD: SOLICITOR'S LIEN.
- (B) OF DAMAGES FOR BREACH OF CONTRACT SUED ON.
- (C) BY EXECUTOR OR ADMINISTRATOR.
- (D) DEBT CONTRACTED BY INFANT: RATIFICATION.
- (E) IN BANKRUPTCY.
- (F) IN OTHER CASES.

#### (A) COSTS: AWARD: SOLICITOR'S LIEN.

1.—Under an award in an action, the plaintiff was ordered to pay a sum of money to the defendant, and the defendant was ordered to pay the plaintiff certain costs which were to be taxed:—Held, that the defendant could set off the debt against the taxed costs, and that the right of set-off was paramount to the ordinary lien of the plaintiff's solicitor for the same costs. *Pringle v. Glogg*, 48 Law J. Rep. Chanc. 380; Law Rep. 10 Ch. D. 676.

Rule 28 of the Rules of Court (Costs), 1875, does not mean that the old Common Law Rules as to costs shall, unless altered, apply to the Chancery Division, but merely that the old rules of the Court of Chancery as to costs shall, except where altered by the new rules, remain in force in the Chancery Division. *Ibid.*

2.—Sums of costs incurred in the same suit or proceedings, though payable under different orders, may be set off against each other; and this right of the parties is not affected by the solicitor's lien. So held, where defendant, after becoming liable under orders in the suit to pay costs to the plaintiff, had changed his solicitor, and subsequently under another order became entitled to receive a smaller sum of costs from the plaintiff; and although the application to set off was made by the plaintiff after notice from the defendant's solicitor that he claimed a lien upon the smaller sum. *Ex parte Cleland* (36 Law J. Rep. Bankr. 83; Law Rep. 2 Chanc.

808) observed upon. *Roberts v. Buile*, 47 Law J. Rep. Chanc. 414; Law Rep. 8 Ch. D. 198.

*Costs in High Court, of, against costs in Bankruptcy.* [See BANKRUPTCY, P 9.]

*Costs, of: special allowances.* [See COSTS, 85.]

#### (B) OF DAMAGES FOR BREACH OF CONTRACT SUED ON.

3.—The plaintiff sued as assignee of a debt for work done under a contract. The defendant delivered "a statement of defence and counter-claim," claiming "by way of set-off and counter-claim" damages for breach of the contract by the assignor in not completing the work within the time agreed on:—Held (on demurrer), that the defendant was entitled to set off or deduct these damages, but that the form of the statement of defence must be amended, inasmuch as it did not shew that the defendant claimed only to set them off and not to recover them. *Young v. Kitohin*, 47 Law J. Rep. Exch. 579; Law Rep. 3 Ex. D. 27.

#### (C) BY EXECUTOR OR ADMINISTRATOR.

4.—Where a creditor makes a bequest to his debtor, and the debtor is at the testator's death a bankrupt, the amount of the debt cannot be retained or set off by the executors. *Cherry v. Boulthbee* (2 Keen, 319; 4 My. & Cr. 442) followed. *Hodgson v. Fox*. *In re Hodgson's Estate*, 48 Law J. Rep. Chanc. 52; Law Rep. 9 Ch. D. 673.

And where the amount of dividend (if any) which the bankrupt's estate would yield was unascertained, and no proof had been tendered in the bankruptcy in respect of the debt,—Held, that the bequest was subject to no deduction whatever on account of the debt. *Ibid.*

5.—To an action by an administrator for a debt due to the intestate at his death, the defendant cannot set off the amount of a promissory note made by the intestate in favour of the defendant, but which was not due till after the death of the intestate, and though the defendant has a good counter-claim for the amount of such note, yet if an order has been made in the Chancery Division to take an account of the debts and estate of the intestate, the administrator will be entitled to judgment for the full amount of the debt due to the intestate, and the defendant will be restrained from further proceedings in respect of his counter-claim, but with liberty to prove against the estate of the intestate for the principal and interest due on the promissory note. *Newell v. The National Provincial Bank of England*, 45 Law J. Rep. C.P. 285; Law Rep. 1 C.P. D. 496.

#### (D) DEBT CONTRACTED BY INFANT: RATIFICATION.

6.—The right of the defendant in an action to set off a debt due from the plaintiff to him under 2 Geo. 2. c. 22. s. 13, exists only where the debt sought to be set off is enforceable by

action. Where the defendant sought to set off a debt, arising upon the promise of an infant, such promise not having been ratified in accordance with section 5 of 9 Geo. 4. c. 14, it was held that the replication of infancy to the plea of set-off was a sufficient answer, and that the plaintiff was entitled to recover. *Rawley v. Rawley* (App.), 45 Law J. Rep. Q.B. 675; Law Rep. 1 Q.B. D. 466.

The words in 9 Geo. 4. c. 14. s. 5, "No action shall be maintained," extend to cases of set-off; so that a defendant may not set off a promise of an infant supported merely by a parol ratification after full age in an action brought against him by the infant, any more than he might sue the infant upon such promise, both being equally precluded by the above section. *Ibid.*

#### (E) IN BANKRUPTCY.

7.—J. W. having been adjudicated bankrupt, the adjudication was annulled, and under the 81st section of the Bankruptcy Act, 1869, his property vested by assignment in the plaintiff as the person appointed by the Court under that section. The plaintiff, as such assignee, having sued the defendant for money payable under the common counts, the defendant pleaded a set-off for debts due to him from J. W. before the adjudication, and for damage provable in the bankruptcy:—Held, that the plea was good, as under the 81st section the defendant had the same rights of set-off as he would have had against the trustee in bankruptcy. *West v. Baker*, 45 Law J. Rep. Exch. 113; Law Rep. 1 Ex. D. 44.

#### (F) IN OTHER CASES.

*Action by assignee of policy.* [See MARINE INSURANCE, 28.]

*As against assignee of legatee.* [See ADMINISTRATION, 29.]

*By shareholder, in winding up, of debt against calls.* [See COMPANY, H 66-68.]

*Debt, of, against legacy.* [See LEGACY, 6.]

*Defaulting trustee: bonus on policy of insurance.* [See TRUST, C 8.]

*Factor selling as principal, where.* [See PRINCIPAL AND AGENT, 8.]

*Scottish law: bankruptcy.* [See SCOTCH LAW, 2.]

#### SETTING ASIDE.

*Deed.* [See DIVORCE, 28-33; MINE, 17; MORTGAGE, 41, 60; SETTLEMENT, 27-32.]

*Judgment.* [See PRACTICE, E 2; MORTGAGE, 55.]

#### SETTING DOWN APPEAL.

[See PRACTICE, B 60-63.]

#### SETTLED ESTATES ACTS.

- (A) WHAT IS A "SETTLED ESTATE."
- (B) POWER TO GRANT LEASES: CONCURRENCE OF PERSON INTERESTED.
- (C) LEASE OF MINERALS: RENT SET ASIDE.
- (D) SALE OF SETTLED ESTATE.
  - (a) *Petition for: parties to consent.*
  - (b) *Application of moneys.*
    - (1) *In making roads.*
    - (2) *In improvements.*
    - (3) *Payment out to tenant in tail.*
  - (c) *Sale out of Court.*

[The Settled Estates Act of 1856 amended by enactments as to the expense of making streets and other works on settled estates. 39 & 40 Vict. c. 30.]

[Amendment of the law relating to leases and sales of settled estates. 40 & 41 Vict. c. 18.]

#### (A) WHAT IS A "SETTLED ESTATE."

1.—A testator devised his real estate to trustees upon trust to sell and invest the proceeds, and to pay the income to A. for life, with remainder to his children, as therein mentioned; and he directed that every sale, after A. should have attained twenty-one, should be made with his consent in writing, and that every sale to which the consent of A. was not, by the aforesaid provision, made requisite, should be made at the discretion of the trustees. The property had not been sold; A. had long since attained twenty-one; all his children were infants:—Held, that this was a "settled estate" within the meaning of the Settled Estates Act, 1877. *In re Morgan's Settled Estates*, 49 Law J. Rep. Chanc. 577.

#### (B) POWER TO GRANT LEASES: CONCURRENCE OF PERSON INTERESTED.

2.—Testator devised real estate to two trustees, of whom K. was one, in fee, upon trust to receive the annual produce and rents, and subject to the payment out of the rents of a portion of the estate of all ground rent, taxes, repairs, and other outgoings, to apply the net rents to M. for life, and by a codicil he gave the ultimate remainder in certain events to K. The will contained no power of leasing. On petition by M., which was opposed by K., praying that a power to grant leases might be vested in the other trustee,—Held, that the opposition of K. was fatal to the application. Decision of the Master of the Rolls (45 Law J. Rep. Chanc. 373; Law Rep. 1 Ch. D. 426) affirmed. *Taylor v. Taylor*; and *Taylor v. Keily* (App.), 45 Law J. Rep. Chanc. 848; Law Rep. 3 Ch. D. 145.

Whether the tenant for life who is to receive the rents and profits through the hand of a trustee is a person entitled to the possession or to the receipt of the rents and profits within the meaning of the 16th section of 19 & 20 Vict. c. 120, *quære*. *Ibid.*

## (C) LEASE OF MINERALS: RENT SET ASIDE.

3.—Where a testatrix, under an absolute power of appointment, appointed the surface of land to A., and the minerals to others, and a lease of the minerals had previously been made under the 19 & 20 Vict. c. 120, and a part of the rents received had been set aside and was held by trustees for investment in purchasing land under the Act:—Held, that the rents so set aside were land in the hands of the trustees and passed with the surface. *In re Scarth*, Law Rep. 10 Ch. D. 499.

## (D) SALE OF SETTLED ESTATE.

(a) *Petition for: parties to consent.*

4.—A. on her marriage settled a contingent reversionary interest to which she was entitled under a will. She had four children under age. On a petition to approve a sale of part of the settled estate,—Held, that under section 17 of the Settled Estates Act, 1856, A.'s children were beneficiaries whose consent was necessary, and leave was given to amend the petition by making the children respondents, and serving notice on their father. *In re Dendy*, 46 Law J. Rep. Chanc. 417; Law Rep. 4 Ch. D. 881.

5.—On petition by tenant for life for the sale of property which was vested in a trustee, upon trust, after the death of the petitioner to sell and divide proceeds among numerous persons who would become absolutely entitled, with power to the trustee to give receipts:—Held, that the consent of all the beneficiaries was necessary under section 17 of the Act of 1856. *In re Ives. Bailey v. Holmes*, Law Rep. 3 Ch. D. 690.

6.—Trustees for sale under a will of certain lands to which the testator was absolutely entitled, and of other lands (intermingled with the before-mentioned lands) to which he was also entitled in fee subject to a gift over in favour of A. B. in case the testator's issue should all die under twenty-one, and no one of them have any lawful issue living at his or her death, petitioned for a sale of both properties under the Settled Estates Act, 1877. At the date of the petition the testator had four children living, three sons and a daughter, the eldest being twelve years old. The petitioners alleged that the joint sale would be an advantageous one, but the sale was opposed by A. B.:—Held (the Court considering that the sale would be for the advantage of both properties), that A. B.'s interest was too remote to be considered, and that the order might be made notwithstanding his opposition. *In re Spurway's Settled Estate*, 48 Law J. Rep. Chanc. 213; Law Rep. 10 Ch. D. 231.

(b) *Application of moneys.*(1) *In making roads.*

7.—In a case where the Court, under section 14 of the Leases and Sales of Settled Estates Act, directs that any part of any settled estates

be laid out for roads, drains, &c., there is no jurisdiction to order the costs of making the same to be paid out of a fund in Court liable to be laid out in the purchase of land to be settled to the like uses as the settled estates. Moneys liable to be so laid out may be applied by direction of the Court in the erection of buildings, but not in drainage or permanent improvements. *In re Venour's Settlement. Venour v. Sellon*, 45 Law J. Rep. Chanc. 409; Law Rep. 2 Ch. D. 522.

(2) *In improvements.*

8.—Trustees of a term with power to apply surplus income in building and improvement were allowed to apply money standing to real estate capital account in building and improvements, including drainage. *In re Leslie's Trusts*, 45 Law J. Rep. Chanc. 668; Law Rep. 2 Ch. D. 185.

(3) *Payment out to tenant in tail.*

9.—A fund in Court representing land sold under the Leases and Sales of Settled Estates Acts should not be paid out to a tenant in tail without the execution of a disentailing deed. *In re Broadwood's Settled Estates*, 45 Law J. Rep. Chanc. 168; Law Rep. 1 Ch. D. 438.

(c) *Sale out of Court.*

10.—Under the Settled Estates Act, 1877, a sale may be directed out of Court, the purchase-money being brought into Court; such sale may be either by public auction or private contract, subject to a reserved price to be fixed in chambers by the Judge. *In re Adams' Settled Estates*, Law Rep. 9 Ch. D. 116.

## SETTLEMENT.

## (A) AGREEMENT FOR.

(a) *Marriage articles binding on heir-at-law of wife.*

(b) *Form of settlement to carry out marriage articles.*

(c) *Agreement by stranger.*

(d) *Conditional agreement by letter.*

## (B) CONSIDERATION FOR.

(a) *Marriage with deceased wife's sister: failure of trusts.*

(b) *Who within marriage consideration.*

## (C) CONSTRUCTION OF.

(a) *Trust for maintenance and education not ceasing at twenty-one.*

(b) *Limitation in favour of sons held to include daughters.*

(c) *Gift over on death "without leaving issue."*

(d) *Gift over on death before share "payable."*

(e) *Gift over for next-of-kin of woman as if she died "without having been married."*

(f) *"Representatives:" gift over to persons entitled under Statute of Distributions.*

- (g) *Repugnancy: gift over in event of intestacy.*
  - (h) "*Right heirs of A. deceased and B.*"
  - (i) *Covenant to settle after acquired property.*
    - (1) *What property subject to covenant.*
    - (2) *Covenant, whether binding on wife.*
  - (h) *Covenant by husband to insure his life.*
  - (D) CONFIRMATION OF VOIDABLE SETTLEMENT.
  - (E) RECTIFICATION OF.
  - (F) EFFECT OF DISSOLUTION OF MARRIAGE.
- [See VOLUNTARY SETTLEMENT; FRAUDULENT CONVEYANCE.]

#### (A) AGREEMENT FOR.

##### (a) *Marriage articles binding on heir-at-law of wife.*

1.—By marriage articles signed by husband and wife, being of full age, the husband agreed for himself, his heirs, executors or administrators, that he would settle such share as his wife might take in certain real estate under her parents' marriage settlement. The wife became entitled to a share in remainder, but died before any settlement was executed in pursuance of the articles:—Held, that the articles were binding upon the heir-at-law of the wife, and specific performance decreed. *Lee v. Lee*, 46 Law J. Rep. Chanc. 81; Law Rep. 4 Ch. D. 175.

##### (b) *Form of settlement to carry out marriage articles.*

2.—Marriage articles provided for the settlement of personal property of the wife, "the trusts of the income thereof being for the benefit of the said (wife) and (husband) during their lives, and the trusts of the capital being for and amongst the children, according to the appointment of the said (husband) and (wife) and the survivor of them, and in default of appointment to the children equally. And in the event of there being no children, and of the said (husband) being the survivor, the trust property to be at his absolute disposal." A settlement was executed following the terms of the articles. There was one child only, who died in infancy in the lifetime of the husband. The husband died before the wife, having by his will given all his property to his brother. On a bill by the wife to rectify the settlement,—Held, that the settlement should not have given absolute interests to the children unless being sons they should attain twenty-one, or being daughters they should attain that age or marry; and that it should have contained an ultimate gift in favour of the wife in case she should survive the husband. Also, *semble*, separate life interests should have been limited, the first being to the wife. Decree of Bacon, V.C. (45 Law J. Rep. Chanc. 74; Law Rep. 20 Eq. 789), declaring the wife entitled to the fund, affirmed. *Cogan v. Duffield* (App.), 45 Law J. Rep. Chanc. 307; Law Rep. 2 Ch. D. 29.

##### (c) *Agreement by stranger.*

3.—Where A., a stranger, promised certain pecuniary benefits to B., in order to enable him to marry C.'s daughter, and on the faith of B.'s representations as to such promise, C. consented to the marriage,—Held, that the agreement was *nudum pactum*, and could not be enforced against A.'s estate. *Dashwood v. Jermyn*, Law Rep. 12 Ch. D. 777.

##### (d) *Conditional agreement by letter.*

4.—A., upon the engagement of his daughter to T., wrote a letter to T. saying that the settlement proposed by him was satisfactory, and that he, A., had made his will dividing his property equally among his daughters. The marriage took place, T. believing, as he alleged, that the will operated as a settlement of one-third of A.'s property on his wife. T. made no settlement, and his wife died in A.'s life, leaving children. A. died, having made another will, whereby he left all his property to H., another daughter. Upon a claim by T. and his children to a third share of A.'s estate,—Held, that the letter constituted only a conditional contract, and that T. not having performed his part of the contract it was not binding, and that in any event the letter was too vague to be enforced as a contract, and the claim was disallowed. *In re Allen. Hincks v. Allen*, 49 Law J. Rep. Chanc. 553.

#### (B) CONSIDERATION FOR.

##### (a) *Marriage with deceased wife's sister: failure of trusts.*

5.—A settlor, by a settlement expressed to be made in consideration of an intended marriage between himself and his deceased wife's sister, assigned a policy of assurance to trustees, upon trust for himself until the solemnisation of the intended marriage, and after the solemnisation thereof and his decease, upon trust for the benefit of his intended wife and the children of a former wife and of the then intended marriage:—Held, that no marriage having ever been solemnised within the meaning of the settlement, the first trust only in favour of the settlor remained in force, and therefore the moneys receivable under the policy formed part of his personal estate. *Parson v. Brown*, 49 Law J. Rep. Chanc. 193; Law Rep. 13 Ch. D. 202.

##### (b) *Who within marriage consideration.*

6.—By a marriage settlement moneys in the funds were covenanted to be paid to trustees, to be held by them in trust for the wife for life, then for the husband for life, and then for the children of the marriage, and if no children, then, if the wife died in the lifetime of her husband, for such persons as she should by will appoint, and in default of appointment, for her next-of-kin according to the statute, and if she should survive him, upon trust for her. The husband and wife were separated, and the wife

had contracted debts. There were no children of the marriage and no possibility of any:—Held, that the *corpus* of the fund might be applied in payment of the debts of the wife, the next-of-kin being mere volunteers and not within the marriage consideration. *Paul v. Paul*, 50 Law J. Rep. Chanc. 14; Law Rep. 15 Ch. D. 580.

*Next-of-kin of wife: volunteers: claim by, as against legal personal representatives of wife.*  
[See INFANT, 21.]

### (C) CONSTRUCTION OF.

#### (a) Trust for maintenance and education not ceasing at twenty-one.

7.—By a marriage settlement property was vested in trustees upon trust, after the death of the wife, to pay the rents and profits to the husband for life, or until he married again, and in case he married again and there was issue of the intended marriage, then to pay him one-half of the rents and profits, and out of the other half to levy and raise for the maintenance and education of one child one-fourth, of two or three children one-third, and of four or more children the whole income of such other half, and subject thereto to pay the whole income thereof to the husband for his life, and if there should be no issue, then to pay the whole of the rents and profits to the husband. The husband married again, and at the date of the decree there were four children of the first marriage, two daughters and one son, who had attained twenty-one, one son under age, and a child of a deceased daughter:—Held, that the trust for maintenance and education did not cease upon the children attaining twenty-one, but that the four children were entitled equally to one-half of the rents and profits during the life of their father, that the daughters were equally entitled in the event of their marrying, and that the word "issue" was restricted to the first generation, and therefore, that the child of a deceased daughter took no interest. *Froven v. Hamilton*, 47 Law J. Rep. Chanc. 391.

[And see ANNUITY, 2.]

#### (b) Limitation in favour of sons held to include daughters.

8.—A post-nuptial settlement, made by a husband of property to which he was entitled in right of his wife, contained a recital that he, for the purpose of making some further provision for his wife and his children by her, had agreed to settle the property upon the trusts thereafter mentioned. The property was then assigned to the trustees, on trust to pay the dividends to the wife for her life, and from and after her death the funds were to be held on trust "for all and every the child and children" of the husband by the wife, "begotten or to be begotten, who being a son or sons have or hath already attained, or shall hereafter live to attain,

the age of twenty-one years, equally to be divided between or among them, share and share alike as tenants in common, and their respective executors and administrators, and if there shall be but one such child, the whole shall be in trust for such one or only child, and his or her executors or administrators." There was a further trust that the trustees should, after the death of the wife, "during the minority of each of the said children," apply the dividends "of the presumptive share of every such child in the said trust funds for and towards his or her respective support, maintenance and education, until such his or her respective share shall become vested, or he or she shall previously die." There were three sons and three daughters of the marriage who lived to attain twenty-one:—Held (reversing a decision of Jessel, M.R.), that all the six children were entitled to share equally in the fund. *In re Daniel's Settlement* (App.), 45 Law J. Rep. Chanc. 105; Law Rep. 1 Ch. D. 375.

#### (c) Gift over on death "without leaving issue."

9.—By a marriage settlement freeholds and personalty were granted and assigned to trustees on trust to apply the rents and interest in the maintenance of the two children of M. until the youngest should attain twenty-one, and then to pay the same between the two children, their heirs, executors, administrators and assigns respectively, with a limitation over in case either of them should die "without leaving lawful issue" of his or her share:—Held, that the limitation over on death without leaving issue did not cut down the prior grant in fee to an estate tail, but that the children took estates in fee simple, subject to be divested on death without issue under twenty-one. *Olivant v. Wright*, 47 Law J. Rep. Chanc. 664; Law Rep. 9 Ch. D. 646.

10.—The rule established by *O'Mahoney v. Burdett* (44 Law J. Rep. Chanc. 56n) and *Ingram v. Soutten* (44 Law J. Rep. Chanc. 55) is only that a gift over on death without issue means death without issue at any time, unless a contrary intention appears by the will. *Olivant v. Wright* (App.), 45 Law J. Rep. Chanc. 1; Law Rep. 1 Ch. D. 346.

A direction, after the death of the tenant for life, to divide the property, is (without relying on other possible grounds for the same construction) a sufficient indication of such contrary intention. *Ibid.*

#### (d) Gift over on death before share "payable."

11.—Trusts in favour of A. for life and after her death for her children in equal shares, the issue of any child dying before his or her share became payable to take such in the place of the parent:—Held, that "payable" referred to the period of distribution, and that the son of a child who died in A.'s lifetime was entitled to his parent's share. *Day v. Radcliffe*, Law Rep. 3 Ch. D. 654.

- (e) *Gift over for next-of-kin of woman as if she died "without having been married."*

12.—By a marriage settlement trust funds were settled in trust, after the death of the wife, if her husband should survive her, for such persons as she should appoint; and, in default of appointment, for such persons as, under the Statutes of Distribution, would have been entitled thereto at her decease, had she died possessed thereof intestate, and without having been married. The wife never made any appointment under the power, and died in the lifetime of her husband, leaving one child of the marriage her surviving:—Held, that the child was entitled to the funds. *In re Ball's Settlement*, 48 Law J. Rep. Chanc. 279; Law Rep. 11 Ch. D. 270.

13.—By a marriage settlement an interest was given to the son of the intended wife by a former marriage in case he attained twenty-one. In case (among other contingencies, all of which happened) the wife predeceased her husband, and all her children died under age, and, being daughters, unmarried, the trust funds were ultimately given to such persons as under the Statutes of Distribution would have been entitled thereto had she died intestate and without having been married. The son survived his mother, but died under age:—Held, that the personal representative of the son was entitled ultimately to the funds. *Upton v. Brown*, 48 Law J. Rep. Chanc. 756; Law Rep. 12 Ch. D. 872.

14.—By a settlement on the second marriage of a lady which contained a recital shewing that there were children living of the former marriage, the lady assigned certain property to trustees upon trust if there was no issue of the marriage (which event happened) after the deaths of her intended husband and herself, for her statutory next-of-kin, "as if she had died absolutely possessed thereof without ever having been married." The settlement contained no trusts for the children of the former marriage, and except the recital there was no further reference to them:—Held, that there was no context to alter the ordinary meaning of the words "without ever having been married," and therefore that the persons to take under the ultimate trust were the lady's next-of-kin as if she had died a spinster. *Emmins v. Bradford*, 49 Law J. Rep. Chanc. 222; Law Rep. 13 Ch. D. 493.

- (f) *"Representatives:" gift over to persons entitled under Statute of Distributions.*

15.—Personal estate brought into settlement by B. stood limited on trust for the person or persons (exclusive of A. and his representatives) who under the Statute of Distributions would have become entitled, if B. had died possessed thereof, a *feme sole* and intestate. A. was B.'s brother. At B.'s death her statutory next-of-kin included three daughters of A.:—Held, that the term representatives meant those who represented A. as statutory next-of-kin of B.; and

that A.'s daughters were therefore excluded from taking under the settlement. *Lindsay v. Ellicott*, 46 Law J. Rep. Chanc. 878.

- (g) *Repugnancy: gift over in event of intestacy.*

16.—A fund was settled in trust for W., the illegitimate daughter of the settlor, for life, and in case she should not marry, or in case there should be no issue of her marriage, then, in the event which happened of her not at her death being under coverture, for her absolutely; with a proviso that if any estate, interest or benefit would but for the trusts, powers and provisions of the settlement be undisposed of, or in the events which should happen, would, but for that proviso, be held upon trust for the Crown, then the said estate, interest and benefit should be held in trust for the settlor for life, and after his death for the petitioner. W. survived the settlor and died intestate, whereupon the petitioner claimed the fund:—Held, that as W. was absolutely entitled at her death, the limitation over was void for repugnancy, and consequently, that the Crown was entitled to the fund. *In re Wilcock's Settlement*, 45 Law J. Rep. Chanc. 163; Law Rep. 1 Ch. D. 229.

- (h) *"Right heirs of A. deceased and B."*

17.—Settlement by A. and his cousin of certain gavelkind lands on a relative, C., for life, with remainder to her issue, and for default of such issue "to the use of the right heirs of E., deceased, and J." (who was then living), "the two sisters of the said A., their heirs and assigns as tenants in common for ever":—Held (the Court declining to read the limitation as a limitation to "the right heirs of E., deceased, and of J."), that J. herself took a vested remainder in fee simple in a moiety of the property expectant on the death of C. without issue; and, accordingly, that on the death of C., who survived J., and died without issue, the moiety passed to the co-heirs of J. in gavelkind. *Hawes v. Hawes*, Law Rep. 14 Ch. D. 614.

- (i) *Covenant to settle after acquired property.*

- (1) *What property subject to covenant.*

18.—A covenant in a settlement to settle the wife's after-acquired property does not apply to property acquired by her after the death of the husband, although such property may have been specifically referred to in the settlement. *In re Campbell's Policies*, 46 Law J. Rep. Chanc. 142; Law Rep. 6 Ch. D. 686.

19.—A marriage settlement contained a covenant by the husband and wife to settle the real and personal property which the wife or her husband in her right should at any time during the coverture become beneficially entitled to in possession or reversion or in any manner soever, derivable from J. At the date of the marriage, and throughout the coverture, the wife was entitled in reversion expectant on the decease of F. (who outlived her) to a vested interest in a fund bequeathed by J., and after



F.'s death the husband claimed it as administrator of his wife's estate:—Held, that the fund was not subject to the covenant. *In re Viant's Settlement Trusts* (48 Law J. Rep. Chanc. 832; Law Rep. 18 Eq. 436) disapproved. *In re Jones's Will*, 45 Law J. Rep. Chanc. 429; Law Rep. 2 Ch. D. 362.

20.—By a covenant contained in a marriage settlement, the husband covenanted that in case at any time during the joint lives of himself and his wife any future portion or real or personal estate whatsoever exceeding 800*l.* should come to or devolve upon the wife, or upon him in her right, by or under any will, donation or settlement, and whether in possession, reversion, remainder, contingency or expectancy, the same should be settled as therein mentioned. At the date of the settlement, the wife was entitled under the will of her uncle to one-third of his residuary estate, subject to certain life interests and to two contingencies. Both the contingencies happened during the coverture, but one of the life interests did not fall in till after her death:—Held (on appeal from the Chancery Division, 47 Law J. Rep. Chanc. 12; Law Rep. 6 Ch. D. 618), that the fund was not bound by the covenant. *In re Mitchell's Trusts* (App.), 48 Law J. Rep. Chanc. 50; Law Rep. 9 Ch. D. 5.

An appeal from an order which gave the appellant part of his demand only, was held not an appeal from a refusal. *Ibid.*

21.—By a marriage settlement certain property of the wife was settled upon trust for her for life, with remainder to her children, and in default of children, for her brother absolutely. And the husband and wife jointly and severally covenanted that if the wife "now is or at any time during the coverture she, or her husband in her right, shall become entitled by gift, descent, succession, or otherwise howsoever, to any real or personal estate, property or effects, of the value of 100*l.* or upwards" (except property belonging to her for her separate use), "the same shall be forthwith conveyed, assured and paid to the trustees upon the trusts herein declared concerning the property" settled by the wife, "or such of them as shall be then subsisting and capable of taking effect, or as near thereto as the natures and qualities of the said properties respectively shall admit:—Held, that the covenant included certain personal estate which, at the date of the settlement, was under a will vested in the wife in remainder expectant on her death without issue, subject to the life interest of any husband who might survive her; and that, accordingly, on the death of the husband and wife, and failure of children of the marriage, the property passed under the settlement to the brother absolutely. *Cornmell v. Keith*, 45 Law J. Rep. Chanc. 689; Law Rep. 3 Ch. D. 767.

22.—Covenant by husband to settle any property to which the wife or he in her right either then was or at any time during the coverture should become entitled:—Held, that a contingent interest in a fund standing in Court

to the credit of a cause which fell into possession after the coverture was bound by the covenant. *Agar v. George*, Law Rep. 2 Ch. D. 706.

23.—A covenant in a marriage settlement that if at the time of the solemnisation of the marriage the intended wife should be, or if at any time thereafter during the joint lives of herself and her husband, she, or he in her right, should become beneficially entitled by descent, transmission, devise, appointment, gift, representation or otherwise, to any real or personal property, estate or effects of the value at one time of upwards of 1,000*l.* sterling for any estate or interest whatsoever (with certain exceptions therein mentioned), the excess of such property over 1,000*l.* should be brought into settlement:—Held, to include a reversionary interest defeasible on the exercise of a power of appointment, to which the lady was then entitled, though it did not fall into possession during the coverture; secondly, to relate to the actual value of the property when in possession, and not to its value as a reversionary interest. *In re Jackson's Will*, 49 Law J. Rep. Chanc. 82; Law Rep. 13 Ch. D. 189.

#### (2) *Covenant, whether binding on wife.*

24.—A marriage settlement to which the wife was a party recited that it had been agreed that all moneys should be settled to which she then was or thereafter during the coverture, or to which her husband in her right might become entitled, and that the husband should enter into the covenant to that effect thereafter contained. The covenant was by the husband that he would settle all such moneys and execute all deeds, &c., for carrying out such settlement:—Held, that the wife was not bound by the covenant, and was entitled after her husband's death to receive a fund which, although vested in her at the marriage, had not been reduced into possession during the coverture. *In re Webb's Trusts*, 46 Law J. Rep. Chanc. 769.

#### (k) *Covenant by husband to insure his life.*

25.—A., on his marriage in August, 1873, covenanted with the trustees of his marriage settlement that he would, on or before the 2nd of July, 1875, insure his life in the sum of 10,000*l.*, which when received was to be held by them on trust for the benefit of his wife and children. At the time of his marriage and until shortly before July, 1875, A. was and continued to be in good health, but after that he fell ill, and consequently was unable to effect an insurance. He remained in ill-health thenceforward until his death. In an action for the administration of his estate,—Held, that the contingency of A.'s health failing was in the contemplation of the parties, and, consequently, that the covenant was absolute. *In re Arthur's Estate*. *Arthur v. Wynne*, 49 Law J. Rep. Chanc. 556; Law Rep. 14 Ch. D. 603.

## (D) CONFIRMATION OF VOIDABLE SETTLEMENT.

26.—By a settlement made in 1843 on the marriage of C., who was then a minor, certain funds to which she was then entitled in reversion were settled upon the usual trusts for husband and wife and children. C. was left a widow with one son. While she was a widow she claimed, as administratrix of her husband, and against the trustees of the settlement, certain policy moneys. These moneys were paid into Court, and she consented to a decree that they should be paid to the trustees. She married again, and had seven more children. During her second coverture the reversionary interests fell in, and an order was made, on petition in a suit, for carrying over C.'s share in the funds to an account entitled the account of C.'s first marriage settlement, and the dividends were ordered to be paid to C. C.'s second husband stated that this order was made in ignorance that it would confirm the settlement. C. never claimed the dividends till after the bill was filed. On a bill by the second husband against C.'s son by the first marriage, for a declaration that the settlement did not bind the funds against him,—Held, that the consent to the trustees taking the policy moneys, and the order made on the petition, amounted to a confirmation of the settlement. *White v. Cow*, 45 Law J. Rep. Chanc. 685; Law Rep. 2 Ch. D. 387.

## (E) RECTIFICATION OF.

27.—In the absence of fraud the Court has no jurisdiction to order a solicitor who has made a mistake in the preparation of a document to pay the costs of a suit for its rectification. *Clark v. Girdwood* (App.), 47 Law J. Rep. Chanc. 116; Law Rep. 7 Ch. D. 9.

28.—By a marriage settlement personalty of the wife was settled on trust for herself for life, for her separate use, without power of anticipation, and after her death, as she should by will or codicil notwithstanding coverture appoint, and in default of appointment on trust for the statutory next-of-kin then living. The husband died in the wife's lifetime. On her uncontradicted evidence that the settlement was not in accordance with the intentions of the parties,—Held, that she was entitled to have it rectified, so that in the events which had happened the trust funds might be held in trust for herself absolutely. *Cook v. Fearn*, 48 Law J. Rep. Chanc. 63.

29.—Where by a marriage settlement the wife's realty was granted to trustees, their executors, administrators and assigns upon the usual trusts, the word heirs being omitted in every case where it was evident that the intention was to convey the fee,—Held upon petition under the Trustee Relief Act, that the Court would rectify the settlement. *In re Bird's Trusts*, Law Rep. 3 Ch. D. 214.

30.—Rectification of a deed on the ground of

mistake ordered upon the evidence of the plaintiff alone, no further evidence being procurable. Post-nuptial settlement limiting real estate belonging to the wife unto A. and his heirs "to the use of" A., his executors and administrators, during the life of the wife, "upon trust" to pay the rents and profits to her for her separate use; and from and after her decease, in case of the death of her husband in her lifetime, "to the use of the heirs and assigns" of the wife for ever: but in case of the wife predeceasing the husband, then to the use of the husband, his heirs and assigns for ever. The wife, having survived her husband, brought an action against A.'s legal personal representative to have the settlement rectified on the ground that by a technical mistake in the form of the settlement her equitable life estate and the legal estate in remainder did not coalesce with in the rule in *Shelley's Case*, so as to give her, as was intended in the events that had happened, an absolute estate in fee. The plaintiff's case was supported by an affidavit by herself alone:—Held, that her uncontradicted affidavit was sufficient, and that the settlement must be rectified so as to vest the legal estate in fee simple to the plaintiff:—Held, also, that a conveyance of the outstanding legal estate was unnecessary. Form of order for rectification. *Smith v. Liffé* (44 Law J. Rep. Chanc. 755; Law Rep. 20 Eq. 666) discussed. *Hanley v. Pearson*, Law Rep. 13 Ch. D. 545.

31.—By a settlement dated in 1861 certain estates were resettled, and settled upon a father for life, his eldest son for life, with remainder to his first and other sons in tail. The settlement contained no provision for the jointuring of widows or raising portions for younger children. The draft of the settlement as originally settled by counsel contained a power of revocation, which clause had, before the draft was engrossed, been struck out, but there was no evidence to shew by or on whose instructions such clause had been struck out:—Held, that the settlement must be rectified by inserting the usual powers of jointuring and for raising portions for younger children. *Welman v. Welman*, 49 Law J. Rep. Chanc. 736; Law Rep. 15 Ch. D. 570.

32.—A settlement of a wife's property was prepared by the husband, a solicitor, under circumstances of haste. It was rectified after the death of the husband on the testimony of the wife that it did not carry out her bargain, and had not been explained to her. *Lovesey v. Smith*, 49 Law J. Rep. Chanc. 809; Law Rep. 15 Ch. D. 655.

*Rectification of settlement in accordance with marriage articles.* [See No. 2 supra.]

## (F) EFFECT OF DISSOLUTION OF MARRIAGE.

33.—By an ante-nuptial settlement property in which the wife was interested jointly with her father was settled in trust, during the joint lives of the husband and wife, for the separate use of the wife, and after her death for the

husband, and then for the issue of the marriage; and if no child of the marriage should acquire a vested interest, then, if the wife should survive the husband, in trust for her absolutely; but if she should die in the husband's lifetime, for such persons as she should by will appoint, and in default, in trust for the father. There was no child, and the marriage being dissolved on the petition of the wife, she filed her bill praying that she might be declared to be absolutely entitled to the trust property:—Held (on the authority of *Evans v. Currington*, De Gex, F. & J. 481; 30 Law J. Rep. Chanc. 364), that the husband's rights under the settlement were not affected by the dissolution of the marriage; and consequently, that the bill must be dismissed. *Fitzgerald v. Chapman*, 45 Law J. Rep. Chanc. 23; Law Rep. 1 Ch. D. 563.

*Jessop v. Blake* (3 Giff. 639), *Swift v. Wenman* (39 Law J. Rep. Chanc. 336), and *Fussell v. Dowding* (42 Law J. Rep. Chanc. 716) not followed. *Ibid.*

34.—A dissolution of marriage creates no forfeiture of the interest of the guilty party under a marriage settlement of the other's property. Decree of Jessel, M.R. (following his decree in *Fitzgerald v. Chapman*—see last case) affirmed. *Burton v. Sturgeon* (App.), 45 Law J. Rep. Chanc. 633; Law Rep. 2 Ch. D. 318.

[And see DIVORCE, 28–34.]

*Equity to settlement.* [See HUSBAND and WIFE, 18–23.]

#### SETTLEMENT OF POOR.

[See POOR LAW, 3–12.]

#### SEWAGE UTILISATION ACT.

[See PUBLIC HEALTH ACT, 30.]

#### SEWER.

*Local Board: expenses.* [See PUBLIC HEALTH ACT, 29.]

*Metropolis Local Management Act: construction and expenses under.* [See METROPOLIS, 13–15.]

*Nuisances: Nuisances Removal Act.* [See NUISANCE, 12.]

*Power of local authority to carry sewer over land.* [See PUBLIC HEALTH ACT, 31.]

[And see PUBLIC HEALTH ACT, 32, 33.]

#### SHARES.

[See COMPANY, D 56–97.]

#### SHELLEY'S CASE.

A testatrix devised real estate (of which the legal estate was outstanding) to trustees during the life of A., upon trust to pay her the rents; with an ultimate remainder, if B. should

die in the lifetime of A., to the heirs of A. A. and B. were both living:—Held, that, as A.'s life estate and the remainder to her heirs were both equitable, the two estates united according to the rule in Shelley's case; and A. took an equitable contingent remainder in fee. *Crofts v. Middleton* (2 Kay & J. 135) dissented from. *In re White*, 47 Law J. Rep. Chanc. 85; Law Rep. 7 Ch. D. 201 (*nom. In re White and Hindle's contract*).

[And see SETTLEMENT, 30.]

#### SHERIFF.

[Liability of, for escapes, abolished. 40 & 41 Vict. c. 21. s. 31.]

#### Compelling return of writ.

1.—A sheriff having failed to make any return to a writ of *fi. fa.*, an order of course was made that he should return the writ forthwith. This order not having been obeyed, an application was made for the usual order *nisi*, that the sheriff should make his return within six days, or in default stand committed:—Held, that the Court could order the sheriff to pay the costs of that application, and of the previous order, and order made accordingly. *Evans v. Davies* (7 Beav. 81; 13 Law J. Rep. Chanc. 11) followed. *In re Hieron's Estate. Hall v. Ley*, 48 Law J. Rep. Chanc. 688; Law Rep. 12 Ch. D. 795.

2.—An attachment against the sheriff for not returning a writ of *fi. fa.* is not now obtainable as of course; but, since Order XLIV. rule 2, can only be applied for "on notice." *Jupp v. Cooper*, Law Rep. 5 C.P. D. 26.

#### Rule to sheriff to pay money levied: notice of motion.

3.—In ruling a sheriff to pay money returned by him as levied on a writ of execution, the proper practice is to give notice of motion to the sheriff under Order LIII. rule 3, and not to move for a rule to shew cause. *Delmar v. Freemantle*, 47 Law J. Rep. Exch. 767; Law Rep. 3 Ex. D. 237.

#### Poundage, fees, and expenses.

4.—A sheriff seized goods under a *fi. fa.* delivered to him indorsed to levy a sum for the debt and interest, besides fees, poundage and other incidental expenses. Before sale he had notice of a composition in bankruptcy proceedings, accepted by the execution creditor from the debtor. Thereupon he was requested to withdraw by the execution debtor, but refused, except upon payment of his fees and possession money. The execution creditor took no further steps in the matter, neither directing him to sell nor countermanding the execution of the writ. The sheriff sold goods to levy the sum required to meet his fees, possession money and expenses of levy. The execution debtor brought trover and trespass against him:—Held (per Grove, J.,

and Field, J.), that the debt being barred by the acceptance of the composition, the execution creditor had lost his right to levy in respect of the debt, and that the right of the sheriff to levy for his fees, possession money and expenses fell with the right to levy the debt, and therefore that the action was maintainable. *Per Cleasby, B.*—That the sheriff was entitled to obey the directions indorsed on the writ to levy in respect of the fees, possession money and expenses, in the absence of any countermand of the authority by the execution creditor, notwithstanding that the debt was barred by the composition, and therefore the action was not maintainable. *Sneary v. Abdy* (App. Div.), 45 Law J. Rep. Exch. 803; Law Rep. 1 Ex. D. 299.

5.—Where the indorsement on a writ of execution is for levy of debt, poundage and other legal incidental expenses, possession money, where possession is necessary, is to be calculated for the purpose of ascertaining whether the execution is for a sum exceeding 50*l.*, within the meaning of section 87 of the Bankruptcy Act, 1869. *Ex parte Sims; in re Grubb* (App.), 46 Law J. Rep. Bankr. 103; Law Rep. 5 Ch. D. 375.

6.—The sheriff seized the goods of the defendant under a writ of *fi. fa.* R., the grantee of a bill of sale on the same goods, paid the amount of the debt and sheriff's charges, whereupon the sheriff withdrew:—Held, that the sheriff was entitled to a discharge fee, but not to poundage. *Roe v. Hammond*, 46 Law J. Rep. C.P. 791; Law Rep. 2 C.P. D. 300.

7.—A sheriff's officer went with a warrant for executing a writ of *fi. fa.* to the execution debtor's shop, and told the debtor the particulars of the warrant, and that unless payment were made a man must remain in possession. The debtor thereupon, although he had paid the debt to the creditor, paid the amount demanded, which included poundage and levy fees:—Held (affirming the decision of the Exchequer Division, 46 Law J. Rep. Exch. 611; Law Rep. 2 Ex. D. 459), that there was a sufficient seizure and levy to render poundage and levy fees payable. *Bisicks v. The Bath Colliery Company (Lim.)* (App.), 47 Law J. Rep. Exch. 408; Law Rep. 3 Ex. D. 174.

8.—Where a sheriff has seized goods in execution of a writ of *fi. fa.*, but before sale the debtor pays the debt and costs, the sheriff is entitled to poundage under 28 Eliz. c. 4. *Mortimore v. Cragg* (App.), 47 Law J. Rep. C.P. 348; Law Rep. 3 C.P. D. 216.

*Bisicks v. The Bath Colliery Company* (see last case) approved. *Roe v. Hammond* (46 Law J. Rep. C.P. 791; No. 6 supra) overruled. *Nash v. Dickinson* (Law Rep. 2 C.P. 252) distinguished. *Ibid.*

9.—Where the goods of a trader have been taken in execution for a sum exceeding 50*l.*, and, bankruptcy ensuing, the sheriff has been restrained from selling, the sheriff is entitled to be paid by the trustee out of the estate of the bankrupt all expenses properly incurred by him

in keeping and taking possession of the goods and preparing for a sale, notwithstanding that no sale has taken place. *In re Graycroft; ex parte Browning*, 47 Law J. Rep. Bankr. 96; Law Rep. 8 Ch. D. 596.

*Notice to sheriff's officer: contempt of Court.*  
[See BANKRUPTCY, N 6.]

### SHINGLE.

*Removal of, from sea-shore: crown: damnum absque injuria.* [See CROWN, 2.]

### SHIFTING CLAUSE.

[See PEERAGE, 2; WILL CONSTRUCTION, L 20.]

### SHIPPING LAW.

(A) ASSIGNMENT OF SHIP.

(B) BILL OF LADING.

(a) Construction.

(1) "Not accountable for rust, leakage or breakage."

(2) "To be delivered in good order and condition:" evidence.

(3) *Lex loci contractus*: cesser of shipowner's liability.

(4) Excepted perils.

(b) Liability of shipowner on bill of lading not signed by master.

(c) Liability of consignee to take delivery.

(C) BOTTOMRY.

(D) CHARTER-PARTY.

(a) Construction.

(1) "Say about" 1,100 tons.

(2) "To be cancelled" in event of war.

(3) Time: despatch-money for time saved.

(4) Time charter: time of the essence of the contract.

(5) *Primage*: right to.

(b) Loading of cargo.

(1) Readiness to load: refusal of foreign power to allow ship to load.

(2) Cesser of charterer's liability on loading.

(c) Deviation.

(d) Warranty.

(1) Of class of ship.

(2) Of seaworthiness.

(3) Of ship's fitness.

(e) Breach of contract in not signing bills of lading.

(f) Liability of shipowner for negligence of master and crew.

(E) COLLISION AND DAMAGE.

(a) Jurisdiction: damages for loss of life.

(b) Inheritable accident.

(c) Steamer: look-out.

(d) Claim to indemnity.

(e) Sailing vessel hoze to.

(f) Ship in stays.

(g) Launch without warning.

- (k) *Regulations for preventing collision.*
  - (1) *One ship overtaking another.*
  - (2) *Crossing vessels.*
  - (3) *Lights.*
- (l) *Contributory negligence: onus of proof.*
- (m) *Damage to pier abroad: loss lost.*
- (n) *Limitation of liability.*
  - (1) *Set-off: "unrecoverable in damages."*
  - (2) *Piers and Harbours Clauses Act: shipmaster liable as contributor.*
  - (3) *Unregistered ship.*
  - (4) *Improper navigation of tug.*
  - (5) *Right of bondholder to freight recovered.*
- (o) *Infringement of Thames by-laws.*
- (p) *Damages.*
  - (1) *Loss of market.*
  - (2) *Loss of charter-party.*
  - (3) *Remoteness of damages.*
  - (4) *Interest on damages.*
- (F) **DELIVERY AND DISCHARGE OF CARGO.**
  - (a) *Delay.*
  - (b) *Non-delivery: right of captain to sell.*
  - (c) *Place of discharge: "as near thereto as ship can safely get."*
  - (d) *Delivery to person first presenting bill of lading.*
- (G) **DEMURRAGE.**
- (H) **FOREIGN SHIP.**
- (I) **FORFEITURE.**
- (K) **FREIGHT.**
  - (a) *Pro rata itinoris: right to.*
  - (b) *Freight in fact part price of cargo.*
  - (c) *Payable on intake: measure of quantity delivered.*
- (L) **GENERAL AVERAGE.**
  - (a) *Liability of shipowner to contribute.*
  - (b) *Part of vessel out away to save whole adventure.*
  - (c) *Spars and cargo used as fuel.*
  - (d) *Injury to goods by water employed to extinguish fire.*
  - (e) *Expenses attributable to.*
    - (1) *Practice of average adjusters.*
    - (2) *Remuneration to shipowner.*
- (M) **LIEN AND MORTGAGE.**
  - (a) *Of master and his agent.*
  - (b) *Of vendors.*
  - (c) *Of owners.*
  - (d) *Mortgagee's right to freight.*
  - (e) *Mortgagor's right to charter ship.*
- (N) **MASTER.**
  - (a) *When not agent of charterer.*
  - (b) *Rights, liabilities and duties of.*
- (O) **NECESSARIES.**
- (P) **OFFENCES.**
- (Q) **PARTICULAR AVERAGE.**
- (R) **PILOTAGE.**
  - (a) *Compulsory.*
    - (1) *In what cases.*
    - (2) *Exemption from liability.*
    - (3) *Duty of pilot.*
    - (4) *Burden of proof where set up as defence.*
  - (b) *Duration of employment of pilot.*
  - (c) *Pilotage dues.*

(S) **SALE OF SHIP.**(T) **SALVAGE.**(a) *Salvage agreement.*(b) *Salvage reward.*(1) *Life salvage: cargo afterwards rescued.*(2) *Assignment of shares.*(3) *Pilot when entitled as salvor.*(4) *Steam-tug and life-boat belonging to harbour.*(5) *One steam-tug informing another.*(6) *Appraisalment and apportionment of.*(U) **SHIP'S HUSBAND: AUTHORITY OF.**(V) **TOWAGE.**(W) **WAGES.**

[Provisions for the re-hearing of investigations into shipping casualties, and amendment of the rules and procedure at such investigations. 42 & 43 Vict. c. 72.]

(A) **ASSIGNMENT OF SHIP.**

A ship built for a foreign owner, and not intended to be registered as a British ship, was assigned by the builder to a creditor under an agreement, not in the form prescribed by the Merchant Shipping Act, 1854. The assignment was not registered under section 19 of that Act, nor under section 7 of the Bills of Sale Act:—Held, that the vessel was not a British ship within the meaning of the Merchant Shipping Act, 1854, and that, therefore, the assignment was valid without registration under that Act; and also that the assignment came within the exception in section 7 of the Bills of Sale Act, by which transfers of ships are exempted from the provisions of that Act. *The Union Bank of London v. Lenanton*, 47 Law J. Rep. C.P. 409; Law Rep. 3 C.P. D. 243.

(B) **BILL OF LADING.**(a) *Construction.*(1) *"Not accountable for rust, leakage or breakage."*

1.—The clause in a bill of lading by which the shipowner is "not accountable for rust, leakage or breakage," is limited to the rust, leakage or breakage of the goods themselves, and does not protect the shipowner from liability for damage done to other goods in consequence of such rust, leakage or breakage. *Thrift v. Youle & Company*, 46 Law J. Rep. C.P. 402; Law Rep. 2 C.P. D. 432.

(2) *"To be delivered in good order and condition:" evidence.*

2.—Goods in bills of lading were described as "shipped in good order and condition," &c., to be delivered in the like good order and condition at the port of London, and certain excepted perils were enumerated, and the words "weight, contents and value unknown" were in the margin. The goods were shipped at St. Petersburg

and arrived in London, but on their delivery to the consignees a great number of them were found to be in a damaged state. It was proved that the damaged goods were in an unmerchantable state when unshipped and damaged both internally and externally, and that the damage was recent, and not attributable to inherent vice in the goods:—Held, in an action by the consignees against the ship, under section 61 of the Admiralty Court Act, 1861, that, in the absence of any satisfactory proof on the part of the shipowners that the goods were in bad condition when shipped, the plaintiffs were not bound to shew where or how the goods became damaged; and that the bills of lading afforded *prima facie* evidence that the goods had been shipped in good order and condition. *The Peter der Grosse*, Law Rep. 1. P. D. 414.

(3) *Lex loci contractus: ceases of shipowner's liability.*

3.—A bill of lading made in London provided that goods were to be carried from London to Toronto, "to be delivered from the ship's deck," when the shipper's responsibility shall cease, at the port of Montreal, unto a railway company to be forwarded to Toronto. "No damage that can be insured against will be paid, nor will any claim whatever be admitted unless made before the goods are removed." The goods, which were damaged during the voyage, were landed in Montreal and forwarded by railway to Toronto, and delivered to the appellants, who made no claim till some days after delivery:—Held, first, that the bill of lading must be construed by the law of England; secondly, that the proviso that the shipper's liability should cease at Montreal was inconsistent with the contract to carry to Toronto; but that the shipper was not liable for the damage, no claim being made till after the goods were removed. *Moore v. Harris*, 45 Law J. Rep. P.C. 55; Law Rep. 1 P.C. 318.

(4) *Excepted perils.*

4.—The plaintiffs shipped a quantity of sugar in bags, to be carried by the defendants' steamship from Hamburg to London, at an agreed freight. The vessel was chartered by Messrs. P. & K., the plaintiffs having no knowledge of the charter; and the bill of lading which was received by the plaintiffs was signed "P. & K., agents." The bill of lading provided that the sugar should be delivered in good order, "the act of God, the Queen's enemies, pirates, robbers, jettison, barratry and collision, fire on board or on shore, and all accidents, loss and damage of whatsoever nature or kind, and however occasioned, from machinery, boilers, steam and steam navigation, or from perils of the sea or rivers, or from any act, neglect or default whatsoever of the pilot, master or mariners in navigating the ship; the owners of the ship being in no way liable for any of the consequences of the causes above excepted; and it being agreed that the officers and crew of the vessel in the trans-

mission of the goods as between the shippers, owners and consignee thereof be considered the servants of such shipper, owner or consignee." In an action for damage caused by negligent stowage,—Held (on appeal from the Common Pleas Division, 47 Law J. Rep. C.P. 755; Law Rep. 3 C.P. D. 410), that the damage done to the sugar was a tortious act, in respect of which the plaintiffs could recover from the defendants, whether the latter were bound by the bill of lading or not. *Hayn, Roman & Company v. Culliford* (App.), 48 Law J. Rep. C.P. 372; Law Rep. 4 C.P. D. 182.

*Exception of "fire on board": injury to goods by water used to extinguish fire. [See L 1 infra.]*

*Construction of demurrage clause. [See G 3 infra.]*

(b) *Liability of shipowner on bill of lading not signed by master.*

5.—A shipowner may be liable on a bill of lading which has been signed by some other person than the master of such ship; and therefore, where a bill of lading had been signed by the charterers of the ship, but not on their own behalf, but as agents for the shipowner, and with his authority, the shipowner was held liable thereon to the owner of goods shipped under such bill of lading for damage by negligent stowage, such damage not being one of the risks mentioned in the bill of lading, and the shipper of the goods having no notice of any charter-party until after the goods had been damaged. *Hayn, Roman & Company v. Culliford*, 47 Law J. Rep. C.P. 755; Law Rep. 3 C.P. D. 410; affirmed on appeal, 48 Law J. Rep. C.P. 372; Law Rep. 4 C.P. D. 182 (supra No. 4).

(c) *Liability of consignee to take delivery.*

6.—Where there is no express stipulation in a bill of lading it is an implied term of the contract contained in it that the consignee named in the bill of lading, or his assigns, will take delivery of the goods within a reasonable time, and the person to whom the property in the goods has passed by reason of such consignment is, by virtue of the Bills of Lading Act, 1855 (18 & 19 Vict. c. 111), s. 1, subject to the liability so to take them. *Fowler v. Knoop* (App.), 48 Law J. Rep. Q.B. 333; Law Rep. 4 Q.B. D. 299, affirming the Queen's Bench Division, 47 Law J. Rep. Q.B. 473.

Where the charterers and the shippers are the same persons, such contract will still be implied in the bill of lading, notwithstanding the existence of an express stipulation in the charter-party between the charterers and the shipowner in reference to the same matter. *Ibid.*

*Equitable assignment of bill of lading. [See BILL OF EXCHANGE, 22.]*

(C) BOTTOMRY.

1.—Where the master of a Danish vessel in order to obtain necessaries for the voyage ob-

tained loans on instruments pledging his vessel for repayment within six days after her arrival in London.—Held, that although the instruments contained no stipulation for interest, they were valid bottomry bonds, and the holders could enforce them against the vessel with interest at four per cent. *The Cecile*, Law Rep. 4 P.D. 210.

2.—A person who has advanced money for the purpose of discharging dock dues stands in the same position as the dock company, and his claim ranks with pilotage and towage claims, and has priority over the claim of a holder of a bottomry bond of a previous date. *The St. Lawrence*, 49 Law J. Rep. P. D. & A. 82; Law Rep. 5 P. D. 250.

3.—A master cannot either bottomry a ship or hypothecate a cargo without communicating with the owners of ship or cargo respectively where such communication is practicable; and in his communication he should state the necessity for hypothecation as well as the necessity for expenditure. *Kleinwort v. Cassa Marittima of Genoa* (P.C.), Law Rep. 2 App. Cas. 156.

[And see ADMIRALTY, 34, 35, and E 25 *infra*.]

#### (D) CHARTER-PARTY.

##### (a) Construction.

##### (1) "Say about" 1,100 tons.

1.—By a charter-party it was agreed that the ship, the measurement of which was not given, should proceed to the port of loading, and there load "a full and complete cargo of iron ore, . . . say about 1,100 tons:—Held, that the meaning was that the charterer should load a full and complete cargo, but that if the ship could carry more than about 1,100 tons the shipowner should accept about 1,100 tons as a full and complete cargo. The allowance of three per cent. would be a fair estimate for satisfying the word "about," and therefore under this charter-party 1,133 tons would be the measurement of a full and complete cargo, though the capacity of the ship exceeded that quantity. *Morris v. Levison*, 45 Law J. Rep. C.P. 409; Law Rep. 1 C.P. D. 155.

##### (2) "To be cancelled" in the event of war.

2.—The plaintiffs having chartered a ship to one C., to proceed to Galatz, after completing intermediate employment, and to load a cargo of grain from there or certain other eastern ports, effected an insurance with the defendants by a time policy on loss of freight for a whole year, the perils insured against being, amongst others, "restraint and retainment of princes." By a memorandum on the charter-party it was agreed: "In the event of war, blockade or prohibition of export preventing loading, this charter-party to be cancelled." At the time of the ship's arrival at Genoa, in completion of the intermediate voyage, war having been declared by Russia against Turkey, the plaintiffs learned that the ports specified in the charter-party

were closed. C. declined, upon the plaintiffs' request, to cancel the charter-party, and they accordingly sent the ship in ballast to Constantinople; but the ports still being closed, and there being no prospect of their being opened, the ship did not proceed further eastward, but obtained a cargo from Constantinople to England at a freight less than the chartered freight, and the plaintiff brought this action on the policy for the difference:—Held (by Cockburn, L.C.J., and Manisty, J., Lush, J., dissenting), that the plaintiffs were not entitled to recover, on the ground that by virtue of the memorandum the charter-party became void on the closing of the ports, that being a prohibition of export preventing loading; and that the charter-party having been thus rescinded before the ship sailed from Genoa, the chartered voyage, the subject of the policy, had never begun. Held (by Lush, J., dissenting), that on the true construction of the memorandum the charter remained in force until one of the parties elected to avoid it, which he would have the option of doing within a reasonable time after the happening of any of the specified events; that here it continued in force until the loading became impracticable, namely, when the ship was at Constantinople, and that the plaintiffs had, therefore, an interest in the chartered freight, which they lost by the restraint of princes, and were entitled to recover from the defendants. *Adamson v. The Newcastle Steamship Freight Insurance Association*, 48 Law J. Rep. Q.B. 670; Law Rep. 4 Q.B. D. 462.

"Cargo to be discharged with all despatch, according to the custom of the port." [See F 2 *infra*.]

##### (3) Time: despatch-money for time saved.

3.—Under the terms of a charter-party, cargo was to be shipped at the rate of 200 tons per running day, and to be discharged as fast as ship could deliver, not exceeding 200 tons per working day. Demurrage, if any, at the rate of 20s. per hour, except in certain cases, and despatch-money 10s. per hour on any time saved in loading or discharging. Ship to load and discharge by night and by day, and as rapidly as possible when required by shippers, consignees or charterers:—Held, that according to the true meaning of the charter-party, despatch-money was payable for every hour saved during the whole twenty-four hours, and not merely in respect of a working day of twelve hours. *Laing v. Holway* (App.), 47 Law J. Rep. Q.B. 512; Law Rep. 3 Q.B. D. 437.

##### (4) Time charter: time of the essence of the contract.

4.—A. chartered B.'s ship "for twelve months, for as many consecutive voyages as the said ship can enter upon after the completion of the present voyage." On completion of the voyage, and when it was ready to load, the ship was

stopped by the surveyor of the Board of Trade, who required certain repairs to be done to her. A. at once gave notice to B. that he should cancel the charter, on account of the ship not being tight, staunch, &c., at the time when he was ready to load as agreed by the charter. B. did the repairs, which lasted two months, and then tendered the ship to A., who refused her:—Held (by Kelly, C.B., Mellish, L.J., and Amphlett, L.J.); that A. was justified in his refusal; that the delay having occurred in reference to a time charter, and not for a chartered voyage, and time being of the essence of such a contract, the inability of B. to give A. the vessel at the beginning of the time agreed for entitled the latter to cancel the charter. And per Brett, L.J.; that time was not of the essence of the contract, and that it was not a condition precedent that the ship should be fit for sea at the beginning of the time, but that under the circumstances the ship had been so delayed that a proper performance of the contract was impossible, and therefore A. was justified in his refusal. *Tully v. Howling* (App.), 46 Law J. Rep. Q.B. 388; Law Rep. 2 Q.B. D. 182.

#### (5) *Primage, right to.*

5.—In an action by the master of a chartered vessel to recover primage from the consignees of the cargo it appeared that the bill of lading contained the words "and other conditions as her charter-party, with five per cent. primage in cash on delivery as customary." The charter-party was silent as to primage, but provided that the charterers or their agent were to have delivery of the cargo on payment of freight at 60s. per ton in full.—Held, that it must be assumed that by arrangement between the owner and the master the latter was precluded from claiming primage, and that therefore the master could not maintain an action for primage. *Caughey v. Gordon*, Law Rep. 3 C.P. D. 419.

*Construction of demurrage clause.* [See G 1-5 *infra*]

#### (b) *Loading of cargo.*

##### (1) *Readiness to load: refusal of foreign power to allow ship to load.*

6.—The plaintiff knowing that the ship R. was under a contract with the British Government to load military stores as deadweight at Malta, and that with such stores on board she would not, without special permission, be permitted by the Spanish Government to load any cargo at a Spanish port, entered into a charter-party with her owners by which it was agreed that the R., "after loading deadweight at Malta for owners' benefit," should proceed to a Spanish port, and there load a cargo of fruit. The ship proceeded with the military stores on board to Valencia to load the plaintiff's cargo, but permission could not be obtained from the Spanish Government to load. The ship was in all other respects ready to load:—Held, that no

action could be maintained by the charterers against the shipowners for not being ready to load, as both parties were prevented from performing their contract to be ready with a ship and cargo by the action of a superior power. *Cunningham v. Dunn* (App.), 48 Law J. Rep. C.P. 62; Law Rep. 3 C.P. D. 443.

##### (2) *Cesser of charterer's liability on loading.*

7.—A charter-party contained the following clause: "This charter being concluded by the defendants for and on behalf of another party, it is agreed that all liability of the former shall cease as soon as the cargo is shipped, loading excepted, the owners and master of the vessel agreeing to rest solely on their lien on the cargo for freight, demurrage and all other claims, which lien it is hereby agreed they shall have:—"Held, that the shipowner, the plaintiff, was entitled to recover damages from the defendants for delay in loading, as the exception extended to all liability of the latter connected with the loading, and was not satisfied merely by loading a complete cargo. *Lister v. Van Haansbergen*, 45 Law J. Rep. Q.B. 495; Law Rep. 1 Q.B. D. 269.

8.—The defendants chartered the plaintiff's vessel to carry a cargo of coals to Callao, to be delivered to the order of the charterers' agent. The charter-party provided that the ship should be loaded at the rate of seventy-five tons per clear working day, "stiffening coal to be if required supplied at the expense of the ship, and at the rate of forty tons per clear working day, . . . but all days on which stiffening coal is to be taken on board, or the ship is detained for the same, are to be excluded from the computation of the said working days allowed for loading; the vessel to be discharged at the rate of forty tons per clear working day. . . . Demurrage to be paid for each day beyond the said days allowed for loading and discharging respectively at the rate of 8d. per registered ton per day. The master to have a lien upon the cargo for all freight, dead freight and demurrage. . . . All liability of the charterers under this agreement shall cease as soon as the cargo is on board. . . . All questions, whether of short delivery, demurrage or otherwise, are to be settled by the charterers' agent at the port of destination." The vessel arrived at Callao, where the captain, at the request of the charterers' agent, delivered the cargo to him without insisting on his lien for freight and demurrage. In an action on the charter-party for undue detention of the vessel in putting stiffening coal on board,—Held, on demurrer, that the plaintiff had no cause of action on the charter-party; the clause providing for the cesser of the charterers' liability operating as an absolute discharge, notwithstanding that the charterer and consignee were the same person. Held also, that the demurrage clause extended to detention of the vessel in putting stiffening coal on board, and that damages for such detention were



covered by the owner's lien. *Sanguinetti v. The Pacific Steam Navigation Company* (App.), 46 Law J. Rep. Q.B. 105; Law Rep. 2 Q.B. D. 238.

9.—By a charter-party the ship was, after loading a full cargo, to proceed to a port of call for orders to be forwarded within forty-eight hours after notice of arrival given to charterers to discharge at a good and safe port. Twelve working lay days to be allowed the freighters for loading the ship at the port of loading, and waiting for orders at the port of call, and fifteen days over and above the said laying days at 4d. per ton per day. The charterers' liability to cease when the ship is loaded, the owners of the ship to have an absolute lien on the cargo for all freight, dead freight and demurrage. In an action by the shipowners against the charterers for not giving orders as to the port of discharge, and for giving orders that the ship should proceed and discharge at a port which was not a safe port within the meaning of the charter-party,—Held (affirming the Common Pleas Division, 45 Law J. Rep. C.P. 880, Baggallay, L.J., doubting), that inasmuch as delay at the port of call was provided for by the stipulation in respect of demurrage, the charterer was discharged, whether the actual damages claimed were covered by the owner's lien or not. *Frenoh v. Gerber* (App.), 46 Law J. Rep. C.P. 320; Law Rep. 2 C.P. D. 247.

*Loading of cargo: commencement of lay days: arrival at place of loading.* [See G 4 infra.]

#### (c) Deviation.

10.—A deviation made by a vessel for the purpose of saving property is not justifiable, and the shipowner is liable to the charterer for loss or damage to cargo occasioned thereby. A deviation made solely for the purpose of saving life is justifiable. *Scaramanga v. Stamp* (App.), 49 Law J. Rep. C.P. 674; Law Rep. 5 C.P. D. 295; affirming the Court below, 48 Law J. Rep. C.P. 478; Law Rep. 4 C.P. D. 316.

#### (d) Warranty.

##### (1) Of class of ship.

11.—The plaintiffs chartered a ship to the defendants. The charter-party was headed "A. 1½ on the record of the American and foreign shipping book," and in the body of the document she was described as "classed as above." At the time of chartering she was actually so classed, but afterwards and before loading she was found to have been wrongly classed, and her certificate of classification was cancelled. The defendants thereupon refused to load:—Held, that there had been no breach of warranty on the plaintiffs' part, and that the defendants were bound to load in accordance with the charter. *French & Son v. Nengass & Company* (App.), 47 Law J. Rep. C.P. 361; Law Rep. 3 C.P. D. 163.

DIGEST, 1875-1880.

##### (2) Of seaworthiness.

12.—A shipowner warrants the fitness of the ship when she starts, and not merely that he will honestly and *bona fide* endeavour to make her fit. This rule is not limited to cases in which the shipowner holds himself out as a common carrier. *Kopitoff v. Wilson*, 45 Law J. Rep. Q.B. 436; Law Rep. 1 Q.B. D. 337.

13.—By the terms of a charter-party made between the plaintiff and the master of a ship belonging to the defendants, then lying at the port of S., the ship was to proceed to a good and safe place in the South Dock, as ordered, and then take on board a cargo of cement, and proceed to D. to discharge. At the time the charter-party was executed, the plaintiff ordered the ship to load at a wharf in the river (which is part of the port of S.), where cement is often loaded, but where vessels of necessity ground at every low tide. The ship having loaded as ordered was towed out to sea and set sail, but though seaworthy when she commenced taking in cargo, she was found on starting to have made about eighteen inches of water, which gradually increased. Notwithstanding this, the ship proceeded on her voyage, but foundered before reaching the port of destination, the water having overpowered the pumps. There was no negligence either on the part of the defendants in sending the ship to sea in the condition in which she was, or on the part of the master in not returning to the port of S.:—Held, that the unseaworthiness at the time of setting sail from the wharf was a breach of the implied warranty on the part of the defendants that the ship was in a condition to perform the voyage, and that the plaintiff was accordingly entitled to recover the value of the cargo. *Cohen v. Davidson*, 46 Law J. Rep. Q.B. 305; Law Rep. 2 Q.B. D. 455.

14.—A cargo of wheat was shipped under a specially worded bill of lading exempting the shipowner from liability for damage however caused, including negligence of the crew. The wheat was damaged by the sea getting in through a porthole insufficiently fastened. The jury did not find whether the porthole was insufficiently fastened before the vessel started:—Held, that under such a bill of lading as this there is an implied engagement to supply a seaworthy vessel, and that the jury should find whether or not the vessel was seaworthy at starting. In the absence of such a finding the Court cannot enter judgment. *Steel v. The State Line Steamship Company* (H.L. Sc.), Law Rep. 3 App. Cas. 72.

##### (3) Of ship's fitness.

15.—A charter-party provided that a ship then at Hong Kong should, after discharging her inward cargo with all proper despatch, sail to Manilla, and there or at a port named take in a full cargo of sugar and (or) other specified goods, and sail therewith with all proper despatch to a port in Europe. Different freights

were to be paid for the different kinds of cargo; for dry sugar 4l. 2s. 6d., for wet sugar 4l. 5s. a ton. The shipowner engaged that the ship before and when receiving cargo should be a good risk for insurance, and that he would provide a survey report declaring her to be so. He also engaged that the master should take proper means to keep the ship tight, staunch, strong, well manned and fit for the voyage. The vessel went with proper despatch to the port of loading, where she arrived in the rainy season. She was surveyed and reported to be a good risk for insurance, and the master took proper means to keep her tight, &c., during the voyage to the port of loading. At that port a full cargo of wet sugar was provided by the freighter, and it was shipped. But before the vessel left the port the greater part of it had to be unshipped, and the rest was wholly spoilt, because the pumps, though adequate for every other purpose, were found insufficient to pump up the liquid matter which came from the sugar bags in great quantity, owing to the rainy season, and mixed with the ordinary leakage of the vessel. Adequate pumps could not be supplied to the ship within such a time as would not have defeated the object of the venture. The ship was fit in all respects to carry a cargo of dry sugar, or of any of the other articles mentioned in the charter-party, except wet sugar. The shipowner was not, and the freighter was, aware at the time the charter-party was executed that pumps of a very large capacity were requisite in a ship carrying wet sugar loaded in the rainy season. The freighter chartered and put his sugar on board another vessel, and refused to wait or to re-ship the same or any other cargo on board the vessel first chartered.—Held, that under the charter-party the cargo provided was a reasonable cargo, such as the shipowner had contracted to carry if provided; that there was an implied warranty on his part that his ship should be reasonably fit to carry such a cargo, and not merely that she should be a good risk, and be tight, &c., during the voyage to the port of loading; that the charterer was entitled to expect, and was not bound beforehand to ascertain, that the ship he chartered was fit or suitably provided for a cargo of wet sugar; that the shipowner was not, and the freighter was, entitled to select from the various kinds of merchandise mentioned in the charter-party the particular kind of cargo to be carried, and that at the option of the latter the cargo might be all of one description; that the freighter was entitled to refuse either to re-load the sugar which had been unloaded, or to wait while the necessary alterations were made in the ship, and the shipowner was not entitled to recover anything on account of the freight lost by such refusal; and also that the freighter was entitled to recover damages for the sugar that was spoilt through the ship not being in a reasonably fit state, nor capable within a reasonable time of being put in a fit state, to carry the cargo

provided for her. *Stanton v. Richardson* (H.L.), 45 Law J. Rep. C.P. 230.

(c) *Breach of contract in not signing bills of lading.*

16.—It was stipulated by a charter-party made between the plaintiffs and the defendants that the master of the ship should sign bills of lading as presented, or pay a named penalty. He refused to do so, and sailed from the port of loading without having signed any bills of lading. He proceeded to the port of discharge, delivered a portion of the cargo to the consignees, but ceased doing so and warehoused the remainder, as they, acting under instructions from the charterers, claimed to deduct from the freight an amount equal to the penalty named in the charter-party. In an action by the charterers against the shipowners for conversion and for penalties,—Held, that the plaintiffs could recover nominal damages for the breach of contract in not signing bills of lading as presented; but that there had been no conversion by the defendants of the cargo, as they had carried it for the plaintiffs, had intended to deliver the whole of it to the consignees of the plaintiffs, and had been prevented by the acts of the plaintiffs from completing the delivery. *Jones v. Hough* (App.), 49 Law J. Rep. Exch. 214; Law Rep. 5 Ex. D. 115.

(f) *Liability of owner for negligence of master and crew.*

17.—Under a charter-party a certain vessel was let on hire to the plaintiffs by the defendants for a specified time, the plaintiffs to have the whole reach of her holds except what was reserved to the owner for the crew; the crew to assist in loading and discharging, and the captain to sign bills of lading and to furnish to the charterers a copy of the log. The defendant engaged and paid the master and crew. Whilst the vessel was upon a voyage under the charter-party with a cargo on board belonging to the plaintiffs, the ship and cargo were lost by negligence of the master and crew: Held, that the master and crew were the servants of the defendant for the purpose of navigating the vessel, and that he was liable to compensate the plaintiffs for the loss which they had sustained. *The Omoa and Cleland Coal and Iron Company v. Huntley*, Law Rep. 2 C.P. D. 464.

*Implied contract that charterer takes risk of circumstances preventing his releasing the ship at the expiration of the lay days.* [See F 1 infra.]

*Breach of contract: detention: remoteness of damage.* [See G 1 infra.]

(E) COLLISION AND DAMAGE.

(a) *Jurisdiction: damage for loss of life.*

1.—A cause of damage having been instituted in the Admiralty Division against a ship by the widow of a person whose death was caused by a

collision at sea to recover damages under Lord Campbell's Act (9 & 10 Vict. c. 93).—Held (by James, L.J., and Baggallay, L.J.), that the Admiralty Division had jurisdiction to try such a case under 24 Vict. c. 10. s. 7. By Bramwell, L.J., and Brett, L.J., that the Court had no such jurisdiction. *Jeffrey v. The Owners of the Franconia* (App.), 46 Law J. Rep. P. D. & A. 33; Law Rep. 2 P.D. 163.

2.—The Admiralty Court has jurisdiction *in rem* against a foreign ship in respect of a claim for damages for loss of life caused by collision with a British ship. *The Franconia*, 46 Law J. Rep. P. D. & A. 71; Law Rep. 2 P.D. 8.

(b) *Inevitable accident.*

3.—An inevitable accident is such as could not have been prevented by the exercise of ordinary care, caution and maritime skill. A brig drifting down came into collision with the P. whilst waiting to be removed from her moorings. The P. broke her moorings and came into collision with the O. In an action by the O. against the P.,—Held, that the P. was to blame, because her cables should have been re-bent, the mate should have reported the weather, and caused a better look-out to be kept, and if the anchor had been let go the collision would probably have been averted. *The Pladda*, 46 Law J. Rep. P. D. & A. 61; Law Rep. 2 P.D. 34.

(c) *Steamer: look-out.*

4.—A steamer running through a roadstead with sails up ought, even by day and in fine weather, to have a look-out man besides the captain on the bridge. *The Glannibanta*, Law Rep. 1 P.D. 283.

(d) *Claim to indemnity.*

*Claim to indemnity by owners of defendant's vessel against owners of tug.* [See ADMIRALTY, 8, 38.]

(e) *Sailing vessel hove to.*

5.—A sailing vessel hove to on the port tack is bound to keep out of the way of a crossing vessel under sail close hauled on the starboard tack. *The Rosalie*, 50 Law J. Rep. P. D. & A. 3; Law Rep. 5 P.D. 245.

(f) *Ship in stays.*

6.—A vessel in stays is bound to signify the fact to an approaching vessel, and it is the duty of the vessel approaching to keep out of her way, and of the other vessel to manoeuvre so as to come under command again as soon as possible. *Wilson v. The Canada Shipping Company (P.C.)*, Law Rep. 2 App. Cas. 389.

(g) *Launch without warning.*

7.—The *Angerona*, proceeding down river in tow of a tug, came into collision with the *Andalusian*, which was being launched from the defendants' shipbuilding yard. The yard

had not been in use for some time. The *Andalusian* was properly decorated, but gave no other warning to vessels passing during the launch:—Held, the *Andalusian* was alone to blame. *The Andalusian*, 46 Law J. Rep. P. D. & A. 77; Law Rep. 2 P.D. 231.

(h) *Regulations for preventing collisions.*

(1) *One ship overtaking another.*

8.—The A. and the P. C. were crossing ships. Both were on the port tack. The A. had the wind free, the P. C. was close hauled. The P. C. overtook the A. and came into collision with her:—Held, that the exception to the 12th rule applied, namely, that the vessel with the wind free must get out of the way; and that the 17th rule did not apply, namely, that the overtaking vessel must get out of the way. The A. alone was to blame for the collision. *The Peckforton Castle*, 47 Law J. Rep. P. D. & A. 12; Law Rep. 2 P.D. 222; affirmed on appeal, 47 Law J. Rep. P. D. & A. 68; Law Rep. 3 P.D. 11.

(2) *Crossing vessels.*

9.—Two steamers in the Thames, one steering parallel to the shore and the other steering obliquely across the stream,—Held to be crossing vessels, so that by the 29th rule of 1872, the one which had the other on her own starboard was bound to keep out of the other's way. *The Velocity* (39 Law J. Rep. Adm. 20; Law Rep. 3 P.C. 44) considered. *The Oceano*, Law Rep. 3 P.D. 60.

10.—The "Regulations for preventing Collisions at Sea," made under the authority of the Merchant Shipping Acts, 1854 to 1873, must, under the 17th section of the 36 & 37 Vict. c. 85, be strictly followed. Sheer necessity alone, and not mere considerations of discretion and expediency, even though skilfully acted on, can avail as an excuse for non-observance of them. Two large steam vessels, the K. and the V., coming in opposite directions, sighted each other at a considerable distance, but ultimately came into collision. On behalf of the K. it was alleged that when the two vessels were fast approaching each other the V. improperly changed its course; that the master of the K. could not rely on the V. taking a particular course; that to meet possible contingencies he ordered his engineers to stand to their engines, and almost instantly afterwards gave the order to starboard the helm, which he deemed would prevent or greatly mitigate the collision, and then stopped and reversed the engines. The regulation directed that in such a case the engines should be stopped and reversed. The Court of Admiralty having deemed both vessels to be in fault, and adjudged accordingly, the Court of Appeal had held the master of the K. to be excused under the circumstances of the case, and had given judgment against the V.:—Held (on appeal to the House of Lords), that the statutes and the regulations had not left the master of the K. a discretion in the matter; that he was bound

to stop and reverse the engines, and that as he had not done so at the first moment of danger, he had disregarded the regulations, and consequently that the K. must be held in part responsible. The judgment of the Court of Admiralty was restored. *The Stoomvaart Maatschappij Nederland v. The Peninsular and Oriental Steam Navigation Company* (H.L.), Law Rep. 5 App. Cas. 876.

### (3) Lights.

11.—It is the duty of those on board a fishing smack, even though they are just about to let go the nets, to exhibit their side lights if the smack is under way. *The Englishman*, 47 Law J. Rep. P. D. & A. 9; Law Rep. 3 P.D. 18.

A fishing smack was found to blame for not having the proper lights exhibited, but the neglect did not contribute to the collision, which was solely caused by the want of a proper look-out on board the other ship:—Held, that the owners of the fishing smack were entitled to recover. *Ibid*.

12.—If a vessel infringes the regulations for preventing collisions at sea in the slightest degree she will, under 36 & 37 Vict. c. 85. s. 17, be held to blame for a collision which takes place during the time of such infringement, if it could by any possibility have caused such collision, and even though the infringement was not the actual cause of the collision. The fact that the infringement is partially caused in consequence of obedience to the instructions of a surveyor of the Board of Trade is not sufficient to make a departure from the regulations necessary, within the meaning of 36 & 37 Vict. c. 85. s. 17. *The Tirzah*, 48 Law J. Rep. P. D. & A. 15; Law Rep. 4 P.D. 83.

13.—When, in an action for damages arising out of a collision, it is proved that the plaintiff's ship is a barge which has infringed the by-law made by Order in Council, 1875, for the navigation of the Thames under the Merchant Shipping Acts, requiring the exhibition of a light, the Court will not hold the other ship to be in fault, although there is no evidence that the infringement of the by-law caused or contributed to the collision, if it draws the inference from the circumstances under which the collision took place that the infringement might possibly have contributed to the collision, and that otherwise there was no blame attributable. The costs in Admiralty appeals will in future, as in all other appeals, follow the event. *The Condor. Perkins and Homer v. The Owners of the s.s. Condor* (App.), 48 Law J. Rep. P. D. & A. 33; Law Rep. 4 P.D. 26 (*nom. The Swansea v. The Condor*).

14.—Regulations as to lights in the river Mersey, made in a local Act, form, so far as the river Mersey is concerned, part of the regulations made under the Merchant Shipping Acts, and therefore 36 & 37 Vict. c. 85. s. 17 is applicable in cases where such local regulations have been infringed. *The Lady Downshire*, 48 Law J. Rep. P. D. & A. 41; Law Rep. 4 P.D. 26.

15.—When a pilot cutter in tow of another vessel keeps a white light at the masthead, this is an infringement of Articles 5 and 8 of the Regulations for Preventing Collisions at Sea. *The Mary Hownwell*, 48 Law J. Rep. P. D. & A. 64; Law Rep. 4 P.D. 204.

16.—A vessel is not bound to shew a light to a vessel following her unless danger is apparent. A steamer is not justified in running at full speed on a dark night not far from a coast where other vessels will probably be. *The City of Brooklyn* (App.), Law Rep. 1 P.D. 276.

### (i) Contributory negligence: onus of proof.

17.—A collision took place between two vessels, and the defendants admitted that their vessel was to blame, but alleged by way of defence that they had a pilot on board by compulsion of law, and that they were therefore exempt from liability:—Held (reversing the decision of the Judge of the Admiralty Court), that as there was no evidence of contributory negligence on the part of the defendant owners they were exempt from liability. *The Clyde Navigation Company v. Barclay* (R 3 *infra*) followed. *The Dairoz* (App.), 47 Law J. Rep. P. D. & A. 1.

The defendants having applied on a subsequent occasion for the costs of the action,—Held, that the rule of the Court of Admiralty, that, where the defendants succeed on a plea of compulsory pilotage, no costs are to be given, also holds good in the Court of Appeal. *The Schman* (43 Law J. Rep. Adm. 18; Law Rep. 4 A. & E. 187) followed. *Ibid*.

18.—When a ship by negligent or improper steering has placed another ship in a position of great peril, although such other ship may then be wrongly manoeuvred, she will not be held to blame. *The Bywell Castle* (App.), Law Rep. 4 P.D. 219.

19.—Where a collision occurred owing to vessel A. having failed in its duty to observe the rule of the road by keeping out of the way of vessel B.,—Held, that in the absence of proof as to the particular time at which an intention to violate that rule was clearly shewn, vessel B. being *prima facie* bound to observe the 18th rule by keeping on its course, would not have been justified in departing therefrom. *The Byfoyed Christensen v. The William Frederick* (P.C.), Law Rep. 4 App. Cas. 669.

*The Commerce* (3 W. Rob. 287) commented on. *Ibid*.

Masters of vessels should not, except in cases of very clear necessity, use their own discretion as to obeying or departing from sailing rules. *Ibid*.

*Compulsory pilotage: burden of proof.* [See R 6 *infra*.]

### (k) Damage to pier abroad: *lex loci*.

20.—A British ship damaged a pier affixed to the soil of Spain, and was arrested in that country. She was released on condition that

the questions of negligence and damages should be tried in England, the question of liability to be determined on the same footing as if the case had been tried in Spain. A suit having been instituted against the ship in the Court of Admiralty, the answer alleged, *inter alia*, that the pier was part of the land of Spain, and that, by the law of Spain in force at the time and place of the collision, the master and mariners, and not the ship or her owners, was or were liable in damages:—Held (reversing the decision of the Court below, 45 Law J. Rep. P.D. & A. 36; Law Rep. 1 P.D. 43), that so much of the answer as alleged non-liability by the law of Spain was material, and ought not to be struck out; since the law of Spain was the law by which the liability of the ship and of her owners must be determined. *The M. Moatham* (App.), 46 Law J. Rep. P.D. & A. 17; Law Rep. 1 P.D. 107.

(1) *Limitation of liability.*

(1) *Set-off: "answerable in damages."*

21.—In an Admiralty action for damages caused by a collision, the defendants put in a counter-claim for damages, and judgment was given declaring both ships to blame, and condemning each in a moiety of the damages caused to the other. The defendants then brought an action in the Chancery Division, under section 514 of the Merchant Shipping Act, 1854, against the plaintiffs, and others, to limit the amount of their liability, and under an order of Court paid into Court the amount of their statutory liability, and enquiries were directed to ascertain the parties entitled to prove against the fund. The plaintiffs in the Admiralty action claimed to set off the damages due from them to the defendants against the damages due to them from the defendants, and to prove for the balance against the fund in Court; but the defendants insisted that they had discharged their liability by the payment into Court, and were entitled to be paid in full the damages due to them. The Master of the Rolls having decided that the plaintiffs were entitled to the set-off they claimed,—Held on appeal, per Baggallay, L.J., and Cotton, L.J., *dissentiente* Brett, L.J., that the phrase "answerable in damages" in the 54th section of the Merchant Shipping Act, 1862, meant the aggregate damage occasioned to one ship by the improper navigation of the other, and that it was in respect of such damage that limited liability was given by the Act, and not in respect of the ultimate balance which, under the procedure of any Court having jurisdiction, might be payable on the final adjustment of all matters of account arising out of the collision. And, therefore, that, as the defendants in the Admiralty action had claimed the benefit of the limited liability given by the Act, there could be no set-off. Held (per Brett, L.J.), that the phrase "answerable in damages" only applied to the last proceeding of the whole liti-

gation; that is, that the ultimate balance of the two losses ought to be ascertained in the usual way, and that the 54th section ought only to be applied when the Court was about to distribute the limitation amount amongst the several claimants; and, therefore, that the decision of the Master of the Rolls was right, and ought to be affirmed. *Chapman v. The Royal Netherlands Steamship Company* (App.), 48 Law J. Rep. Chanc. 449; Law Rep. 4 P.D. 157.

(2) *Piers and Harbours Clauses Act: ship-master liable as contributor.*

22.—The steamship C. under the directions of the dock master, and within the limits of his jurisdiction, when entering the St. Katharine Docks, came into collision with two barges, and drove them against a steamship lying alongside the wharf, which steamship crossed the plaintiff's skiff and sunk it. In the City of London Court, where a cause of damage was instituted, it was found by the learned Judge as a fact that the C. was not liable for the damage to the plaintiff's skiff, because she was bound by statute to obey the dock master, and could not do anything but under his orders. The plaintiffs appealed, and the Court held that the master contributed to the damage by negligence in carrying out the orders of the dock master, and therefore that C. was liable for the damages proceeded for. *The Cynthia*, 46 Law J. Rep. P.D. & A. 58; Law Rep. 2 P.D. 52.

(3) *Unregistered ship.*

23.—A vessel not registered under 18 & 19 Vict. c. 104. s. 18, is a ship within the meaning of that Act; but in consequence of such non-registration is not entitled to limitation of liability under 25 & 26 Vict. c. 63. s. 54, after a collision with another ship. *The Andalusian*, 47 Law J. Rep. P.D. & A. 65; Law Rep. 3 P.D. 182.

(4) *Improper navigation of tug.*

24.—A damage to a vessel whilst being towed, caused by the improper navigation of the tug which was towing it, is within section 54, sub-section 4, of the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), notwithstanding such damage occurred also through a breach of the towing contract, and the owner of the tug is therefore entitled to the limitation of liability given by that section if such damage occurred without his actual fault or privity. *Wahlberg v. Young*, 45 Law J. Rep. C.P. 783.

Semble, that if the damage occurred from a mere breach of the contract to tow, the owner of the tug would not be entitled to the benefit of such section. *Ibid.*

To entitle a defendant to the limitation of liability given by the 54th section, the facts which bring the case within that enactment must, since the Judicature Act, 1873, be stated in the defence, though before that Act such a

statement would have been bad as a plea to the damages. *Ibid.*

(5) *Right of bondholder to freight recovered.*

25.—Where a bottomry bond on freight has been given, and the ship by which the freight is to be carried is lost in a collision with another ship, from which the owners of the first ship recover in a limitation of liability action instituted by the wrong-doing shipowners among other damages a sum in respect of freight, the bondholder is entitled to receive from the shipowners recovering the damages such an amount of freight as equals the sum lent by the bond, or a proportional amount according to the amount of freight recovered. *The Empusa*, 48 Law J. Rep. P. D. & A. 36; Law Rep. 5 P.D. 6.

(m) *Infringement of Thames by-laws.*

26.—By the negligent navigation of those in charge of her, a dumb barge was suffered to come into contact with a schooner moored to a mooring buoy in the river Thames. The schooner had her anchor hanging over her bow with the stock above the water, contrary to the Thames by-laws. The anchor made a hole in the barge and caused damage to her cargo. Had it not been for the improper position of the anchor of the schooner, neither the barge nor her cargo would have received any damage:—Held, that the owners of the barge were not entitled to maintain an action of damage against the schooner. *The Margaret*, 50 Law J. Rep. P. D. 3; Law Rep. 5 P.D. 238; reversed on appeal, Law Rep. 6 P.D. 76.

(n) *Damages.*

(1) *Loss of market.*

27.—The plaintiff shipped hemp and sugar on board the P. For an unreasonable delay in delivering the cargo, the plaintiff claimed loss by drainage in respect of the sugar, and interest on the invoice value of the whole cargo, which were allowed. He also claimed for loss of market price in respect of the hemp. This was disallowed by the Registrar. On appeal from the Registrar the Court allowed compensation for the difference between the market price when the goods ought to have been, and when they were, delivered. *The Parana*, 45 Law J. Rep. P. D. & A. 108; Law Rep. 1 P.D. 452, 2 P.D. 118.

(2) *Loss of charter-party.*

28.—The S. I. and the C. came into collision on the 1st of May, by which the C. was unable to load cargo by the time stipulated for in the charter-party, which was accordingly cancelled. She was not sufficiently repaired to obtain another charter-party until the 4th of July. The collision was the fault of the S. I.:—Held (overruling the Registrar's report), first, that the owners of the C. were entitled to some compen-

sation for loss of charter-party; and secondly, that such compensation was not included in the usual allowance of 4d. per ton a day for demurrage. *The Star of India*, 45 Law J. Rep. P. D. & A. 102; Law Rep. 1 P.D. 466.

(3) *Remoteness of damages.*

29.—A steamship meeting three barges was compelled by the negligent management of the foremost barge to take a course which brought her into collision with the other two barges:—Held (affirming the decision of the Court below, 44 Law J. Rep. Adm. 23), that the owners of the first barge were liable to those of the other two barges for the damage done by the collision. *The Sisters* (App.), 45 Law J. Rep. P. D. & A. 39; Law Rep. 1 P.D. 117.

(4) *Interest on damages.*

30.—The owners of a ship, though their liability to damages in respect of the loss of goods owing to a collision is confined by section 54 of the Merchant Shipping Amendment Act, 1862, to an aggregate amount not exceeding 8l. per ton of the ship's tonnage, are liable to pay interest on that amount from the date of the collision. *The Northumbria* (Law Rep. 3 A. & E. 6) followed. *Smith v. Kirby*, Law Rep. 1 Q.B. D. 131.

[And see ADMIRALTY, 8, 36-40, 45-51.]

(F) DELIVERY AND DISCHARGE OF CARGO.

(a) *Delay.*

1.—Where a charterer is allowed a given number of days for unloading a vessel, there is an implied contract on his part that from the time when the vessel is at the usual place of discharge, he will take the risk of any ordinary vicissitudes which may occur to prevent his releasing the ship at the expiration of the lay days. *Tiss v. Byers*, 45 Law J. Rep. Q.B. 511; Law Rep. 1 Q.B. D. 244.

2.—In an action for demurrage upon a charter-party, which contained the following clause: "The cargo is to be discharged with all despatch, according to the custom of the port,"—Held, that the charterers were not liable for delays caused by the insufficiency of the appliances for unloading provided at the port of discharge, and the rules regulating their user. *Postlethwaite v. Freeland* (H.L.), 49 Law J. Rep. Exch. 630; Law Rep. 5 App. Cas. 599. On appeal from the Court of Appeal, 48 Law J. Rep. Exch. 353; Law Rep. 4 Ex. D. 155.

3.—When it is agreed by a charter-party that a ship shall proceed to a safe port, or so near thereto as she can safely get, the master is bound, if ordered to a port which can only be entered by first discharging part of the cargo, to allow such an amount as may be necessary to be taken out, and then to enter the port, if the lighterage can be done in a place and under circumstances which will not expose the vessel

to danger. *The Alhambra*; 49 Law J. Rep. P. D. & A. 73; Law Rep. 5 P. D. 256, reversed on appeal, but not yet reported.

*Consignee prevented from discharging within the time by the default of other consignees.* [See G 2 *infra*.]

*Liability of consignee named in bill of lading: delivery to be taken within reasonable time: contract implied by law in bill of lading.* [See B 6 *supra*.]

(b) *Non-delivery: right of captain to sell.*

4.—In an action against a shipowner for non-delivery of a cargo of maize, which had become heated, and was sold by the defendant at an intermediate port during the voyage, the jury found that the cargo was damaged by its own inherent vice; that it was impossible for the defendant to carry it to the port of destination; that the sale was what a prudent man would have done under the circumstances; but that there was no such urgent necessity for the sale as to give no time or opportunity to give notice to the plaintiff the owner of the cargo:—Held, on these findings, that the defendant had no right to sell without the plaintiff's consent, and that the action would lie. *Acatos v. Burns* (App.), 47 Law J. Rep. Exch. 566; Law Rep. 3 Ex. D. 282.

(c) *Place of discharge: "as near thereto as ship can safely get."*

5.—By a charter-party the vessel was to deliver at H., "or so near thereto as she could safely get;" to discharge as customary; the cargo to be brought to and taken from alongside the ship at merchant's risk and expense. The draught of water of the vessel with the cargo on board being too great to allow her to reach H., the nearest point to which she could safely get was S., where the merchant refused to accept delivery of any part of the cargo. In order to lighten the vessel, part of her cargo was discharged into lighters at S. and sent in them to H. Her owner having sued the charterer to recover the lighterage expenses, the charterer by his defence alleged that by the custom of the port of H. the defendant was not bound to take delivery elsewhere than at H.:—Held, on demurrer, that this defence was bad, inasmuch as it sought to set up a custom inconsistent with the written contract, and that the plaintiff was entitled to recover. *Hayton v. Irwin* (App.), Law Rep. 5 C.P. D. 130.

6.—By a charter-party it was agreed that a ship should load a full cargo and proceed to a safe port within specified limits, or so near thereto as she could safely get; the port to be named on signing bills of lading. The cargo to be brought to and taken from alongside at merchant's expense. She was ordered to K., and the master signed bills of lading for delivery of the cargo at K. K. was situated thirty miles up a canal, which was not deep enough to admit of

the ship when laden passing up it. The ship-owners having during the voyage in vain asked the charterers to give orders as to what was to be done when she should arrive at the mouth of the canal, and finding no one there to take delivery, lightered one-third of the cargo up to K., and took the rest up in the ship, whose draught was thus sufficiently reduced to allow her to pass into the canal. On action brought to recover the expense of taking the cargo from the mouth of the canal to K.,—Held, that, under the circumstances, the master was justified in considering the voyage to be at an end at the mouth of the canal, and in treating it as the place of discharge, and that the plaintiffs were therefore entitled to recover. *Capper & Company v. Wallace Brothers*, 49 Law J. Rep. Q.B. 350; Law Rep. 5 Q.B. D. 163.

(d) *Delivery to person first presenting bill of lading.*

7.—Goods shipped to C. as owner were, before arrival, pledged by him to the plaintiffs as security for an advance. The bill of lading was, as is customary, in three sets, "the one being accomplished the rest to stand void," and made the goods deliverable to "C. or assigns," freight payable in London. C. indorsed one copy of the bill of lading—marked "first"—to the plaintiffs, and also gave them a letter of charge, making the bill of lading a collateral security for the advance, and empowering them to sell the goods represented by the bill of lading if default was made in repayment of the advance. The vessel went on arrival into the dock of the defendants. S. duly entered the goods at the Custom-house, and they were afterwards, at the request of C., landed and deposited with the defendants, the freight being unpaid. The manifest, a copy of which the captain lodged with the defendants, authorised the defendants to deliver the goods to the holders of the bill of lading. On the following day the captain lodged with the defendants a stop order for freight, pursuant to the Merchant Shipping Act, 1862. C. then produced and gave to the defendants, unindorsed, the second part of the bill of lading; the defendants then entered C. as the proprietor of the goods. C. paid the freight, the stop was taken off, and the defendants delivered the goods to W., on the production by him of a delivery order from C. C. shortly after went into liquidation, when the plaintiffs, producing the indorsed bill of lading, in vain demanded the goods of the defendants. In an action for conversion,—Held (by the Court of Appeal—Bramwell, L.J., and Baggallay, L.J.; *dissentiente* Brett, L.J., on appeal from Field, J., on further consideration, 49 Law J. Rep. Q.B. 303; Law Rep. 5 Q.B. D. 129), that the defendants were not liable. (By Bramwell, L.J.), that the property in the goods did not pass, but that there was a pledge of them with a right of redemption in C.; that the duty of the defendants was the same as that of the

shipowner would have been had the goods remained on board; that the plaintiffs assented to C.'s retaining the other parts of the bill of lading, and to the receipt by the defendants of the goods to hold, after freight paid, to the order of C., so that there was no conversion. (By Baggallay, L.J.), that the property in the goods passed by the delivery of the indorsed bill of lading: that the landing of the goods was the result of an arrangement between the shipowner C. and the defendants; that the Merchant Shipping Act did not effect that the defendants thereafter held the goods for the plaintiffs, but that they received them to hold to an order of C., and that in the absence of any notice of title in anyone else, the defendants were bound to deal with them as directed by the ostensible owner. (By Brett, L.J.), that the defendants were liable; that C. by indorsing the bill of lading to the plaintiffs passed the legal property to the plaintiffs, only reserving to himself an equity of redemption; that the shipowner was therefore bound to deliver to the plaintiffs, subject to the provisions of the Merchant Shipping Act as to warehousing the goods; that the defendants were, as such warehousemen, bound to hold the goods till freight was paid, and then to deliver to the plaintiffs as holders of the bill of lading. *Glyn, Mills, Currie & Company v. The East and West India Dock Company* (App.), 50 Law J. Rep. Q.B. 62; Law Rep. 6 Q.B. D. 475.

*Past delivery not prima facie delivery of the whole.* [See SALE OF GOODS, 30.]

#### (G) DEMURRAGE.

1.—By charter-party it was agreed that the plaintiff's ship should go to a port, and there "load in regular turn" a cargo from the defendants. On her arrival the defendants made default in supplying cargo, whereby she lost one turn. Wind afterwards came on to blow, and the harbour-master therefore would not allow the ship to take up her loading-berth for three days more:—Held, that the default of the defendants was the proximate cause of the detention during those three days, and that the plaintiff was entitled to damages as demurrage in respect of them. *Jones v. Adamson*, 45 Law J. Rep. Exch. 64; Law Rep. 1 Ex. D. 60.

2.—The defendants were indorsees of a bill of lading for a portion of a cargo of wheat. The charter-party under which the ship sailed stipulated that fourteen working days should be allowed for loading and unloading at the port of discharge, and ten days' demurrage at 35*l.* day by day, and the bill of lading contained the words, "paying freight and other conditions as per charter-party." The defendants' portion of the cargo was stowed at the bottom of the hold, and in consequence of the delay of the consignees of the upper portions in taking delivery, the defendants were unable to clear their portion till after the expiration of the lay days:—

Held, that the defendants were liable in an action for demurrage, on the ground that the charter-party (which was to be read into the bill of lading) amounted to an absolute contract to pay demurrage unless prevented from doing so by default of the shipowner. *Porteous v. Watney* (App.), 47 Law J. Rep. Q.B. 648; Law Rep. 3 Q.B. D. 534; affirming the decision of the Court below, 47 Law J. Rep. Q.B. 365; Law Rep. 3 Q.B. D. 223.

3.—The defendants, who were indorsees of bills of lading for portions of cargoes of wheat, were sued by the shipowners for demurrage. The bill of lading contained the following stipulation: "Three working days to discharge the whole cargo, or 30*l.* sterling per day demurrage." The defendants' portion of the cargo was stowed at the bottom of the hold, and in consequence of the consignees of the upper portions not being ready to take delivery as soon as the ship was ready to discharge, they were unable to clear their portion till after the expiration of the lay days:—Held, that the defendants were liable, on the ground that the stipulation in the bill of lading amounted to an absolute contract to pay demurrage if the defendants failed to discharge the cargo within the time, unless prevented doing so by the default of the shipowner. *Straker v. Kidd & Company*, 47 Law J. Rep. Q.B. 365; Law Rep. 3 Q.B. D. 223.

4.—The plaintiff and the defendant entered into a charter-party, dated the 19th of November, by which it was agreed that the plaintiff should load on the defendant's vessel a cargo of coal, and proceed therewith to D., "the vessel to be loaded and discharged in nineteen running days, or if detained longer, to pay 4*l.* per day demurrage. Vessel to load in B. M. Dock or W. Dock, High Level." On the 20th of November the vessel was admitted into the W. Dock, and was ready for loading, but was unable to obtain a berth at the High Level till the 5th of December in consequence of the regulations of the dock:—Held, that the nineteen running days were to be calculated from the time when the vessel arrived in the W. Dock. *Davies v. M'Veagh* (App.), 48 Law J. Rep. Exch. 686; Law Rep. 4 Ex. D. 265.

5.—By a charter-party a ship was bound to deliver a cargo at certain specified private docks, "or as near thereunto as she may safely get." All the unloading berths in the docks being engaged for some weeks in advance, the dock owners refused the ship admittance. No other arrangement for unloading was made by the charterer, and the shipowners, after several days' delay, delivered the cargo by lighters:—Held, that the ship was prevented from entering the docks by a permanent obstacle, and was entitled to unload the cargo outside, and therefore demurrage was payable. *Nelson v. Dahl*, Law Rep. 12 Ch. D. 568; affirmed on appeal to the House of Lords, 50 Law J. Rep. Chanc. 414; Law Rep. 6 App. Cas. 38 (*nom. Dahl v. Nelson*).

[And see F 2 *supra*.]



*Detention of vessel in putting stiffening coal on board: construction of demurrage clause.* [See D 8 supra.]

*Compensation for loss of charter-party not included in usual allowance of £d. a ton per day for demurrage.* [See E 28 supra.]

#### (H) FOREIGN SHIP.

1.—A warrant of arrest having been given to the messenger at arms to execute against the foreign ship E. C., authorising, if necessary, the dismantling of the ship, the messenger, finding the vessel had sailed, pursued her in a steam-tug with thirty men, and overtook her in the Clyde, within the jurisdiction of the Scotch Courts, as she was approaching the high seas, seized her, brought her back to port and dismantled her:—Held, that the execution of arrestment was illegal. *Borjesson v. Carlberg* (H.L. Sc.), Law Rep. 3 App. Cas. 1316.

2.—Other arrestments having been subsequently used against the ship by persons acting in concert with the original arresters,—Held, that these arrestments must also be recalled. *Borjesson v. Carlberg* (No. 2), (H.L. Sc.), Law Rep. 3 App. Cas. 1322.

[And see ADMIRALTY, 1-7.]

#### (I) FORFEITURE.

The forfeiture incurred under section 103 of the Merchant Shipping Act, 1854, accrues at the time of the illegal and fraudulent act, and a subsequent seizure relates back to the date of the act constituting the cause of forfeiture, even as against a *bona fide* purchaser without notice of such act. *The Annandale*, 46 Law J. Rep. P. D. & A. 68; affirmed on appeal, 47 Law J. Rep. P. D. & A. 8; Law Rep. 2 P.D. 218.

The A., with the consent of the British owners, sailed under the Belgian flag in 1874. In 1876 the defendant bought her *bona fide*, and for valuable consideration. The ship was claimed as forfeited to the Crown under section 103 of the Merchant Shipping Act, 1854. The defendant pleaded his *bona fide* purchase for valuable consideration. The plaintiff demurred:—Held, that such sale was of no effect as against the prior forfeiture, which accrued at the time of the act of sailing under foreign colours. *Ibid.*

#### (K) FREIGHT.

##### (a) *Pro rata itinoris: right to.*

1.—The plaintiff's vessel was chartered by the defendant to carry a cargo of coal, and the freight was to be on the quantity delivered at the port of destination. The vessel was disabled by a storm during the voyage, and obliged to put in at an intermediate port for repairs, where the captain, being unable to borrow on bottomry, necessarily sold a portion of the cargo to raise money for repairing the vessel. After the vessel had been thus repaired, she pro-

ceeded to the port of destination with the rest of the cargo, and there duly delivered the same. The coal which was sold by the captain at the intermediate port sold for more than it would have done at the port of destination:—Held, that the defendant was entitled to treat the money received on the sale by the captain as a loan, and that therefore no freight *pro rata itinoris* was due in respect of the carriage of the coal to the intermediate port. *Hopper v. Burness*, 45 Law J. Rep. C.P. 377; Law Rep. 1 C.P. D. 137.

2.—A cargo of railway iron was shipped under two charter-parties on a ship to be carried from M. to T., "or as near thereto as she might safely get;" and by the bills of lading and charter-parties it was to be delivered at the port of T.; and it was consigned to a railway company there. On arrival at K., on the 17th of December, the master found that further navigation was impossible owing to the ice, and that the port of T. would not be open again till April. He, therefore, notwithstanding express notice from the charterer's agents at T. not to do so, discharged the cargo at K. as the nearest place to T. to which he could safely get; and no bills of lading being produced to him, he put the cargo into the hands of the Custom-house authorities. After it had been so discharged, an agent of the consignees, by producing copies of the charter-parties and bills of lading, obtained possession of the iron from the Custom-house authorities, the captain in vain protesting his right to retain the cargo till the freight was paid. The following receipt was, however, given to the master by the agent: "On the power of the charter-party and bill of lading, passed to me by the agents of the railway company, I hereby declare that I have received the cargo, &c., composed, &c." Two days later the ship sailed from K., the master having no intention of returning or of carrying on the cargo to T. when the navigation should be again open: Held (affirming the decision of the Court below, 45 Law J. Rep. Q.B. 837; Law Rep. 1 Q.B. D. 613), that the chartered voyage not having been accomplished, and no new agreement having been made between the parties, neither the full freight nor freight *pro rata itinoris* could be recovered. *Metcalf v. The Britannia Iron Works Company* (App.), 46 Law J. Rep. Q.B. 443; Law Rep. 2 Q.B. D. 423.

3.—The plaintiffs' goods were part of a general cargo shipped on board the defendants' ship at Riga for conveyance from that port to Hull. The ship was stranded on the voyage, part of the cargo was saved, part was washed out of her, and part jettisoned; she was afterwards got off and towed into Copenhagen, where her cargo was discharged, and she was repaired. After a detention of two months she was sent on to Hull with some of her cargo on board, another part having been sent on to Hull in two other ships belonging to the defendants. The plaintiffs' goods were so damaged as to be not

worth forwarding, and were sold at Copenhagen. An average adjustment took place there, under which the plaintiffs' contribution was assessed according to Danish law, and they were further charged with *pro rata* freight from Riga to Copenhagen. It was admitted that the goods were properly sold, but the plaintiffs had no opportunity of exercising an option in the matter, nor did they assent to the Copenhagen adjustment:—Held, first, that the plaintiffs were not bound by the Copenhagen adjustment; secondly, that the plaintiffs were not liable to pay *pro rata* freight. *Hill v. Wilson*, 48 Law J. Rep. C.P. 764; Law Rep. 4 C.P. D. 329.

(b) *Freight in fact part price of cargo.*

4.—On the 1st of December, 1874, M., the owner of 60–64ths of the ship *Stonehouse*, then at San Francisco, mortgaged his interest to the plaintiffs for 7,500*l.* and further advances. On the 2nd of December the captain (who was the owner of the remaining 4–64ths of the ship) obtained the shipment of a cargo of wheat “on account of the ship.” The cargo was consigned to the order of the shippers under bills of lading, wherein the freight payable was stated to be at the nominal rate of 1*s.* per ton, and the shippers drew bills of exchange for the price on M. at sixty days’ sight, which were attached to the bills of lading. The rate of freight then current at San Francisco was 55*s.* per ton. On the 4th of January, 1875, the defendants advanced to M., to enable him to meet the bills of exchange, a sum of 3,000*l.*, and on the 4th of February a further sum of 9,000*l.*, on deposit of the bills of lading and policies of insurance on freight, with liberty for the defendants to sell the cargo and receive the proceeds on M.’s account. On the 19th of February the defendants sold the cargo to J. & Co. at 43*s.* 6*d.* per quarter, it being provided by the contract that “as cargo is coming on ship’s account, freight is to be computed at 55*s.* per ton.” On the 23rd of February, M., with the money advanced by the defendants, paid the bills of exchange, and handed them over, with the bills of lading attached, to the defendants: the bills of lading were indorsed with a memorandum stating that “the freight is assigned at the rate of 55*s.* per ton, and not at the nominal rate of 1*s.* per ton.” In April, on the arrival of the ship in England, the plaintiffs took possession of her and claimed to be entitled to freight at the rate of 55*s.* per ton:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. C.P. 452; Law Rep. 2 C.P. D. 163; on appeal from the Common Pleas Division, 45 Law J. Rep. C.P. 876; Law Rep. 1 C.P. D. 722); that the “freight” so called in the contract of the 19th of February was in fact merely part of the purchase-money of the cargo, that there had been no variation of the terms of the bill of lading, and that the plaintiffs were entitled to freight at 1*s.* per ton, not at the rate of 55*s.* per ton. *Keith v. Burrows* (H.L.), 46 Law J. Rep. C.P. 801; Law Rep. 2 App. Cas. 636.

(c) *Payable on intake measure of quantity delivered.*

5.—The plaintiffs consigned to the defendants a cargo of deals and battens, with deal ends for broken stowage. Freight was, by the charter-party, to be paid on deals, battens, &c., at the rate of 3*l.* 5*s.* per St. Petersburg standard hundred of 1,980 super feet, and on deal ends at the rate of 2*l.* 1*s.* 8*d.* for the like hundred, eight feet and under. The charter-party contained the following provision as to freight: “Freight payable on deals and sawn lumber on the intake measure of quantity delivered.” The bill of lading was signed for a specified number of pieces, deals, battens and scantlings, and a specified number of pieces, deal ends, and freight was made payable as per charter-party. The shipper adopted the usual course of business with respect to the measurement of timber, and made up his specification, shewing the number of pieces shipped of various dimensions. The dimensions were arrived at by measuring the length, breadth and depth of the various pieces of timber, on each of which, before shipment, were chalked the figures representing its dimensions. During the voyage, owing to the severe weather encountered by the vessel, a portion of the deals and deal ends was lost; there was evidence that the dimensions of such portion were average dimensions, compared with the rest of the cargo. The remainder of the timber was duly delivered, though on some of the pieces so delivered the shipper’s measurement had become obliterated:—Held (by Bowen, J., on further consideration), that the freight to be paid under the charter-party was on the measure put upon the timber when measured at the port of loading, and not on the quantity delivered measured according to the intake mode of measurement at the port of discharge; and that as the pieces thrown overboard or lost were of a fair average size, as compared with the rest of the cargo, the proportion which they bore to the rest of the cargo ought to be deducted from the specification total, and freight charged upon the residue. *Spaight v. Farnworth*, 49 Law J. Rep. Q.B. 346; Law Rep. 5 Q.B. D. 115.

(L) GENERAL AVERAGE.

(a) *Liability of shipowner to contribute.*

1.—Where a bill of lading contained an exception of “fire on board,” and the goods carried under it were injured in consequence of the water used to extinguish a fire occurring during the voyage,—Held, that the exception did not exempt the shipowners from liability to contribution in general average towards the loss sustained by the owner of the goods so injured. Nor were they exempted by virtue of s. 503 of the Merchant Shipping Act, 1854. The exception in the bill of lading and the above section of the Act had reference only to the obligation on the contract to deliver the goods, and did not take away the ordinary liability of the shipowner to contribute in general average, as

owner, when a fire had occurred and a sacrifice had been properly made to save the whole adventure. *Schmidt v. The Royal Mail Steamship Company*, 45 Law J. Rep. Q.B. 646.

(b) *Part of vessel cut away to save whole adventure.*

2.—A ship being caught in a storm, portions of the rigging gave way to such an extent that the main mast began to lurch violently, whereupon, fearing that the mast would rip up the decks and thereby endanger the safety of the ship, the captain ordered it to be cut away, which was done. In an action by the owner of the ship to recover from the owners of the cargo their proportion of general average loss incurred by the sacrifice of the mast, the Judge left to the jury the following questions: first, Are you of opinion that the mast was virtually a wreck and gone at the time it went over? secondly, Do you find it was hopelessly lost? The jury answered both questions in the affirmative:—Held (by the Court of Appeal), reversing the decision of the Common Pleas Division, that there had been no misdirection, and that substantially the right questions had been left to the jury. *Shepherd v. Kottgen* (App.), 47 Law J. Rep. C.P. 67; Law Rep. 2 C.P. D. 578, 585.

If anything on board a ship, which is cut or cast away because it is endangering the whole adventure, is in such a state or condition that it must itself certainly be lost, although the rest of the adventure should be saved without the cutting or casting away, then the destruction of the thing gives no claim for general average. *Ibid.*

(c) *Spars and cargo used as fuel.*

3.—A ship sailed from Q. to L. properly equipped and manned, with a cargo of timber. In addition to her ordinary pumps she had on board, as is not unusual for such ships, a donkey-engine available, if necessary, for pumping purposes. At the time of sailing the ship had coal enough for an ordinary voyage, including a reasonable supply for the donkey-engine for pumping purposes. During the voyage severe weather caused the ship to spring a leak, and it became necessary, in order to keep her afloat, to work the donkey-engine at the pumps. Afterwards the master seeing that the supply of coals would be, under the circumstances, insufficient, and adopting a proper and necessary course for the preservation of the ship and cargo, used some of the spare spars and a portion of the cargo together with the coals, and so managed to keep the vessel afloat till a further supply of coals was obtained from a passing steamer. Had the spars and cargo not been burned as aforesaid the ship would, in all probability, have been lost. In an action brought by the shipowner against the owner of the cargo for a general average contribution,—Held (affirming the decision of the Court below), 46 Law J. Rep. Q.B. 22, that the circumstances under which the spars and cargo were used as

fuel satisfied all the conditions of a general average claim. *Robinson v. Price* (App.), 46 Law J. Rep. Q.B. 551; Law Rep. 2 Q.B. D. 91.

(d) *Injury to goods by water employed to extinguish fire.*

4.—A bill of lading, by which the shipowner undertook to deliver the goods at a port to a railway company, to be by them carried inland and delivered to the consignees, contained an exception, "that the shipowner or railway company are not to be liable for any damage to any goods which is capable of being covered by insurance, or for any claim, notice of which is not given before the removal of the goods." On the voyage a fire broke out, and the cargo was damaged by the admission of water to extinguish the fire. The ship put back, and the shipowners delivered the cargo up, without taking security from any of the cargo owners, or taking any step for procuring an adjustment of general average:—Held, first, following *Schmidt v. The Royal Mail Steamship Company* (45 Law J. Rep. Q.B. 646; No. 1 supra), that the shipowners were not exempted from contribution to general average by the clauses in the bill of lading; and, second, that they were liable to an action by a shipper of goods for neglecting to take the necessary steps for procuring an adjustment of the general average, and securing its payment. *Crookes v. Allen and the Montreal Ocean Steamship Company*, 49 Law J. Rep. Q.B. 201; Law Rep. 5 Q.B. D. 38.

(e) *Expenses attributable to.*

(1) *Practice of average adjusters.*

5.—The plaintiffs' ship sailed to L. in England with a general cargo, and encountered severe weather, in consequence of which a general average sacrifice was made by cutting away the fore topmast, the fall of which occasioned further damage to the vessel, which was thereby compelled to put into C. to repair, in order to enable her to prosecute the voyage. To repair the vessel it became necessary to unship a portion of the cargo, and expenses were incurred in landing, warehousing and re-shipping it. Further expenses were also incurred on account of pilotage and other charges on the ship leaving the port in order to proceed on her voyage. The vessel completed her voyage and discharged her cargo at L. The plaintiffs, as shipowners, claimed contribution according to English law by way of general average, from the defendants, the owners of the cargo, in respect not only of the expense of entering the port and of discharging the cargo, but also that of warehousing and re-shipping the latter, as well as in respect of expenses incurred in the way of port charges and pilotage on the occasion of the vessel again putting to sea. The defendants admitted their liability to contribute up to the discharge of the cargo, but denied any liability beyond that stage, relying on what was admitted to have been the practice, for

from seventy to eighty years, of British average adjusters in adjusting losses, according to which the expense of warehousing the cargo had been treated as particular average on the cargo, and the expense of the re-shipment, pilotage, port charges and other expenses incurred, to enable the ship to proceed on her voyage, as particular average on the freight. The charter-party and bill of lading were silent on the subject:—Held (by Cockburn, L.C.J., and Mellor, J., *dissentiente* Manisty, J.), that the plaintiffs were entitled to have brought into general average the expense incurred in the warehousing and re-shipment of the cargo, and the pilotage, port charges and other expenses, on the ship leaving the port in order to proceed on her voyage to L.; also that the usage of the average adjusters, being inconsistent with law, could not prevail, the parties not having expressly agreed to make such usage a part of the contract. *Attwood v. Sellar*, 48 Law J. Rep. Q.B. 465; Law Rep. 4 Q.B. D. 342; affirmed on appeal, 49 Law J. Rep. Q.B. 515; Law Rep. 5 Q.B. D. 286.

(2) *Remuneration to shipowner.*

6.—A shipowner, who upon the stranding of his ship incurs trouble in arranging for the salvage, forwarding and identification of the cargo, and in the distribution of the proceeds of the sale of the unidentified portions of the cargo among the consignees, is not entitled to claim as general average, under an average agreement between himself and the consignees, remuneration for such services, nor to be paid a commission on the sale of the cargo or on his disbursements. *Schruster v. Fletcher*, 47 Law J. Rep. Q.B. 530; Law Rep. 3 Q.B. D. 418.

*Adjustment at intermediate port.* [See K 3 *supra*.]

*Warranty of freedom from general average unless ship "stranded."* [See MARINE INSURANCE, 11.]

(M) LIEN AND MORTGAGE.

(a) *Of master and agent.*

1.—An order having been made to wind up a company who were owners of a ship, and the ship being in the possession of mortgagees,—Held, that as the Court in the winding-up had no jurisdiction over the mortgagees, an order had been properly made giving leave to the master of the ship to proceed in the Court of Admiralty to enforce his maritime lien for disbursements on behalf of the ship. *In re The Rio Grande Do Sul Steamship Company; Turner's Claim* (App.), 46 Law J. Rep. Chanc. 277; Law Rep. 5 Ch. D. 282.

*In re the Australian Direct Steam Navigation Company* (44 Law J. Rep. Chanc. 676) distinguished. *Ibid*.

An order having been afterwards made that the liquidator should pay 150*l.* into Court to answer the master's claim, he undertaking not to proceed in the Admiralty Court, but without

prejudice to any application by him to increase the amount, if it should be insufficient,—Held (reversing a decision of Bacon, V.C.), that the master was entitled, not only to the amount of his disbursements, with interest, but also to his costs, charges and expenses, properly incurred in the winding-up, and that the 150*l.* must be increased to an amount sufficient to cover those costs, charges, and expenses. *Ibid*.

2.—A vessel went ashore with cargo on board of her. The captain put the plaintiff, a ship agent, in possession of the wreck with authority to do what was best for the benefit of all concerned. The plaintiff expended money in discharging the cargo, and succeeded in bringing it to a place of safety. No attempt was made to save the hull, which was a total wreck. The expenditure so incurred was an extraordinary expenditure for the purpose of saving the cargo alone, and was not in any way on behalf of the master as agent of the shipowner performing his contract to carry on the cargo to its destination and earn freight. The defendant was a mercantile agent, to whom the owner of the cargo had transmitted the bill of lading to enable him to obtain the cargo on his behalf. The defendant did obtain possession of the cargo by means of an agent who, without any special authority in that behalf, promised that the plaintiff's charges should be paid; and this action was brought to recover those charges:—Held, first, that the employment of the agent to obtain possession of the goods gave him authority to give security for any charges for which there was a lien on the cargo; and, secondly, that there was a lien: the expenditure was in the nature of particular average, but in the absence of direct authority, and upon the analogy of general average and salvage, it was just and convenient that the master should have a lien for the expenses which he is entitled, and in some cases compelled, to incur for the protection of a particular article. *Hingston v. Wendt*, 45 Law J. Rep. Q.B. 440; Law Rep. 1 Q.B. D. 367.

*Pledge by consignee.* [See F 7 *supra*.]

(b) *Of vendors.*

3.—The plaintiff shipped goods in his own vessel to be carried on the ship's account, a nominal freight of one shilling per ton being payable under the bill of lading. He subsequently sold the goods whilst in transit, for 65*s.* per 500 lbs., "including freight and insurance, freight to be reckoned at 60*s.* per ton." After intermediate sales, the defendants bought the goods whilst still in transit upon the same terms as to freight. The ship arrived at the port of discharge, and the defendants, having notice of the terms of the plaintiff's contract, paid him a sum on account of freight at 60*s.* per ton, and thereupon obtained delivery of the goods. In an action by the plaintiff to recover the balance alleged to be due for freight,—Held, that the 60*s.* per ton agreed to be treated as freight in the plaintiff's contract for sale was unpaid purchase-

money, in respect of which he had a lien on the goods before delivery; that the defendants' conduct under the circumstances amounted to an implied contract to discharge the lien, and therefore that the plaintiff was entitled to recover. *Swann v. Barber & Company* (App.), 49 Law J. Rep. Exch. 253; Law Rep. 5 Ex. D. 132.

(c) *Of owners.*

*Damages for detention whether covered by owners' lien.* [See D 8, 9 supra.]

(d) *Mortgagee's right to freight.* [See K 4 supra.]

(e) *Mortgagor's right to charter ship.*

4.—Where a mortgagor in possession has entered into a beneficial charter-party of a ship the mortgagee cannot object to the charter-party being carried out simply upon the ground that the effect of so doing will be to remove the ship out of the jurisdiction of the Court, and to render it difficult for him to enforce his mortgage. *The Fanckon*, Law Rep. 6 P.D. 173.

(N) MASTER.

(a) *When not agent of charterer.*

1.—The defendants offered the plaintiffs room for a cargo at a named rate in the ship D.; they then chartered that ship under a charter-party which provided (*inter alia*) that the ship should go to C., should receive on board such goods as might be required, that the whole ship should be at the disposal of the charterers, that the master and owners should be responsible as if the ship were loaded for the owners independently of the charter-party, that the master should sign bills of lading at any rate of freight the charterers might require, without prejudice to the charter-party, that the ship should be addressed to the charterers' nominee at the port of discharge, and that the charterers' responsibility, except for freight, should cease on the vessel being loaded. Shortly after, the defendants "acting for the owners of" the D., agreed with the plaintiffs to receive on board a cargo at the rate previously mentioned by them to the plaintiffs, and further agreed that the barges as they came along should be immediately discharged, or they undertook to pay demurrage. The cargo was received on board, and the master signed bills of lading for the cargo to be delivered at C. to the plaintiffs' order or assigns. Half the freight, less discount, was, by agreement, paid to the defendants before the ship sailed; the residue, being the sum mentioned in the bill of lading, was to be paid at C. The ship sailed, met with bad weather, put into an intermediate port, and was condemned; the cargo was discharged, and the master sold it without communicating with the plaintiffs. In an action for the value of the cargo the jury found that the sale was unjustifiable:—Held (affirming the decision of Denman, J., 48 Law J. Rep. C.P. 759 Law Rep. 4 C.P. D. 283),

that the defendants were not liable, that the contract between the plaintiffs and the defendants was at an end when the cargo was on board, and that the master was not the agent or servant of the defendants. *Wagstaff, Brassey & Company v. Anderson, Moss & Company* (App.), 49 Law J. Rep. C.P. 485; Law Rep. 5 C.P. D. 171.

(b) *Rights, liabilities and duties of.*

*Liability of, for necessities: right to deduct for in his account.* [See O 1 infra.]

*Liability of, as contributor for negligence in carrying out dockmaster's orders.* [See E 22 supra.]

*Lien of, for disbursements.* [See No. M 1, 2 supra.]

*Right of master to primage.* [See D 5 supra.]

*Right of captain to sell damaged cargo: duty to give notice to shipper.* [See F 4 supra.]

*Suspension of certificate of.* [See MERCHANT SHIPPING ACTS, 4, 5.]

*Sale of ship, urgent necessity.* [See MARINE INSURANCE, 19.]

(O) NECESSARIES.

1.—The master of the L. in a foreign port gave his bond for payment of the damage caused to another ship by the L. But for the bond the L. would have been liable to arrest. On a reference to the registrar of the master's accounts as against a mortgagee, it was held, that the master was entitled to deduct the amount of the bond. *The Limerick*, 45 Law J. Rep. P. D. & A. 97; Law Rep. 1 P. D. 141, 292.

In his accounts against a mortgagee a master is entitled to security for the amount for which he is personally liable in respect of necessities. *Ibid.*

2.—D. J. furnished necessities to the A., which was subsequently sold to persons who had notice of D. J.'s claim:—Held, that D. J. could not after the sale arrest the ship in an action for necessities. *The Aneroid*, 47 Law J. Rep. P. D. & A. 15; Law Rep. 2 P.D. 189.

3.—Under the Judicature Act, 1875, Order XXXIII. in an action for necessities, the Court will, in its discretion, order inquiries to be made in an action for necessities, before the judgment is pronounced, to ascertain if any or what sum is due. *The Sully*, 48 Law J. Rep. P. D. & A. 56

(P) OFFENCES.

*Penalty on unauthorised persons coming on board: ship "about to arrive:" "actual arrival in dock."* [See MERCHANT SHIPPING ACTS, 7.]

*Unseaworthy vessel: detention and survey: powers of Board of Trade.* [See MERCHANT SHIPPING ACTS, 1.]

(Q) PARTICULAR AVERAGE.

*Lien on.* [See M 2 supra.]

## (B) PILOTAGE.

## (a) Compulsory.

## (1) In what cases.

1.—Pilotage is compulsory on a vessel belonging to the port of London within the river Thames, in consequence of the provisions of the Merchant Shipping Act, 1854, s. 353. *The Killarney* (Lush. 427; 30 Law J. Rep. P. M. & A. 41) followed. *The Hankow*, 48 Law J. Rep. P. D. & A. 29; Law Rep. 4 P.D. 197.

2.—Pilotage is compulsory within the Fal-mouth district. *The Juno*, Law Rep. 1 P. D. 185.

## (2) Exemption from liability.

3.—Where a ship is under the compulsory charge of a licensed pilot the owners are not responsible for damage occasioned by his fault or incapacity. *The Clyde Navigation Company v. Barclay* (H.L. Sc.), Law Rep. 1 App. Cas. 790.

4.—When a tug is towing a ship on board of which there is a pilot by compulsion of law, and the tug comes into collision with another vessel, such tug is not exempt from liability by reason of the pilot being compulsorily on board the tow. *The Mary*, 48 Law J. Rep. P. D. & A. 66; Law Rep. 5 P. D. 14.

## (3) Duty of pilot.

5.—A ship in charge of a pilot whose employment was compulsory was being towed by a steam-tug; the steam-tug without waiting for orders from the pilot suddenly adopted a wrong manoeuvre, and so caused the ship to come into collision:—Held, that the owners of the ship were responsible. Semble, where a pilot is in charge of a ship in tow in a crowded river, it is not necessarily incumbent upon him to direct every movement of the tug. *The Siquani*, 50 Law J. Rep. P. D. 5; Law Rep. 5 P. D. 241.

## (4) Burden of proof where set up as defence.

6.—In an action for damage by collision as soon as the defendants have shewn that a pilot whose employment was compulsory was on board the wrong-doing vessel and that his orders were obeyed, the burden of proving that negligence arising from the act of some other person is a cause which contributed to the collision rests on the plaintiff, even though the defendants have only given the testimony of the pilot as evidence. *The Marathon*, 48 Law J. Rep. P. D. & A. 17.

*Compulsory, plea of: costs where defendants succeed on.* [See E 17 supra.]

## (b) Duration of employment of pilot.

7.—A vessel in charge of a pilot whom the master was compelled to take, and who had been engaged to take her into dock, was brought to anchor, being prevented by the state of the weather from going into dock. Whilst so at anchor she drove into collision with the T. Z.:

—Held, that the pilot was still in charge of the vessel. *The Princeton*, 47 Law J. Rep. P. D. & A. 33; Law Rep. 3 P. D. 90.

## (c) Pilotage dues.

8.—The compensation to which a pilot is entitled under section 357 of the Merchant Shipping Act, 1854, for being taken without his consent beyond the limits of his pilotage, is not recoverable from the shipbroker as "pilotage due" under section 363. *Mortoo v. Julian*, 48 Law J. Rep. M.C. 126; Law Rep. 4 C.P. D. 216.

## (S) SALE OF SHIP.

A., the managing owner of a ship, having no express authority from the defendants, owners of 23-64ths (who, however, knew that a sale was in contemplation), sold the ship through the plaintiffs, his agents at Constantinople, to the Turkish Government, and received a bill, which was duly paid, on the Oriental Bank in London for the amount of the purchase-money. The defendants after the sale executed a power of attorney, which, after reciting that they had agreed to sell to the Turkish Government and had actually received the purchase-money, empowered the plaintiffs to transfer their respective shares and to deliver over the vessel. A. subsequently paid to the defendants or settled with them for their several shares:—Held, that the jury were justified in finding that the defendants had authorised the sale of the vessel by A., or had so ratified his act as to render them jointly liable to the plaintiffs for their commission; and that the circumstance that the plaintiffs had drawn a bill upon A. at three months date for the amount of the commission had not so altered the position of the defendants as to release them from liability upon the bill being dishonoured. *Keay v. Fenwick* (App.), Law Rep. 1 C.P. D. 745.

*By master: urgent necessity.* [See MARINE INSURANCE, 19.]

*In action of co-ownership: jurisdiction of Court.* [See ADMIRALTY, 12.]

## (T) SALVAGE.

## (a) Salvage agreement.

1.—The High Court of Admiralty will not give full effect to an agreement for life salvage when the amount stipulated for is inequitable. And where the M. struck on the Parkin Rock in the Red Sea, and her passengers, 550 in number, were landed on the rock, and were afterwards taken to Aden by the T., an agreement for 4,000*l.* life salvage was set aside and 1,800*l.* was awarded. *The Medina*, 45 Law J. Rep. P. D. & A. 81; Law Rep. 1 P.D. 272; affirmed on appeal, Law Rep. 2 P.D. 5.

2.—A hired commander and crew on a vessel belonging to the British Government are in the same position within 17 & 18 Vict. c. 104. s. 484, as a Queen's ship with commissioned officers,

and though they are entitled to remuneration for salvage services rendered if they are sent for the purposes of rendering assistance they cannot impose terms. *The Cargo on Woorung* (App.), Law Rep. 1 P. D. 260; and see *The Dalhousie*, Law Rep. 1 P. D. 271n.

3.—The Court will set aside an agreement to pay salvage remuneration when the amount agreed to be paid to the salvors is so exorbitant as to be inequitable, and will decree a reasonable sum in place thereof. Under such circumstances each side must pay its own costs of the action. *The Medina* (45 Law J. Rep. P. D. & A. 81; Law Rep. 1 P. D. 272; on appeal, Law Rep. 2 P. D. 5) followed. *The Sileria*, 50 Law J. Rep. P. D. & A. 9; Law Rep. 5 P. D. 117.

[And see ADMIRALTY, 20.]

(b) *Salvage reward.*

(1) *Life salvage: cargo afterwards rescued.*

4.—Salvors of life are entitled to salvage reward from the owners of cargo subsequently rescued by the owners of the cargo. *The Cargo on Schiller*, 46 Law J. Rep. P. D. & A. 9; Law Rep. 1 P. D. 473; affirmed on appeal, *ibid.* 2 P. D. 145.

Twenty-five men, the crews of four boats, saved the lives of ten men, and gave information to a steamboat, which rescued others. The services lasted about four hours, and were attended with much danger. Part of the cargo, of the value of 40,000*l.*, having been afterwards recovered, the Court awarded the salvors of life 500*l.* *Ibid.*

5.—Where a Spanish steamship saved specie and the plaintiffs the lives of persons belonging to the lost ship, but the ship herself was lost, and in an action against the specie, the owners of it joined the owners of the vessel under Order XVI. rule 13, and prayed for a declaration that they were liable to contribute towards the amount awarded for life salvage:—Held, that the property salvaged was alone liable. *The Cargo on Sarpedon*, Law Rep. 3 P. D. 28.

(2) *Assignment of shares.*

6.—Sixteen of the crew of the steamship *N.* sued her owners for distribution of salvage. The owners answered that after the date of the salvage services, but before the distribution of the salvage money, fourteen of the plaintiffs had assigned to the defendants for good consideration all their shares:—Held, that the fourteen plaintiffs were nevertheless entitled to sue. *The Rosario*, 46 Law J. Rep. P. D. & A. 52; Law Rep. 2 P. D. 41.

(3) *Pilot when entitled as salvor.*

7.—A smackman who goes on board a vessel to which salvage services may be rendered and pilots her to a port of refuge is entitled to be remunerated as a salvor and not simply as a pilot. *The Anders Knapp*, 48 Law J. Rep. P. D. & A. 53; Law Rep. 4 P. D. 213.

(4) *Steam-tug and life-boat belonging to harbour.*

8.—The Board of Trade as owners of a steam-tug and lifeboat belonging to Ramsgate harbour may sue for an award of salvage in respect of services rendered by the steam-tug and lifeboat. *The Cybele*, 47 Law J. Rep. P. D. & A. 13; affirmed on appeal, 47 Law J. Rep. P. D. & A. 86.

(5) *One steam-tug informing another.*

9.—Where one steam-tug while towing a vessel saw a ship ashore and went out of her way to inform another steam-tug, which thereupon proceeded to the ship and towed her into safety:—Held, that the owners, master and crew of both steam-tugs were entitled to salvage remuneration. *The Sarah*, Law Rep. 3 P. D. 89.

(6) *Appraisalment and apportionment of.*

10.—Out of a crew of about eight men on board the *S.*, the first mate had died, and the master, second mate, and two seamen were ill with yellow fever. The chief mate of the *H.* (which had a crew of only eight men) went on board the *S.* and brought her into port after forty-two days. The value of the property saved was about 5,000*l.* The Court awarded 900*l.*, that is, 600*l.* to the mate, 100*l.* to the owners, 50*l.* to the second mate, and 150*l.* to the crew. *The Skibladner*, 47 Law J. Rep. P. D. & A. 84; Law Rep. 3 P. D. 24.

11.—A ship built on purpose to convey the obelisk known as "Cleopatra's Needle" was, whilst laden with the obelisk, abandoned about ninety miles N.E. of Ferrol, on the coast of Spain. The *F.* discovered her and lay by her for a night; and the next day four of the crew of the *F.* volunteered and went to the ship, and after much difficulty and at considerable risk succeeded in getting the rudder clear and a hawser attached. The *F.* after towing her for fifty-two hours brought her into port. The Court appraised the ship and obelisk at 25,000*l.*, and awarded 2,000*l.*, and apportioned the latter sum as follows, namely, 1,200*l.* to the owners of the *F.*, 250*l.* to her master, and the rest among the officers and crew according to their ratings, as follows, namely, double shares to the chief officer, second engineer and other volunteers, and three shares to the seaman immersed in water while clearing the shackles and tow-line—the rest among the others of the crew. *The Cleopatra*, 47 Law J. Rep. P. D. & A. 72; Law Rep. 3 P. D. 145.

12.—The Admiralty jurisdiction of the County Courts extends to the distribution of salvage, although there has been no original claim for salvage. *The Glannibanta*, 46 Law J. Rep. P. D. & A. 75; Law Rep. 2 P. D. 45.

13.—Where a derelict vessel, valued with cargo at 750*l.*, was saved by meritorious salvage services the Court awarded 360*l.* to the salvors. *The Hebe*, Law Rep. 4 P. D. 217.

14.—Where a derelict vessel, worth 5,000*l.*,

was found in the North Atlantic Ocean, 800 miles from land, in a seriously damaged condition, and was navigated into Queenstown by salvors, who incurred great risk and hardship in rendering the service, the Court awarded 2,300*l.* as salvage reward. *The Craigs*, Law Rep. 5 P. D. 186.

#### (U) SHIP'S HUSBAND: AUTHORITY OF.

A ship's husband, as such, has no authority to bind the shipowner to pay money to the charterer in consideration of the cancellation of the charter-party. *Thomas v. Lewis*, 48 Law J. Rep. Exch. 7; Law Rep. 4 Ex. D. 18.

*Ships' papers, production of.* [See PRODUCTION OF DOCUMENTS, 29, 30.]

#### (V) TOWAGE.

1.—When a contract is entered into to tow a vessel from one point to another for a fixed sum, the tug cannot claim extra remuneration in the nature of payment for towage in respect of a delay which occurs during the transit without any fault on the part of the tug or the tow. *The Hjennett*, 49 Law J. Rep. P. D. & A. 66; Law Rep. 5 P. D. 227.

2.—Salvage suit in respect of services whereby the defendants' vessel, not at the time in actual or imminent probable danger, was safely towed into port:—Held, towage and not salvage services. No tender having been made the amount could not be recovered in a salvage suit. *The Charlotte* (3 W. Rob. 68) approved. *Turnbull v. The Owners of the Strathnaver. The Strathnaver* (P.C.), Law Rep. 1 App. Cas. 58.

3.—A tug which has contracted to tow a ship is not entitled to salvage remuneration for rescuing the ship from danger brought about by the tug's negligent performance of her towage contract. A tug having agreed to tow a ship from Liverpool to the Skerries for a fixed sum, imprudently towed the ship in bad weather too near a lee shore, and, the weather becoming worse during the towage, the hawser parted and the ship was placed in a position of danger and was compelled to let go her anchors to avoid being driven on shore. She was rescued from this position by the tug, having been compelled to slip her anchors and chains, which were lost:—Held (affirming the decision of the Court below), that the tug was not entitled to claim salvage remuneration, and that her owners were liable to pay for the loss of the anchors and chains. *Semble*, if a tug receives positive directions from the ship she is towing as to the course she is to steer, she is bound to obey them; and if the ship gets into danger in consequence of such directions the tug is not liable. *The Robert Dixon* (App.), Law Rep. 5 P. D. 54.

#### (W) WAGES.

1.—A shipmaster who has been habitually drunk during his employment cannot maintain an action for his wages. *The Macleod*, 50 Law J. Rep. P. D. 6; Law Rep. 5 P. D. 254.

2.—The Merchant Shipping Act, 1854, s. 169, enacts that the wife or father of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may sue for and recover the sums allotted from the owner or any agent who has authorised the drawing of the note. *M.* was the registered owner of a ship which he demised by a time charter-party to *H.*, who appointed the master and crew, paid their wages, and had the whole control of the ship. The master gave an allotment note in favour of *W.*, wife of one of the seamen. Several instalments were paid by *H.* upon this note, but he afterwards got into difficulties. *W.* thereupon took proceedings against *M.* under the above section as being the owner:—Held, that having parted with all the control over the ship, and not having been any party to the making of the allotment note, he was not "owner" within the meaning of the section. *Meikleroid v. West*, 45 Law J. Rep. M.C. 91; Law Rep. 1 Q.B. D. 428.

3.—A claim for damages for wrongful dismissal by the master of a vessel engaged under a special wages agreement is a claim for wages within section 3 sub-section 2 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71). *The Blessing*, Law Rep. 3 P.D. 35.

#### SHORTHAND NOTES.

*Costs of.* [See BANKRUPTCY, P 3, 10; COSTS, 98-100.]

#### SIGNBOARD.

*Right to attach, to another's house.* [See EASEMENT, 2.]

#### SIMONY.

*Exchange of livings: agreement not to charge for dilapidations.* [See CHURCH AND CLERGY, 7.]

#### SKATING RINK.

*Keeping, without license for music and dancing.* [See PUBLIC ENTERTAINMENT, 1.]

#### SLANDER.

##### (A) WHEN ACTIONABLE.

(a) *Charge of adultery against trader's wife.*

(b) *Privilege: statement by witness.*

##### (B) COSTS OF ACTION FOR.

##### (A) WHEN ACTIONABLE,

(a) *Charge of adultery against trader's wife.*

1.—A declaration alleged that the plaintiff carried on business as a grocer and draper, and Margaret, his wife, assisted him in and about the conduct and carrying on of the same; and the defendant falsely and maliciously spoke and published of the said Margaret, in relation



to the said business, and her conduct therein, certain words (set out), charging that she had committed adultery with the Rev. J. A., upon the premises where the plaintiff resided and carried on business as aforesaid, whereby the plaintiff was injured in his business; and L. A. N., T. H. and B. H., and many other persons who had theretofore dealt with him, in his business, ceased to deal with him, and he was unable any longer to carry on the same. At the trial the publication of the words to persons in the plaintiff's town was proved, and evidence given of a general loss of custom in the business of the plaintiff attributable only to such publication, but no evidence that any particular customers had ceased to deal with him:—Held, that the declaration shewed a good cause of action, and that general evidence of loss of custom was sufficient to support the allegation of damage, and per Kelly, C.B.—To publish of a trader any statement, the natural consequence of which would be to prevent customers dealing with him, is actionable, if followed by a general loss of custom in consequence of such publication. *Riding v. Smith*, 45 Law J. Rep. Exch. 281; Law Rep. 1 Ex. D. 91.

(b) *Privilege: statement by witness.*

2.—No action will lie for defamatory words spoken by a witness whilst in the course of giving evidence in a judicial proceeding. *Seaman v. Nethercift*, 45 Law J. Rep. C.P. 798; Law Rep. 1 C.P. D. 540; affirmed on appeal, 46 Law J. Rep. C.P. 128; Law Rep. 2 C.P. D. 53.

At a trial in the Probate Court of a cause of D. v. M. as to the validity of a will, N., who was an expert, gave evidence against the genuineness of the testator's signature, to which S. was an attesting witness, and the Judge animated on the presumption of N., in declaring the signature to be in his opinion forged in the face of overwhelming evidence to the contrary. On a subsequent occasion, upon an investigation before a magistrate of a charge of forgery against one E. F., N. gave evidence as an expert in favour of the genuineness of the alleged forgery, and having admitted on cross-examination that he had been a witness in the Probate Court in the case of D. v. M., he was asked whether he had read what the Judge of the Probate Court had said as to his evidence in that case. He said he had, whereupon the cross-examining counsel stopped and sat down. The said N. then said he wished to make a statement as to that case in the Probate Court. The magistrate refused to hear him, but in vain; and N. then stated, "I believe that will to be a rank forgery, and I shall believe so to the day of my death." In an action for slander by S., the attesting witness to the will, against N. for speaking these words,—Held, that the evidence of N. was not over when he spoke these words, and being therefore spoken by him in the course of giving his evidence before the magistrate,

DIGEST, 1875-1880.

they were not actionable, but were absolutely privileged, whether spoken maliciously or not. *Ibid.*

*Of title: adjoining estates.* [See INJUNCTION, 15.]

*Of title: service of writ out of jurisdiction.* [See PRACTICE, BB 11.]

*Of title: patent: threatening legal proceedings.* [See PATENT, 20.]

*Of title: infringement of copyright.* [See COPYRIGHT, 2.]

*Representations by defendants to plaintiffs' employer in good faith in the course of business.* [See COLONIAL LAW, 27.]

(B) COSTS OF ACTION FOR

3.—Where in an action for slander tried by a jury, the plaintiff obtained a verdict with nominal damages, the Judge at the trial refusing to certify for costs,—Held (reversing the decision of the Court of Appeal, 46 Law J. Rep. Exch. 545), that the plaintiff was entitled to his full costs. *Parsons v. Tinsling* (46 Law J. Rep. C.P. 230; Law Rep. 2 C.P. D. 119) approved. *Garnett v. Bradley* (H.L.), 48 Law J. Rep. Exch. 186; Law Rep. 3 App. Cas. 944.

4.—Order LV. provides that, "where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial, for good cause shewn, the Judge before whom such action or issue is tried or the Court shall otherwise order:—"Held, that where no application has been made to the Judge at the trial to deprive a successful plaintiff of his costs, it is nevertheless competent to the defendant to come to the Divisional Court which has jurisdiction, for good cause shewn, to make an order that costs shall not follow the event. But such application to the Court must be made promptly. *Bowey v. Bell*; *Brooks v. Israel*; *North v. Bilton*; *Siddons v. Lawrence*, 48 Law J. Rep. Q.B. 103; Law Rep. 4 Q.B. D. 95; affirmed on appeal. *Myers v. Defries*. *Siddons v. Lawrence* (App.), 48 Law J. Rep. Q.B. 446; Law Rep. 4 Q.B. D. 459.

5.—Section 91 of the Judicature Act, 1873, which provides that "the several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognisable by such Courts," extends Order LV. in the first schedule of the Judicature Act, 1875, to the Liverpool Court of Passage, so that a plaintiff in an action of slander, who has recovered 1s. damages, is entitled to his costs in the absence of any order depriving him of them. *King v. Hawksworth*, 48 Law J. Rep. Q.B. 484; Law Rep. 4 Q.B. D. 371.

SLAVE TRADE.

[The Slave Trade (East African Coasts) Act, 1873, amended. 42 & 43 Vict. c. 38.]

## SMOKE.

[See NUISANCE, 14.]

## SOIL.

*Removal of minerals: rights of lord and copyholder.* [See MINES, 1.]

## SOLICITOR.

## (A) ARTICLED CLERK.

(a) *Service under articles.*(1) *Time of service.*(2) *Clerk managing business during articles.*

## (B) UNCERTIFICATED SOLICITOR.

## (C) AUTHORITY, RIGHTS AND LIABILITIES OF SOLICITOR IN GENERAL.

(a) *Authority to receive money for client.*(b) *Action by solicitor without authority.*(c) *Property of solicitor in letters.*(d) *Liability of solicitor.*(1) *For costs.*(2) *For moneys received for investment and mixed with his own moneys.*(3) *For improper investment.*(4) *For negligence.*(c) *Country solicitor and town agent: interest on disbursements.*(f) *Notice to solicitor.*

## (D) DEALINGS AND AGREEMENTS BETWEEN SOLICITOR AND CLIENT.

(a) *Gift by client to solicitor.*(b) *Purchase by solicitor from client.*(c) *Solicitor lending to client on mortgage.*(d) *Agreement as to solicitor's charges.*(e) *Re-opening settled accounts.*

## (E) SUMMARY JURISDICTION OVER.

## (F) BILL OF COSTS.

(a) *Taxation after twelve months.*(b) *Change of solicitor: payment of costs of old solicitor.*(c) *Joint or several retainers: apportionment of costs.*(d) *General retainer: journeys.*

## (G) LIEN FOR COSTS.

(a) *On documents.*(1) *Solicitor acting for both mortgagor and mortgagee.*(2) *Solicitor employed by trustee in bankruptcy.*(3) *Order for delivery up of papers.*(4) *Clerk to local board.*(5) *Production to trustee in bankruptcy.*(b) *On property deposited with solicitor.*(c) *On property recovered or preserved.*(1) *Nature and extent of lien.*(2) *Procedure to enforce lien.*

[Solicitors may appear as proctors in the provincial Courts of Canterbury and York, 39 & 40 Vict. c. 66.]

[Regulations as to examination of persons applying to be admitted solicitors of the Supreme Court of Judicature in England, and for otherwise amending the law relating to solicitors.

Exemption of certain barristers from intermediate examination. 40 & 41 Vict. c. 25.]

[Amendment of the law relating to legal practitioners. 40 & 41 Vict. c. 62.]

## (A) ARTICLED CLERK.

(a) *Service under articles.*(1) *Time of service.*

1.—Where a clerk who had articulated himself for three years was absent by reason of illness for sixteen months, and afterwards served thirteen months,—Held, that he could not be examined, and must enter into fresh articles for six months. *Ex parte Digby*, 45 Law J. Rep. Chanc. 692.

2.—An articulated clerk must not only be bound for five years and serve five years, but the service itself must be under written articles. *Ex parte Adams*, 46 Law J. Rep. Chanc. 42; Law Rep. 4 Ch. D. 39.

A clerk was articulated in September, 1870, for five years, and served up to October, 1873, when he was assigned to another solicitor for fifteen months. At the expiration of that period he returned to his first master, and served him under the original articles until the expiration of the five years in September, 1875. It having been decided that the fifteen months could not be counted, the clerk continued to serve his first master under a parol contract of service until November, 1876, when he applied to be admitted to the final examination:—Held, that he might be examined, but that he must enter into fresh articles for a period of fifteen months before he could be admitted. *Ibid.*

3.—A clerk was articulated to his father in April, 1872, for the term of five years, and attended the office regularly for that time, but from Michaelmas, 1875, to Michaelmas, 1876, his father was absent from ill health, and business was practically suspended, although the office remained open:—Held, that the clerk might be allowed to go in for his final examination in April, 1877, but must enter into fresh articles for a year and serve under them before he could be admitted. *Ex parte Fordey*, 46 Law J. Rep. Chanc. 504.

4.—W. was articulated to R. in 1861 for five years, and served under these articles one year, eleven months and eight days, when, with R.'s consent, the articles were considered as cancelled, and W. entered a merchant's office, where he remained for eight months. In 1865 W. was re-articled to R. for three years and twenty-three days, and served under these articles two years and twelve days, when he left R.'s service through ill-health. In 1869 R. assigned and re-articled W. to L. for one year and twelve days, which period W. served, making a total service of five years under the three articles:—Held, on an application by W., that the three periods of service might be reckoned as continuous service for five years, that the first and second articles had been cancelled by mutual consent within

6 & 7 Vict. c. 73. s. 13, and that the application might be granted. *Ex parte Williamson*, 46 Law J. Rep. Chanc. 624; Law Rep. 4 Ch. D. 581.

(2) *Clerk managing business during articles.*

5.—A clerk, having a connection of his own, derived from a former master, articulated himself to a solicitor, and managed the business introduced by him under an arrangement with the solicitor that the clerk should draw 150*l.* a year out of the profits, and the rest be retained to form the solicitor's share of the capital of a partnership which was to be entered into between them upon the clerk's becoming admitted. On an application by the clerk to be admitted to the final examination,—Held, that he had so far complied with the requirements of the statute as to service, as to be entitled to present himself for examination. *Ex parte Joyce*, 46 Law J. Rep. Chanc. 295; Law Rep. 4 Ch. D. 596.

(B) UNCERTIFICATED SOLICITOR.

6.—By the 12th section of 37 & 38 Vict. c. 68, "no costs . . . or disbursements on account of or in relation to any act or proceeding done or taken by any person who acts as an attorney or solicitor without being duly qualified so to act, shall be recoverable in any action, suit or matter, by any person or persons whomsoever." Where the solicitor acting for a claimant in an arbitration for the assessment of compensation for land compulsorily taken under the Lands Clauses Act had omitted to take out his certificate,—Held, that the client as well as the solicitor was precluded by section 12 of 37 & 38 Vict. c. 68 (The Attorneys and Solicitors Act, 1874), from recovering his costs, notwithstanding that the award had been in his favour, and he had been ignorant of the disqualification of his solicitor. *Fowler v. The Monmouthshire Railway and Canal Company*, 48 Law J. Rep. Q.B. 457; Law Rep. 4 Q.B. D. 334.

(C) AUTHORITY, RIGHTS AND LIABILITIES IN GENERAL.

(a) *Authority to receive money for client.*

7.—A solicitor induced an intending mortgagor who owed him 100*l.* to execute a mortgage to A. for 400*l.* without receiving the money, and afterwards handed the deed to A. to secure a previous advance by A. to himself of 300*l.* The remaining 100*l.* was paid by A. on behalf of the mortgagor.—Held, that the possession by the solicitor of the deed executed by the mortgagor gave him no authority to receive the 300*l.*, and that, as to that sum, the mortgage was invalid and must be cancelled. *Ex parte Swinbanks*; *In re Shanks* (App.), Law Rep. 11 Ch. D. 525.

(b) *Action by solicitor without authority.*

8.—When a solicitor has instituted proceedings in the name of his client without his authority, and an application is made by the

plaintiff for an order to make him pay the costs, the practice formerly prevailing at common law will, for the future, be adopted in preference to the old Chancery practice. Notice of the application will be served on the defendant, and the solicitor will be ordered to pay the costs, not only of the plaintiff but also of the defendant, the costs of the plaintiff as between solicitor and client, and those of the defendant as between party and party. *Newbiggin-by-the-Sea Gas Company v. Armstrong* (App.), 49 Law J. Rep. Chanc. 231; Law Rep. 13 Ch. D. 810.

9.—The proper form of order where an action is instituted by solicitors without authority is to direct the solicitors to pay all the costs occasioned by their commencing the action without such authority; those of the plaintiff as between solicitor and client, and those of the defendant as between party and party. In such a case the defendants are not entitled to any order upon the plaintiffs to pay their costs, or to any indemnity from them against the same; but on motion to dismiss, the solicitors will be ordered to pay the defendant's costs of the action. Where solicitors had joined A. as the plaintiff, upon the instructions of B., another plaintiff, who had, in fact, no authority for that purpose, and who was since dead, and where the solicitors had been ordered to pay A.'s and the defendant's costs of the action,—Held, that the solicitors would be entitled to prove against the estate of B. for all the costs so ordered to be paid by them. *Nurse v. Durnford*, 49 Law J. Rep. Chanc. 229; Law Rep. 13 Ch. D. 764.

[And see PRACTICE, V 7.]

(c) *Property of solicitor in letters.*

10.—Letters received by a solicitor from his client and copies of letters addressed by a solicitor to his client are the property of the solicitor. *In re Wheatcroft*, 46 Law J. Rep. Chanc. 669; Law Rep. 6 Ch. D. 97.

(d) *Liability of solicitor.*

(1) *For costs.*

11.—In the absence of fraud the Court has no jurisdiction to order a solicitor who has made a mistake in the preparation of a document to pay the costs of a suit for its rectification. *Clark v. Girdwood* (App.), 47 Law J. Rep. Chanc. 116; Law Rep. 7 Ch. D. 9.

[And see Nos. 8, 9 supra.]

(2) *For moneys received for investment and mixed with his own moneys.*

12.—A solicitor having received money to invest for a client upon mortgage of a particular property, represented in writing to the client that the money was all invested as arranged, and paid him interest as on the mortgage. After the solicitor's death it was discovered that the solicitor had not effected the mortgage, but had mixed the money with

his own, and had invested a larger sum, purporting to be his own money, upon mortgage of the identical property. In a creditor's suit for the administration of the insolvent estate of the solicitor,—Held, under the circumstances, that the solicitor's estate was bound by the representation, and that the client's money was repayable out of the proceeds of sale of the mortgaged estate. *Middleton v. Pollock; ex parte Wetherall*, 46 Law J. Rep. Chanc. 39; Law Rep. 4 Ch. D. 49.

(3) *For improper investment.*

13.—A solicitor invested money of a client on an improper security (a fourth mortgage). It being supposed that the security was worthless, and the solicitor having absconded, the client received a composition of 5s. in the pound from the estate of a deceased partner of the solicitor, under a general scheme of compromise between the executors and creditors of such deceased partner. The mortgaged estate having subsequently proved sufficient to pay the fourth mortgage,—Held, that the amount received under the composition must be repaid to the partner's estate, and did not enure to the benefit of subsequent incumbrances on the mortgaged property. *Sawyer v. Goodwin* (App.), 45 Law J. Rep. Chanc. 289; Law Rep. 1 Ch. D. 351.

(4) *For negligence.*

14.—The plaintiff agreed to make an advance to F. on mortgage of certain land. The defendant, who acted as the plaintiff's solicitor, omitted to ascertain that a third person held an equitable charge upon the land. On the sale of the land the plaintiff was unable to convey without paying off the equitable mortgage:—Held, that the defendant was liable for negligence to the amount which the plaintiff was called upon to pay. *Whitman v. Hawkins*, Law Rep. 4 C.P. D. 13.

(c) *Country solicitor and town agent: interest on disbursements.*

15.—Notwithstanding the definition of the word "client" in section 3 of the Attorneys and Solicitors Act, 1870, that Act does not apply to accounts between country solicitors and town agents. The Act is not retrospective, and therefore interest cannot be allowed under section 17 on disbursements made prior to the passing of the Act. *Ward v. Eyre* (App.), 49 Law J. Rep. Chanc. 657; Law Rep. 15 Ch. D. 130.

Quære, whether a statement of claim or defence, averring a sum certain to be due and claiming interest, is, when delivered, a sufficient demand of payment and notice claiming interest within 3 & 4 Will. 4. c. 42. s. 28. *Ibid.*

(f) *Notice to solicitor.*

16.—A solicitor was party to the investment of funds held by him on trust in real estate,

which afterwards was mortgaged under circumstances which shewed a fraudulent design to which he was party, embracing the whole transactions:—Held, that though he acted as solicitor to the mortgagee, the latter was not affected with notice of the breach of trust, and, having the legal estate, had priority over the lien of the beneficiaries; but subsequent equitable mortgages were postponed to that lien. *Chaplin v. Case; Case v. Case*, 49 Law J. Rep. Chanc. 505; Law Rep. 15 Ch. D. 639.

*Notice to solicitor: not notice to trustees.* [See MORTGAGE, 24, 26.]

*Notice to solicitor: subsequent registration.* [See MORTGAGE, 30.]

*Attachment against solicitor.* [See ATTACHMENT, 15, 17; TRUST, D 4.]

*Default in payment of money into Court: Debtors Act: discharge from custody.* [See FALSE IMPRISONMENT, 2.]

*Duty of solicitor attesting bill of sale.* [See BILL OF SALE, 32.]

*Set-off not interfered with by lien.* [See SET-OFF, 1.]

(D) DEALINGS AND AGREEMENTS BETWEEN SOLICITOR AND CLIENT.

(a) *Gift from client to solicitor.*

17.—Gifts *inter vivos* from client to solicitor held void, although an instrument confirming them was prepared by an independent solicitor. *Morgan v. Minett*, Law Rep. 6 Ch. D. 638.

In order that such gifts should stand, there must be not only a total absence of fraud or suspicious circumstances, but there must be a severance of the confidential relation. *Ibid.*

(b) *Purchase by solicitor from client.*

18.—By advice of W., a Scotch advocate, trustees who were about to sell trust property did not advertise it, W. promising to find a purchaser. The brother of W. offered a sum for the property, which was accepted. The sale, though ostensibly to the brother, was by agreement between the brothers, in reality a sale to W., but the vendors were ignorant of this. In an action to set aside the sale,—Held, that W., being employed in the same capacity as a solicitor elsewhere, and acting as agent for the vendors, could not become a purchaser from them without their knowledge and consent. *McPherson v. Watt* (H.L. Sc.), Law Rep. 3 App. Cas. 254.

(c) *Solicitor lending to client on mortgage.*

19.—A solicitor who advances money to his client on mortgage has no lien on the mortgage deed, against a prior or subsequent mortgagee, for costs due from the client. *Sheffield v. Eden* (App.), Law Rep. 10 Ch. D. 291.

(d) *Agreement as to solicitor's charges.*

20.—To constitute an agreement as to costs between a solicitor and his client within the meaning of section 4 of the Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), the document must be signed by both parties. *Ex parte Munro*; *in re Lewis*, 45 Law J. Rep. Q.B. 816; Law Rep. 1 Q.B. D. 724.

21.—A solicitor made an agreement in writing with some clients to assert their title to certain property for a percentage of ten per cent. on the net value of the property which might be so recovered, with a proviso that in the event of no property being recovered, beyond a certain legacy of 5,000*l.*, the solicitor should receive his costs out of pocket only. Before taking any step to recover the property, the agreement was submitted to the taxing master, who required the opinion of the Court to be taken thereon.—Held, that the taxing master could not require the opinion of the Court to be taken on the agreement inasmuch as nothing had become payable under it. *In re The Attorneys and Solicitors Act*, 1870, 45 Law J. Rep. Chanc. 47; Law Rep. 1 Ch. D. 573.

Semble, the agreement was invalid under section 11 of the Attorneys and Solicitors Act, 1870. *Ibid.*

(e) *Re-opening settled accounts.*

22.—W., a lady advanced in life, employed R., a solicitor, to represent her interests in two suits. R. was also solicitor for all the other parties in both suits. The suits were compromised, and a deed was executed by which, amongst other things, W. covenanted with all the other parties to the two suits to pay all their costs in both suits. An account was then drawn up and settled between W. and R., in and by which all these costs were included and paid. Two years afterwards W. brought an action against R. to have the settled accounts re-opened, and the bills of costs referred to taxation.—Held (affirming the decision of Malins, V.C., 47 Law J. Rep. Chanc. 418; Law Rep. 7 Ch. D. 625), that W. was entitled to relief on the ground—first, of undue influence; secondly, that many of the charges were exorbitant, and much of the business charged for was unnecessary and improper. Held, further, that as W. had no independent professional advice when she agreed to the compromise, R. had no equity against her for payment of the costs of all his other clients, parties to the suits. *Watson v. Rodwell* (App.), 48 Law J. Rep. Chanc. 209; Law Rep. 11 Ch. D. 150.

The admission of documents as evidence in an action does not make them evidence in the action unless they are read or put in and marked by the registrar at the trial. *Ibid.*

23.—A solicitor made advances to clients to carry out speculations; he took mortgages from them on accounts signed, which included professional charges of which bills of costs had not been delivered. He submitted to allow for

certain mistakes of amount. In a foreclosure suit the mortgagors, without cross-bill, were allowed to re-open the accounts. *Eyre v. Hughes*, 45 Law J. Rep. Chanc. 395; Law Rep. 2 Ch. D. 148.

Some of the advances had been made on bills of exchange at a heavy discount. The amount of discount was disallowed. *Ibid.*

The mortgages contained power to charge for management on entry. Such charges were disallowed. *Ibid.*

Semble, the relief that a defendant could formerly obtain on cross-bill will be given on a claim contained in an answer filed before November, 1875. *Ibid.*

*Attesting bill of sale: duty of.* [See BILL OF SALE, 32.]

*Libel: privilege: fair report by solicitor of proceedings in a Court of justice.* [See LIBEL, 9.]

## (E) SUMMARY JURISDICTION OVER.

24.—An application for the Court to exercise its jurisdiction over a solicitor on account of conduct disclosed in an action may be made in the action, and therefore is a further proceeding within Order LL rule 1 (a). *Cave v. Cave*; *in re Cave* (No. 2), 49 Law J. Rep. Chanc. 656; Law Rep. 15 Ch. D. 639.

*Service on, of notice of motion for attachment.* [See ATTACHMENT, 15, 17.]

## (F) BILL OF COSTS.

(a) *Taxation after twelve months.*

25.—The old rule of Common Law that the retainer of a solicitor for a particular business is a retainer for the purpose of carrying through that business to a conclusion, and that until such conclusion he has no cause of action against his client, is founded on the principle of entirety of contract, and is not to be extended to the case where a solicitor undertakes a business of a complicated nature, e.g. the administration of an estate; in such case the solicitor's bill of costs for carrying such business through is not necessarily to be treated as one bill. *In re Hall*, 47 Law J. Rep. Chanc. 621; Law Rep. 9 Ch. D. 538 (*nom.* *In re Hall and Barker*).

*Taxation after payment.* [See COSTS, 78, 79.]

(b) *Change of solicitor: payment of costs of old solicitor.*

26.—An order for changing a solicitor in an action is not to be conditional on payment of the costs of the original solicitor, unless under exceptional circumstances, as the rule in Equity before the Judicature Act, 1873, did not require such payment as a condition precedent to the change, and now, in accordance with section 25, sub-section 11 of the Judicature Act, 1873, the rule in Equity must prevail. *Grant v. Holland*; *in re Norton*, 47 Law J. Rep. C.P. 518; Law Rep. 3 C.P. D. 180.

(o) *Joint or several retainers: apportionment of costs.*

27.—A suit was brought against a company, the secretary and seven directors, to set aside a contract to take shares, and for an indemnity from the directors personally. The nine defendants appeared by one solicitor and made a joint defence. During the progress of the suit the solicitor obtained three similar written retainers, signed respectively by five, one and three of the defendants, as follows: "You having up to the present time alone conducted the defence of the present suit on behalf of all the defendants, and in pursuance of their instructions, we, the undersigned, do hereby confirm such instructions, and request you to continue such defence." The solicitor having obtained an order to tax his costs as between solicitor and client against the company alone, the taxing master made his certificate on the view that the company was only liable for one-ninth of the costs:—Held, that the taxing master had proceeded on a right principle, and that on these retainers the company was only liable for its proportion of the costs. *In re Allen. Davies v. Chatwood*, 48 Law J. Rep. Chanc. 358; Law Rep. 11 Ch. D. 244.

(d) *General retainer: journeys.*

28.—Although a general retainer does not authorise a solicitor to take long journeys on his client's business without special instructions, his costs and expenses of such journeys will be allowed on taxation if his client has ratified them, and adopted and acted on the results of such journeys. The decision of the Master of the Rolls reversed on appeal. *In re Snell* (App.), Law Rep. 5 Ch. D. 815.

(G) LIEN FOR COSTS.

(a) *On documents.*

(1) *Solicitor acting for both mortgagor and mortgagee.*

29.—On a mortgage of property the same solicitor acted both for mortgagor and mortgagee. At the time of the mortgage the solicitor had a lien on the deeds against the mortgagor for costs and charges. Being also solicitor to the mortgagee, he, on the completion of the mortgage, continued to hold the deeds. The mortgagor filed a petition for liquidation, and a trustee was appointed, and the same solicitor acted for the trustee. The property was sold, subject to the mortgage, and the solicitor received the price for the equity of redemption. In an account between the solicitor and the trustee, the solicitor deducted the amount due to him from the debtor, on the ground that he had a lien on the deeds as security:—Held (reversing the order of the County Court Judge), that the solicitor had a lien on the deeds for the amount due to him. *Ex parte Calvert; in re Messenger*, 45 Law J. Rep. Bankr. 134; Law Rep. 3 Ch. D. 317.

30.—A solicitor acting for mortgagee as well as mortgagor loses his lien for previous costs on the title deeds of the mortgagor comprised in the security. *In re Snell*, 46 Law J. Rep. Chanc. 627; Law Rep. 6 Ch. D. 106.

31.—Where the same solicitor acts for both parties in a mortgage transaction, his duty towards the mortgagee to procure him a good security prevents the solicitor, in the absence of express agreement, from claiming against the mortgagee a lien for his charges upon the mortgage deed and title deeds. *In re Mason and Taylor*, 48 Law J. Rep. Chanc. 193; Law Rep. 10 Ch. D. 729.

The same solicitors having acted for both parties in the preparation of a trust deed to secure debentures upon the property of a company,—Held, that under the circumstances, the trustees of the deed, though clients of the solicitors, were not liable for the costs of the transaction, and that the solicitors could not withhold the deed from them upon a claim of lien. *Ibid.*

(2) *Solicitor employed by trustee in bankruptcy.*

32.—A solicitor employed by a trustee in bankruptcy has a lien for his costs upon all papers in his possession upon which he has expended his own labour or money, and there is no obligation upon the trustee upon being removed from his office to discharge that lien in order to enable him to comply with the 294th rule of 1870. *In re Austen; ex parte Yalden* (App.), 46 Law J. Rep. Bankr. 59; Law Rep. 4 Ch. D. 129.

(3) *Order for delivery up of papers.*

33.—On the 10th of November a solicitor delivered a bill, comprising the costs of pending actions up to that date. On the 5th of December, when further costs had been incurred to the client's knowledge, the client obtained the common order to tax the delivered bill, directing the solicitor, on payment, &c., to deliver up all papers, &c., belonging to the client. On the 15th of December the solicitor (who had been discharged by the client) delivered a second bill, and now moved to discharge the order to tax the first bill as irregular. The Court, holding that the order was irregular, in directing the solicitor to deliver up the client's papers where further costs had been incurred, amended it by making it include both bills. The proper order in such a case would be a simple order to tax, without any order to deliver up papers. *In re Teague* (11 Beav. 318) overruled. *Ex parte Jarman*, 46 Law J. Rep. Chanc. 485; Law Rep. 4 Ch. D. 835.

(4) *Clerk to local board.*

34.—A solicitor had been appointed clerk to a local board with a salary for conducting the legal as well as the ordinary business of the board. On an interlocutory motion in an action for *mandamus* to compel production of papers,

—Held, by Bacon, V.C., that whatever claim the clerk might have against the board for costs, he could not, being their servant, refuse production of legal documents claimed by them. But held, on appeal, that as an order for production would prejudice the clerk's lien it could not be made before trial without payment into Court of a sufficient sum to meet the amount claimed by the clerk. *Newington Local Board v. Eldridge* (App.), Law Rep. 12 Ch. D. 349.

(5) *Production to trustee in bankruptcy.*

35.—A solicitor is not entitled on the ground of his lien on documents of a bankrupt in respect of professional services before the bankruptcy, to refuse to produce such documents for examination by the trustee. *In re Toleman and England; ex parte Bramble*, Law Rep. 13 Ch. D. 885.

(b) *On property deposited with solicitor.*

36.—H. having employed the defendant, a solicitor, to take proceedings in respect of certain shares of which H. was holder, deposited with the defendant the certificates of such shares as security for the costs. H. afterwards transferred to the plaintiffs his interest in the shares, with notice of the lien of the defendant, and the defendant accepted the retainer of the plaintiffs to continue the proceedings, and the defendant obtained certain cheques in exchange for the shares which the plaintiffs claimed to have delivered to them:—Held, that the defendant was entitled to retain these cheques as security for his costs due from H., notwithstanding that he had accepted a retainer from the plaintiffs. *The General Share and Trust Company (Lim.) v. Chapman*, 46 Law J. Rep. C.P. 79; Law Rep. 1 C.P. D. 771.

(c) *On property recovered or preserved.*

(1) *Nature and extent of lien.*

37.—In composition proceedings no trustee was appointed, but the amount of the composition was paid to the debtor's solicitor for distribution:—Held, that he had constituted himself a trustee for the creditors and had no lien on the funds in his hands for the costs due to him from the debtor, who had absconded. *Ex parte Newland; in re Clark*, Law Rep. 4 Ch. D. 515.

38.—The plaintiffs in a suit, by a deed, charged funds, which were part of the funds sought to be recovered in the suit, with payment to the defendants of 1,200l. This deed was executed by them under the advice of the solicitor who acted for them in the suit, but nothing was then said about the solicitor's costs of the suit. Subsequently the plaintiffs changed their solicitor. The former solicitor then petitioned for a charging order on the funds recovered or preserved in the suit:—Held (affirming the decision of the Master of the Rolls), that the solicitor was entitled to such charging order, and held (reversing the decision of the Master of the Rolls), that such charge took

priority of the charge given to the defendants by the deed. *Faithful v. Ewen* (App.), 47 Law J. Rep. Chanc. 457; Law Rep. 7 Ch. D. 495.

39.—A partnership suit having been compromised upon the terms (*inter alia*) of the plaintiff taking the assets, and covenanting to pay thereout and to the extent thereof the costs of the suit, &c., and the defendant covenanting, so soon as the above liabilities had been discharged, to pay in a certain event a sum of money to the plaintiff, by an order in the suit the compromise was confirmed, and the plaintiff was ordered to pay the costs as covenanted out of assets to be received by him. An account was afterwards settled between the parties, which shewed assets in excess of liabilities including the costs; but the plaintiff, afterwards alleging that the moneys had become payable under the defendant's covenant, claimed to set them off against the defendant's costs. Upon an application by the defendant and his solicitor for an order for payment of his costs,—Held, that, apart from other considerations, the solicitor intervening had such a lien on the defendant's costs payable under the order as precluded the set off. *Heiron v. Hobson*, 47 Law J. Rep. Chanc. 574.

40.—In a suit for the administration of a testator's estate, an order was made for the taxation of the costs and payment to the plaintiff's solicitor personally of the plaintiff's costs out of a fund set apart for that purpose. The plaintiff sold his life interest in the estate with the knowledge of his solicitor, who did not then raise any claim upon it for his costs. The plaintiff subsequently, and before any of the costs were taxed, changed his solicitor. The solicitor then took out a summons for a charging order, under 23 & 24 Vict. c. 127. s. 28, upon the plaintiff's interest in the funds in Court. It appeared that it was not the practice for the taxing masters to give a warrant for taxation to any solicitor not acting for a party to the cause:—Held, that the solicitor was entitled to a charging order, with liberty to apply to the Judge as to enforcing it by sale or otherwise. *Pilcher v. Arden. In re Brook* (App.), 47 Law J. Rep. Chanc. 479; Law Rep. 7 Ch. D. 818.

41.—B., a trustee, seised of real estate in trust for sale and division of the proceeds among five persons, of whom he was himself one, purchased from E., one of the other persons beneficially entitled, her one-fifth share. E. afterwards having discovered facts which she considered entitled her to the beneficial interest in the whole estate filed her bill in equity against B., seeking to set aside the sale and claiming the whole beneficial interest, but the bill was dismissed with costs:—Held (affirming the decision of Bacon, V.C.), that the solicitors employed by B. to defend the suit were entitled to a charge for their costs upon the whole estate and not merely upon the share to which B. was beneficially entitled. *Bulley v. Bulley* (App.), 47 Law J. Rep. Chanc. 841; Law Rep. 8 Ch. D. 47.

42.—The costs of a partnership action which has been occasioned by no fault on either side should be ordered to be paid out of the partnership assets following the ordinary rule in administration actions; but where the action has been rendered necessary by the misconduct of either party the Court has jurisdiction and should order that party to pay the costs occasioned by his misconduct. On the 4th of December, 1878, the solicitors of G. obtained after service on him an order on summons, charging all sums in the hands of H. and payable to G. on taking the partnership accounts, with their costs, charges and expenses of or in reference to two actions instituted to obtain a dissolution of the partnership between H. & G. and to take the partnership accounts. The order made in the actions was forthwith served on H. It was not intitled in the matter of the Attorneys and Solicitors Act, 1860, or in the matter of the solicitors themselves. On the 5th of December, a garnishee order *nisi*, under Order XLV. rule 2, was served on H., attaching all moneys in his hands then due or thereafter to become due to G. As the result of taking the partnership accounts a sum was found due to G. which was in H.'s hands:—Held, that—independently of the Attorneys and Solicitors Act, 1860—G.'s solicitors had a lien on the property recovered by them in the actions belonging to G., enforceable by an order in the actions, and that such lien could not be displaced by any equitable charge given by G. Held also, that until service the garnishee order *nisi* did not bind the moneys in the hands of H. That at the date of the service of the order no debt was due by H. to G., and that inasmuch as the charging order had been first served, G.'s solicitors had thereby obtained priority. *Hamer v. Giles*, *Giles v. Hamer*, 48 Law J. Rep. Chanc. 508; Law Rep. 11 Ch. D. 942.

A charging order under section 28 of the Attorneys and Solicitors Act, 1860, may be obtained on summons as well as by petition, and need not be intitled in the matter of the Act, or in the matter of the solicitors. It is sufficient if such order is intitled in the action or proceeding in which the property is "recovered or preserved." *Ibid*.

43.—The plaintiffs were the solicitors for W. in an action in which he recovered a sum of money. The defendant was a judgment creditor of W., and obtained *ex parte*, on the day that judgment was signed in the above action, a garnishee order attaching all debts due to W. On the taxation of costs on the same day the plaintiffs for the first time learned of the defendant's claim, and then gave notice to the defendant in the action in which W. was the plaintiff, of their claim of lien, and within five days applied for an order declaring that they were entitled to a charge on the money recovered by W.:—Held (affirming the decision of the Common Pleas Division), that the plaintiffs had a lien for their costs on the sum recovered by W.; that they were entitled to the

order sought for; and that the garnishee order obtained by the defendant did not take priority over that lien. *Shippey v. Grey* (App.), 49 Law J. Rep. C.P. 524.

44.—The administrator and son of an intestate sued his brother and sister in detinue for goods of the intestate, and recovered judgment, but was unable to levy. The brother and sister brought an action in the County Court for administration, and brought into Court the proceeds of the intestate's goods. The solicitor of the administrator recovered judgment for his professional services in both the above actions in an action against the administrator in the Common Pleas at Lancaster, and this judgment not being satisfied, he applied to the High Court for a charging order under 23 & 24 Vict. c. 127. s. 28, on the property in the County Court:—Held, that the application was rightly made. *Catlow v. Catlow*, Law Rep. 2 C.P. D. 362.

45.—A London solicitor acting as agent for a country solicitor has a general lien against any money recovered in an action for all costs for agency business and disbursements due from the country solicitor, whether in the particular action or in any other proceeding; but as between the town agent and the client the lien of the town agent extends only to the costs of the particular action in which he is employed. *Lawrence v. Fletcher*, Law Rep. 12 Ch. D. 858.

## (2) Procedure to enforce lien.

46.—An application by a solicitor, under the Solicitors Act, 1860, s. 28, to enforce a charge for costs on property preserved or recovered may properly be made by petition. No one but the party whose property is sought to be charged ought to be served. *Brown v. Trotman*, 48 Law J. Rep. Chanc. 862; Law Rep. 12 Ch. D. 880.

47.—Upon a petition by a solicitor for a charging order under 23 & 24 Vict. c. 127. s. 28, upon property preserved in an action instituted in the Chancery Division in the Liverpool District Registry, and attached to the Court of the Vice-Chancellor Hall, but which had been tried by a Judge and jury at Liverpool,—Held, that the Judge before whom the action had been tried, and who had dealt with the substantial question in the case, was the Judge to whom the application ought to be made. *Owen v. Henshaw*, 47 Law J. Rep. Chanc. 267; Law Rep. 7 Ch. D. 385.

48.—An order declaring a solicitor entitled to a charge for his costs under the Solicitors Act (23 & 24 Vict. c. 127. s. 28) on a judgment recovered in an action which he was employed to prosecute, must not be made by any other Judge than the Judge who tried the action. *Higgs v. Schrader*, 47 Law J. Rep. C.P. 426; Law Rep. 3 C.P. D. 252.

*Lien on wife's alimony.* [See DIVORCE, 26.]

*Set off of debt against costs.* [See SET OFF, 1, 2.]



## SOUTH AFRICA.

[Provisions for union of South African Colonies under one Government. 40 & 41 Vict. c. 47.]

## SOUTH AUSTRALIA.

[See COLONIAL LAW, 43, 44.]

## SOUTHLAND WASTE LANDS ACT.

[See COLONIAL LAW, 36, 37.]

## SPECIAL CASE.

[See ARBITRATION, 17; PRACTICE, DD 1, 2, HH 7.]

*By arbitrator under Lands Clauses Act: right of appeal.* [See PRACTICE DD 2.]

## SPECIAL EXAMINER.

*Attendance of witness.* [See COMPANY, H 91.]

*Taking down depositions.* [See WAY, 1.]

## SPECIAL REFEREE.

[See PRACTICE, Y 7.]

## SPECIALTY DEBT.

*Deed: recital acknowledging debt.* [See DEED, 2.]

*Rent.* 32 & 33 Vict. c. 46. [See ADMINISTRATION, 9.]

## SPECIFIC APPROPRIATION.

*Consignments, of proceeds of sale of, to meet bills.* [See BILL OF EXCHANGE, 20-26.]

## SPECIFIC BEQUEST.

[See LEGACY, 9-22; WILL, CONSTRUCTION, F.]

## SPECIFIC PERFORMANCE.

(A) WHAT AGREEMENTS WILL AND WILL NOT BE SPECIFICALLY ENFORCED.

(a) *Agreement for lease.*

(1) *Uncertainty.*

(2) *Subject to preparation of formal contract.*

(3) *Provided terms of draft lease are reasonable.*

(4) *Lease of minerals: failure of subject-matter.*

(5) *Property in fact held by under-lease.*

(b) *Agreement for sale.*

(1) *Uncertainty.*

(i) *Legal interest in one-third and beneficial interest in one-fifth.*

(ii) *As to subject-matter.*

DIGEST, 1875-1880.

(2) *Subject to approval of solicitor.*

(3) *Contract by correspondence.*

(c) *Part performance: parol promise on marriage.*

(d) *Variation and discrepancy.*

(e) *Mistake.*

(f) *Delay and acquiescence.*

(B) OBJECTIONS TO TITLE: WAIVER OF OBJECTIONS.

(C) RIGHT TO SPECIFIC PERFORMANCE WITH COMPENSATION.

(D) PRACTICE IN ACTIONS FOR.

(a) *Making auctioneer party.*

(b) *Interrogatories: sale to trustee: notice of breach of trust.*

(c) *Inquiry as to title.*

(d) *Costs: notice to make time of the essence of the contract.*

(e) *Vendor's lien: future instalments.*

(A) WHAT AGREEMENTS WILL AND WILL NOT BE SPECIFICALLY ENFORCED.

(a) *Agreement for lease.*

(1) *Uncertainty.*

1.—By an agreement in writing made in 1839, S., who was entitled to a leasehold house for a term, expiring in 1898, agreed to let the house to the plaintiff at 26l. yearly rent; and to let the plaintiff have a lease at the same rent "at any period he may feel disposed," and "not to molest, disturb or raise the rent" of the plaintiff "after his having laid out money in improving the premises." The plaintiff remained in possession under the agreement until 1876, having expended about 150l. in improvements. In 1876, being threatened with an action of ejectment by the legal personal representative of S., who had died, he commenced an action for specific performance of the agreement, and there being no statement of defence or counter-claim, asked at the bar for a declaration that he was entitled to a lease for the unexpired residue of the defendant's term, less one day:—Held (by Bacon, V.C.), that the plaintiff was entitled to the declaration asked for. Held (on appeal), that he was entitled only to a lease for his life, that is to say, a lease for 99 years, less one day, if he should so long live. *Kusel v. Watson*, 47 Law J. Rep. Chanc. 825; on appeal 48 Law J. Rep. Chanc. 413; Law Rep. 11 Ch. D. 129.

2.—An agreement to let for a term did not specify the date of the commencement of the term:—Held, that there was a valid agreement to let for a term commencing on the date which the agreement bore. *Jagues v. Millar*, 47 Law J. Rep. Chanc. 554; Law Rep. 6 Ch. D. 153.

(2) *Subject to preparation of formal contract.*

3.—An agreement in writing to take a lease of a house for a certain term at a certain rent contained a stipulation, "This agreement is made subject to the preparation and approval

of a formal contract:—Held, that there was no agreement of which the Court could decree specific performance against the defendant. *Winn v. Bull*, 47 Law J. Rep. Chanc. 139; Law Rep. 7 Ch. D. 29.

(3) *Provided terms of draft lease are reasonable.*

4.—The defendants by letter agreed to take on lease property on terms mentioned, "provided the terms of the draft lease are reasonable in our estimation:—Held, that some terms of the draft lease sent being unreasonable, the defendants were at liberty to decline the contract, without specifying to which particular terms they objected; and an action for performance by the lessor, in which he offered to withdraw certain terms mentioned in the defendants' pleadings as unreasonable, was dismissed. The plaintiff, answering the above letter, said that the terms of the lease would be of the usual character of such letting. The defendants in replying did not notice this; but said, "We do not wish it to be known that we have taken property on lease:—Held, that the defendants had not accepted the terms as altered by the plaintiff, nor bound themselves by admission to any agreement beyond that contained in their first letter. *Hussey v. Payne* (48 Law J. Rep. Chanc. 352; Law Rep. 4 App. Cas. 311) distinguished. *Wilcox v. Redhead*, 49 Law J. Rep. Chanc. 539.

(4) *Lease of minerals: failure of subject-matter.*

5.—The plaintiff agreed to let to the defendants the vein of coal called the Shenkin vein, and being about two feet thick, with the beds of clay on and under the farm called Liwyndu, such veins and beds being contiguous or in juxtaposition, for sixty years, at the yearly rental of 100*l.*, as certain or dead-rent, with certain royalties, the lessees to have the surface land therein specified at 10*l.* per acre for the same term, to expend not less than 500*l.* in the erection of buildings for the purpose of working the coal and clay, and to have the option of determining the lease at the end of the first three years:—Held, in an action for specific performance, that the contract did not import any warranty by the lessor that the Shenkin vein existed under the land, and that the defendants, having liberty to search for and get minerals within the terms of the contract, were bound by it. *Jeffreys v. Fairs*, 46 Law J. Rep. Chanc. 113; Law Rep. 4 Ch. D. 448.

(5) *Property in fact held by under-lease.*

6.—Although, *prima facie*, a vendor contracting to sell property held on lease cannot make a good title unless he holds under an original lease, still, if the purchaser has notice from the particulars and conditions of sale that the property sold is in fact held under an under-lease, he cannot, on the ground that it is an under-lease refuse to complete or claim com-

pensation on the ground of misdescription. *Madeley v. Booth* (2 De Gex & S. 718) dissented from. *The Camberwell and South London Building Society v. Holloway*, 49 Law J. Rep. Chanc. 361; Law Rep. 13 Ch. D. 754.

A vendor can make a good title if he discloses on his abstract a good equitable title, and power to get in the legal estate, either under the Trustee Acts or otherwise. *Ibid*.

(b) *Agreement for sale.*

(1) *Uncertainty.*

(i) *Legal interest in one-third and beneficial interest in one-fourth.*

7.—One of three trustees, acting as if he were absolute owner, entered into a contract to sell the entirety of certain freehold property (in one-fifth part of which he had a beneficial interest), describing the property as "The Jolly Sailor, offices, &c.," to the plaintiff. The other trustees, afterwards, refused to concur in the sale. The plaintiff having brought his action for specific performance of the contract,—Held, that the subject matter of the contract was sufficiently defined, as the vagueness (if any) about the meaning of the words "Jolly Sailor, offices, &c.," might be removed by an enquiry at chambers. Also that the contract for the sale of the entirety could not be enforced, and the property being trust property, it could not be enforced against the defendant as to his one-fifth share only. *Naylor v. Goodall*, 47 Law J. Rep. Chanc. 53.

(ii) *As to subject matter.*

8.—M. purchased an estate, having previously agreed with C. that if he purchased he would let C. have a portion thereof, but the memorandum of agreement between C. and M. left it to some extent uncertain what portion C. was to have. In an action by C. for specific performance a reference was directed to chambers to ascertain what portion C. was to have, and M. was decreed to convey such portion to him. *Chattock v. Muller*, Law Rep. 8 Ch. D. 177.

(2) *Subject to approval of solicitor.*

9.—A sale made subject to the approval of the purchaser's solicitor enables the purchaser to rescind for a reasonable cause. *Hudson v. Buck*, 47 Law J. Rep. Chanc. 247; Law Rep. 7 Ch. D. 689.

A sale of a leasehold house was subject to approval of the purchaser's solicitor. The house and another were included in one lease, at one rent and subject to restrictive covenants as to the whole:—Held, that (the vendor not having proved that he could obtain an apportionment of the rents and covenants) the purchaser could rescind. *Ibid*.

(3) *Contract by correspondence.*

10.—An estate was bought by eight persons, of whom B. and C. were two, as a joint specula-

tion, and conveyed to R. and C. in trust for the eight. In 1871 and 1873 the eight owners offered parts of the estate for sale, subject to conditions which only described the vendors as the proprietors in possession. Subsequently M. made a verbal offer to the agent of the eight owners to buy three lots remaining unsold. The agent told M. he must buy, subject to the conditions of 1871, and promised to lay his offer before the proprietors. The agent then wrote to M., saying the proprietors had accepted his offer, subject to the conditions, and, after stating the terms of it, said he had instructed the solicitors to forward the agreement for purchase. M. then wrote and accepted this offer, subject to one stipulation, which was agreed to. A formal agreement was prepared by the solicitors, and sent to M., but M. refused to sign it, or to complete the contract. An action was brought by R. and C. for specific performance, to which a demurrer was allowed for want of parties, and the statement was then amended by making the eight owners co-plaintiffs.—Held (reversing the decision of the Court of Appeal, 46 Law J. Rep. Chanc. 737; Law Rep. 5 Ch. D. 648; reversing the Master of the Rolls, 46 Law J. Rep. Chanc. 228), that the correspondence between M. and the agent of the vendors amounted to a binding contract within the Statute of Frauds. *Rositer v. Miller* (H.L.), 48 Law J. Rep. Chanc. 10; Law Rep. 3 App. Cas. 1124.

11.—A. on behalf of himself and S. entered into a verbal agreement with W. for the purchase of certain freehold premises for 950*l*. On the following day W. went to his solicitors and informed them of the agreement, and authorised them to act as his solicitors in the business, and to prepare a formal contract, and they on the same day wrote to A.'s solicitor, saying "W. has been with us to-day and stated that he had arranged with your client A. for the sale to the latter of the 'Golden Lion' for 950*l*."—Held, in a suit by A. and S. for specific performance, that the authority given by W. to his solicitors to act in the matter, authorised them to communicate the terms of the verbal agreement to A.'s solicitor, and that the letter written by them constituted a binding contract, of which specific performance would be decreed. *Smith v. Webster*, 45 Law J. Rep. Chanc. 430; affirmed on appeal, 45 Law J. Rep. Chanc. 528; Law Rep. 3 Ch. D. 49.

(c) *Part performance: parol promise on marriage.*

12.—A. being the owner of a leasehold house, subject to a mortgage payable by instalments, in contemplation of the marriage of his daughter, verbally promised the daughter and her intended husband, that in the event of their marriage taking place, the house should be the wedding present of his daughter, and that they should take possession of it on their marriage. The marriage took place, and the daughter and her

husband immediately entered into possession of the house. A. during his lifetime regularly paid the instalments in respect of the mortgage as they fell due, and at his death there remained still due 110*l*.—Held (the Court being satisfied on the evidence that the promise, as stated above, was given), that the promise to give the house, having been followed by possession, which was a sufficient part performance to take the case out of the Statute of Frauds, the agreement was valid, and was binding on A. and on his estate, and that the daughter was entitled to have the house assigned to her free from encumbrances. *Ungley v. Ungley*, 46 Law J. Rep. Chanc. 89; Law Rep. 4 Ch. D. 73; affirmed on appeal, 46 Law J. Rep. Chanc. 854; Law Rep. 5 Ch. D. 887.

*Divisible contract: part performance: fraud*  
[See FRAUD, 4.]

(d) *Variation and discrepancy.*

13.—Where there was a variation between the descriptions of the property in the contract for sale and in a plan signed by the parties at the same time, specific performance was ordered, the plan being held to control the written description. *The New Valley Drainage Commissioners v. Dunkley* (App.), Law Rep. 4 Ch. D. 1.

14.—A purchaser and his assignees sued for specific performance of a contract to sell land. The vendor pleaded fraud, and that the contract, if any, reserved mines. The plaintiff's subsequent pleadings affirmed there was no reservation in the contract. The contract signed by the purchaser contained a reservation; the receipt for deposit signed by the vendor stated the other terms, and was silent as to the reservation. Specific performance of the agreement with such reservation was decreed. *Smith v. Wheatcroft*, 47 Law J. Rep. Chanc. 745; Law Rep. 9 Ch. D. 223.

(e) *Mistake.*

15.—The plaintiff being the lessor of a public-house subject to a covenant against Sunday trading, put the same up for sale, having previously obtained from the freeholder a letter which was stamped as an agreement offering to release the restrictive covenant. The defendant at the sale became the purchaser, both parties being under the impression that the freeholder could alone release the covenant. The abstract delivered to the purchaser shewed that the plaintiff held under an under-lease by demise, a reversion of one day being vested in A. and B., whose consent to a release of the covenant was necessary, which fact was overlooked by the purchaser, he taking an under-lease at an increased rent, in which the covenant was omitted, and he paid his purchase-money partly by a cheque and entered into possession. The day after the mistake as to the parties to release the covenant was discovered, and the defendant stopped payment of the cheque. The plaintiff had offered to rescind the contract:—Held, that

the defendant, not having discovered the mistake till after completion through his own negligence, was too late in taking his objection, and specific performance was decreed. *Allen v. Richardson*, 49 Law J. Rep. Chanc. 187; Law Rep. 13 Ch. D. 524.

16.—By the particulars of sale property was described as "all that inn with the brewhouse, outbuildings, and premises known as 'The Ship,' together with the saddler's shop and premises adjoining thereto, situate at N., Nos. 454 and 455 on the tithe map, and containing by admeasurement twenty perches more or less." The plans exhibited in the sale-room shewed the property to consist of the closes numbered 454 and 455 on the tithe map. In the rear of the property were two pieces of garden ground containing together about twenty perches, not belonging to the vendors, one of which had for many years been occupied with the inn and the other with the saddler's shop, and which were hardly at all fenced off from the premises with which they were occupied. The defendant, who was acquainted with the property and knew that the gardens were occupied along with the inn and saddler's shop, did not look at the plans, and bought in the belief that he was buying the whole of the property in the occupation of the tenants:—Held (by Bag-gallay, L.J., sitting for Malins, V.C., and by the Court of Appeal), that the purchaser could not resist specific performance on the ground of mistake. *Tamplin v. James* (App.), Law Rep. 15 Ch. D. 215.

Where specific performance is refused on the ground of mistake by the defendant, so that under the old practice a bill for specific performance would have been dismissed without prejudice to an action, the Court will proceed to consider the question of damages. *Ibid.*

#### (f) Delay and acquiescence.

17.—(1). Where a purchaser had been guilty of delay after an abstract had been delivered, but no other steps had been taken to complete, a notice by the vendor to determine the contract if not completed within five weeks was held invalid, as limiting too short a period. *Cramford v. Toogood*, 49 Law J. Rep. Chanc. 108; Law Rep. 13 Ch. D. 153.

17.—(2). A tenant with option to purchase within ten years from 1861 gave notice to do so in 1867 and remained in possession until 1873. Owing to disputes as to the persons entitled to the purchase-money he never paid it, and no conveyance was executed:—Held, that the option and notice made a binding contract; but that the purchaser had lost his right to specific performance by delay. *Mills v. Haywood* (App.), Law Rep. 6 Ch. D. 196.

18.—In order that acquiescence in the acts of another may preclude a person from exercising a right, he must have encouraged those acts with knowledge that they were done under mistake, and were inconsistent with the exercise of

the right. *Willmott v. Barber*, 49 Law J. Rep. Chanc. 792; Law Rep. 15 Ch. D. 96 [affirmed on appeal, but not yet reported].

*Marriage consideration: volunteers.* [See INFANT, 21.]

*Marriage articles binding on heir-at-law of wife.* [See SETTLEMENT, 1.]

#### (B) OBJECTIONS TO TITLE: WAIVER OF OBJECTIONS.

19.—Taking possession of land under a parol agreement for a lease is not in itself an acceptance of the title, but merely evidence of such acceptance which may be rebutted. But taking possession without taking objection to known defects in title amounts to a waiver of such objections. *Hyde v. Warden* (App.), 47 Law J. Rep. Exch. 121; Law Rep. 3 Ex. D. 72.

A person who agrees to accept an assignment of an under-lease is not to be held to have constructive notice of the terms of the original lease, unless he has had a fair opportunity of ascertaining its terms. *Ibid.*

The defendant having agreed to take an assignment of an under-lease from the plaintiff found on examining the lease that it contained a covenant by the plaintiff not to underlet without the consent of the lessor, the lessor agreeing not to withhold his consent from any assignment to a respectable and responsible person:—Held, that the fact that the lessor's consent had not been obtained at the time of the agreement to take an assignment was not enough to enable the defendant to resist a claim for specific performance. *Ibid.*

Semble, a power of re-entry on non-performance of covenants does not entitle the lessor to re-enter for breach of a negative covenant, such as a covenant not to assign without consent. *Ibid.*

A covenant by the lessee not to mow meadow-land more than once in a year is not so unreasonable or unusual as to form a valid objection to the lessee's title on the part of a proposed assignee. But a covenant that the lessor and his assigns shall have a right of re-entry on the bankruptcy of the lessee or his assigns, or if execution should issue against him, is a valid and fatal objection, disentitling the lessee to specific performance of an agreement to accept an assignment. *Ibid.*

B. was in possession of two farms, of one as freeholder, and of the other for a term of years ending Michaelmas, 1889. B. leased the whole to N. for fourteen years, from Michaelmas, 1870, subject to a covenant for re-entry in case of the lessee's bankruptcy, and the plaintiff became the assignee of N.'s lease. During the plaintiff's term, B. granted to him a lease of the leasehold farm from Michaelmas, 1884, for five years, ending at the same time as the original lease to B.:—Held, that the last-mentioned lease, as it conferred merely an "*interesse termini*" on the plaintiff, was no severance of the reversion, such as to extinguish the right of

re-entry by the original lessor. And further, that such lease for five years, being expressed to be made subject to the former lease, would not affect the right of entry thereby reserved.—*Doe d. Freeman v. Bateman* (2 B. & Ald. 168), approved of. *Ibid.*

Where two distinct properties, held under separate titles, are comprised in one lease, and the reversion of one of them becomes vested in the lessee, this does not extinguish a right of re-entry in respect of the property of which the reversion remains in the lessor; the rules as to severance of reversion by assignment to third parties not being applicable to cases where a portion of the reversion is vested by assignment in the lessee himself. *Ibid.*

Where land is purchased for immediate occupation the Court will not direct a general enquiry as to title, so as to give the vendor an opportunity of making good defects which existed in the title when possession should have been given. *Ibid.*

*Agreement by husband to settle wife's real estate.*

[See HUSBAND AND WIFE, 29.]

*Claim against third party.* [See PRACTICE, U 17.]

#### (C) RIGHT TO SPECIFIC PERFORMANCE WITH COMPENSATION.

20.—The plaintiff tendered for a lease of a farm of 214 acres and 35 acres. The defendant accepted the offer believing it to be for the 214 acres and 27 acres not comprised in the tender. Specific performance of a lease of the 214 acres was decreed, with compensation for the loss of 27 acres. *McKenzie v. Hesketh*, 47 Law J. Rep. Chanc. 231; Law Rep. 7 Ch. D. 675.

21.—Under a contract which disclosed the circumstances, B. bought real estate, which was limited to such uses as the vendor and his wife should appoint, and in default of appointment, on trust for the wife's separate use without power of anticipation during her life, with remainder to the vendor in fee. Before completion of the contract the vendor died. The purchaser was held entitled to a conveyance of the remainder in fee, with compensation for the widow's life interest. *Barker v. Cox*, 46 Law J. Rep. Chanc. 62; Law Rep. 4 Ch. D. 464.

22.—The plaintiff purchased property from A. and B. which belonged to A. and C. as tenants in common. Specific performance of the sale of A.'s half was ordered with compensation. *Horrocks v. Rigby*, 47 Law J. Rep. Chanc. 800; Law Rep. 9 Ch. D. 180.

23.—Under the direction of the Court a farm was put up for sale by particulars accompanied by a plan, and was described as "a compact small farm containing 41a. 8r. 35p., divided as follows." The parcels included "490a. Bottlesey Green, containing 7a. 1r. 27p.," opposite to which, in the column shewing the amounts which made up the 41a. 8r. 35p., was entered 4a. 0r. 38p. The conditions provided that any

error, misstatement, or omission in the particulars should not annul the sale, nor should any compensation be allowed except such (if any) as the Judge in Chambers should direct. G. bought the property in his own name, and was certified as purchaser, but he in fact bought as agent for B., who was the owner of immediately adjoining property. On the investigation of the title it was ascertained that the vendors were only entitled to four undivided sevenths of 490a., which was a narrow close containing 7a. 1r. 27p., having a long frontage to a highroad and at one end adjoined B.'s property. B. alleged that it was of great importance to the enjoyment of his property that he should have the whole of 490a., and G., by his directions, refused to complete. The vendors then entered into an arrangement with the owner of the other three-sevenths to give them up, receiving an equivalent out of another part of the farm having a frontage to another road:—Held (by the Master of the Rolls), that, as B. had not been substituted as purchaser, G. must be treated as the real purchaser, and could not take any objection depending on the circumstances of B.'s property, and that, as the arrangement would give the purchaser all he contracted to buy, he must complete without compensation.—Held (on appeal), that G., having only purchased as agent for B., could take any objection which B. had he been the nominal as well as the real purchaser, could have taken; that, for the purpose of resisting completion, the purchaser was entitled to say that he bought the farm as shewn on the plan; that, as the possession of 490a. was important to the enjoyment of B.'s property, completion could not be compelled unless he could get the whole of it, and that he was not bound to accept the arrangement by which he would obtain the whole of it by giving up another part of the purchased property; and that he must therefore be discharged from his purchase. *In re Arnold. Arnold v. Arnold* (App.), Law Rep. 14 Ch. D. 270.

[And see No. 6 supra.]

#### (D) PRACTICE IN ACTIONS FOR.

##### (a) Making auctioneer party.

24.—In actions for specific performance the auctioneer ought not, as a general rule, to be made a defendant in respect of the deposit, unless he have refused before action to pay the same into Court; but in a case where the deposit amounted to £850l.,—Held, that the largeness of the amount justified the auctioneer's being made a defendant in the first instance. *The Earl of Egmout v. Smith*; and *Smith v. The Earl of Egmout*, 46 Law J. Rep. Chanc. 356; Law Rep. 6 Ch. D. 469.

##### (b) Interrogatories: sale to trustee: notice of breach of trust.

25.—To a claim for specific performance of an agreement to sell lands, the defendant

pleaded, first, that the agreement was entered into by a house agent, who was not authorised by the defendant to sell; second, that since the contract the defendant had notice that the purchasers were trustees of a marriage settlement, and that the property, which was an under-lease, might be an improper investment of the trust funds.—Interrogatories by the defendant, directed to establish the case that the investment was a breach of trust, were ordered to be struck out as irrelevant. *Mansfield v. Childerhouse*, 46 Law J. Rep. Chanc. 30; Law Rep. 4 Ch. D. 82.

Semble, an innocent vendor of lands, discovering before completion that the purchasers are trustees, is not concerned to see that the investment is authorised by the trust. *Ibid.*

(c) *Inquiry as to title.*

*General inquiry as to title when directed.* [See No. 19 supra.]

(d) *Costs: notice to make time of the essence of the contract.*

26.—Where time is not made of the essence of a contract for sale of land, neither party can make it so by giving notice, unless the other party has been guilty of unreasonable delay. *Green v. Sovin*, 49 Law J. Rep. Chanc. 166; Law Rep. 13 Ch. D. 589.

(e) *Vendor's lien: future instalments.*

27.—A vendor's lien was declared in respect of money due and future instalments, with liberty to the purchaser to apply in respect of instalments as they became due. *Nives v. Nives*, 49 Law J. Rep. Chanc. 674; Law Rep. 15 Ch. D. 649.

*Action to rescind contract: counter-claim for specific performance: transfer of action.* [See PRACTICE, GG 5.]

*Damages, where action dismissed.* [See No. 16 supra.]

*Trial before Judge and jury.* [See PRACTICE, HH 18.]

## SPECIFICATION.

[See PATENT, 7-13.]

## SPIRIT LICENSE.

[See 43 & 44 Vict. c. 20, ss. 40, 43, 46.]

## SPIRITUALISM.

[See ROGUE AND VAGABOND.]

## SPORTING.

*Rateability of.* [See RATES, 10.]

## STAKEHOLDER.

*Wager money deposited, when recoverable.* [See CONTRACT, 11.]

## STALL.

*Sale of goods: exclusive right.* [See COVENANT, 11.]

## STAMP.

- (A) DEED.
- (B) TRANSFER OF MORTGAGE.
- (C) SALE BY MORTGAGOR WITH CONCURRENCE OF MORTGAGEE.
- (D) ORDER FOR PAYMENT OF MONEY.
- (E) ORDER OF CHARITY COMMISSIONERS.
- (F) FOREIGN SECURITIES.
- (G) STAMP ACT OR LICENSE ACT.

### (A) DEED.

1.—Before a deed can be admitted in evidence it must be proved to the satisfaction of the Judge that the instrument is duly stamped, not only at the time of its production but also in accordance with the law in force at the time when it was first executed.—*Gatty v. Fry* (46 Law J. Rep. Exch. 605) distinguished. *Clarke v. Roche*, 47 Law J. Rep. Q.B. 170; Law Rep. 3 Q.B. D. 70.

### (B) TRANSFER OF MORTGAGE.

2.—An indenture reciting an indenture of mortgage of certain hereditaments for 350*l.*, and that the mortgage debt was still owing, witnessed that in consideration of 350*l.* paid to the mortgagee, at the request of the mortgagor, by C. S., party of the last part of the present indenture, in discharge of all moneys owing upon the recited indenture, and in consideration also of 120*l.* paid by C. S. to the mortgagor, the former mortgagee granted, released and conveyed, and the mortgagor granted, released, conveyed and confirmed the said hereditaments to C. S. to hold discharged from the proviso for redemption in the recited indenture, and from all equity thereupon, but subject to the provisos, &c., thereafter contained, which were a proviso for reconveyance upon payment to C. S. as therein mentioned of 470*l.* and interest, a covenant by the mortgagor with C. S. for payment of the 470*l.* and interest, a power of sale in default, covenants for title and other usual clauses. This indenture having been assessed with duty under the Stamp Act, 1870, as a mortgage for 470*l.*—Held, that the indenture was as to 350*l.* chargeable only as a transfer of a mortgage, and that the assessment was therefore wrong. *Wale v. The Commissioners of Inland Revenue*, 48 Law J. Rep. Exch. 574; Law Rep. 4 Ex. D. 270.

### (C) SALE BY MORTGAGOR WITH CONCURRENCE OF MORTGAGEE.

3.—A mortgage deed of leaseholds by demise made in 1879, was stamped with a 10*s.* stamp. The mortgagor afterwards agreed to sell the leaseholds, and it was arranged that the mortgagees should be paid off out of the purchase-

money and join in the assignment to the purchaser:—Held, notwithstanding, that the purchaser was entitled to have the mortgage deed stamped with the full *ad valorem* duty stamp. *In re Whiting and Loomes*, 49 Law J. Rep. Chanc. 617; Law Rep. 14 Ch. D. 822; affirmed on appeal, 50 Law J. Rep. Chanc. 472; Law Rep. 17 Ch. D. 10.

(D) ORDER FOR PAYMENT OF MONEY.

4.—W. gave H. & Co. a letter directed to his tenants, requesting them to pay H. & Co. 200*l.* out of the rents payable by them the next quarter day. The letter was given in pursuance of a parol agreement between W. and H. & Co., by which W., in consideration of 200*l.* advanced to him by H. & Co., agreed to give them a charge on his future rents. W. became bankrupt before the rent became payable:—Held (on appeal from the Chief Judge in Bankruptcy, 48 Law J. Rep. Bankr. 46; Law Rep. 10 Ch. D. 615, *nom. Ex parte Hall*), that the letter by itself was a mere revocable authority to pay, which was revoked by bankruptcy supervening before the time of payment; and that the parol contract between W. and H. & Co. related to an interest in land, and, not being in writing, was not admissible to support the letter as an equitable assignment of the rent for value. *In re Whiting; ex parte Hall* (App.), 48 Law J. Rep. Bankr. 79; Law Rep. 10 Ch. D. 615.

5.—A contract was entered into by which A. was to build a boat for B. for the sum of 80*l.*, to be paid on completion and delivery of the boat to B. During the progress of the work B. advanced to A. 40*l.* on account; and subsequently A., being indebted to the defendants, agreed to make over to them the balance of 40*l.* to become due from B., and wrote to B. in these terms: "I hereby assign to Messrs. Robson the sum of 40*l.*, or any other sum now due or that may hereafter become due, in respect of the steam launch I am building for you." The plaintiff, as trustee for A.'s creditors, and the defendants having both claimed to be entitled to the 40*l.* now payable by B., the question arose whether the above letter was an order for the payment of money or the assignment of a debt:—Held, that it was an assignment of a debt, and admissible in evidence at the trial for the defendants on payment of the stamp duty and penalty. *Buck v. Robson*, 48 Law J. Rep. Q.B. 250; Law Rep. 3 Q.B. D. 687.

(E) ORDER OF CHARITY COMMISSIONERS.

6.—An order of the Charity Commissioners appointing new trustees, and vesting in them the charity property, is liable to stamp duty under section 8 of the Stamp Act, 1870, and does not come within section 78. *Hadgett v. The Commissioners of Inland Revenue*, Law Rep. 3 Ex. D. 46.

(F) FOREIGN SECURITIES.

7.—A public company incorporated in America and having its chief seat of business at New

York, issued a parcel of their bonds at a certain price to a banking firm in that city, who contracted to purchase them. The bonds were transmitted by the firm to their agents in London with instructions in pursuance of which the agents published a prospectus announcing the issue and inviting subscriptions for the bonds. One of the bonds having been afterwards allotted to an applicant in England,—Held, that, although thus disposed of on the English market by means of a prospectus, the bond was not a foreign security "issued" in the United Kingdom within the meaning of 34 Vict. c. 4. s. 1, and was therefore not liable to the stamp duty imposed on such an instrument by 33 & 34 Vict. c. 97. *Grenfell v. The Commissioners of Inland Revenue*, 45 Law J. Rep. Exch. 465; Law Rep. 1 Ex. D. 242.

(G) STAMP ACT OR LICENSE ACT.

8.—A license Act by which a Licensee is compelled neither to take out nor to pay for a license but which merely provides that the price of a license shall consist of an adhesive stamp to be paid in respect of each transaction, not by the licensee, but by the person who deals with him, is virtually a Stamp Act and not a License Act. *The Attorney-General for Quebec v. The Queen Insurance Company* (P.C.), Law Rep. 3 App. Cas. 1090.

The imposition of a stamp duty on policies, renewals and receipts with provisions for avoiding the policy renewal or receipt in a Court of law if the stamp is not affixed is not warranted by the terms of an Act which authorises the imposition of direct taxation. *Ibid.*

The clauses of Act 39 Vict. c. 7 (Quebec) imposing a tax upon certain policies of assurance, receipts or renewals are not authorised by the British North America Act, 1867, s. 92, sub-ss. 2, 9.

*Bill or cheque payable on demand.* [See BILL OF EXCHANGE, 7, 8.]

*Duty on medicines.* [See STATUTE, 11.]

STANNARIES ACT.

*Fraudulent transfer.* [See COMPANY, D 96.]

*Meeting of mining company.* [See COMPANY, D 47.]

STATEMENT OF CLAIM.

[See PRACTICE, W 35-37.]

STATEMENT OF DEBTS.

[See BANKRUPTCY, K 3, 4, 9; L 10-15.]

STATEMENT OF DEFENCE.

[See PRACTICE, W 44-52.]

## STATUTE

## (A) DATE AND OPERATION OF.

- (a) *Date.*
- (b) *Local and private Acts.*
- (c) *Who affected by Act.*

## (B) CONSTRUCTION OF.

- (a) *Repair of bridge: "omission:" notice to person to perform statutory duty.*
- (b) *Right to dig gravel out of pit.*
- (c) *Enacting part whether controlled by title and recitals.*
- (d) *Act imposing penalty.*
- (e) *Words whether directory or imperative.*
- (f) *In particular cases.*

## (C) REPEAL OF.

- (a) *By implication: general and local Acts.*
- (b) *Special and general provisions.*
- (c) *Effect of repeal of special words on general words.*

## (D) INCORPORATION OF.

[The revision of the Statute Law facilitated by substituting in certain Acts recent enactments still in force for those which have been otherwise repealed—39 & 40 Vict. c. 20.]

[Further promotion of the revision of the Statute Law—41 & 42 Vict. c. 79.]

## (A) DATE AND OPERATION OF.

(a) *Date.*

1.—Where an Act comes into operation on a given day, it becomes law as soon as the day commences. *Tomlinson v. Bullock*, 48 Law J. Rep. M.C. 95; Law Rep. 4 Q.B. D. 230.

[And see ADMINISTRATION, 10, 11.]

(b) *Local and private Acts.*

2.—A local Act of Parliament must be judicially noticed and have all the operation of a public statute. *Aiton v. Stephen* (H.L. Sc.), Law Rep. 1 App. Cas. 456.

3.—Although general words in an Act of Parliament will not have the effect of taking away or abrogating existing customs or rights, yet directions, even in a private Act of Parliament, which are inconsistent with such customs or rights, will have that effect. *Green v. The Queen* (H.L.), Law Rep. 1 App. Cas. 513.

(c) *Who affected by Act.*

4.—An English statute *prima facie* affects only English subjects or foreigners who come, either permanently or temporarily, within the allegiance of the English Crown. *Ex parte Blain; in re Samers* (App.), Law Rep. 12 Ch. D. 522.

*Effect of, on covenant.* [See COVENANT, 13; PUBLIC HEALTH, 32.]

*Privilege not destroyed without express enactment.* [See PUBLIC HEALTH, 14.]

## (B) CONSTRUCTION OF.

(a) *Repair of bridge: "omission:" notice to person to perform statutory duty.*

5.—When a duty to be performed at uncertain intervals has been created by statute, the person liable to fulfil it must have notice of the necessity to perform it before he can be held responsible for its nonfulfilment by the person for whose benefit it exists, if the latter is aware of the circumstances requiring its fulfilment, and is in possession of the thing as to which it is to be discharged. *The London and South Western Railway Company v. Foweraker*, 45 Law J. Rep. C.P. 54; Law Rep. 1 C.P. D. 77.

By a local Act a bridge, over which the plaintiffs' railway passed, was to be maintained by the defendants, "at their sole expense in all things . . . under the superintendence and to the reasonable satisfaction of the principal engineer for the time being" of the plaintiffs' company. It was also enacted that the defendants should be responsible for and make good to the plaintiffs all costs, losses, damages and expenses which might be occasioned to the plaintiffs by reason of any "omission" of the defendants. Repairs became necessary for the bridge, and were executed by the plaintiffs; no notice was given to the defendants of the necessity for the repairs before the execution thereof. The bridge was in the exclusive occupation of the plaintiffs:—Held, that the defendants had been guilty of no "omission" with respect to the bridge, and that as they were not aware of its condition the plaintiffs could not recover from them the reasonable costs of repairing it. *Ibid.*

(b) *Right to dig gravel out of pit.*

6.—The B. local board having, under an Act of Parliament, power to cut, dig, gather, carry and take away any quantity or quantities of gravel for the repair of roads, &c., from a pit belonging to the plaintiff, it was held, they were not bound to confine themselves to the original dimensions of the pit, but entitled to dig gravel laterally, so as to enlarge the area of the pit.—Decision of the Master of the Rolls reversed. *Ellis v. The Bromley Local Board* (App.), 45 Law J. Rep. Chanc. 763.

(c) *Enacting part whether controlled by title and recitals.*

7.—The enacting part of an Act of Parliament is not to be controlled by the title or recitals unless the enacting part is ambiguous, and then the title and recitals may be referred to for the purpose of ascertaining the intention of the Legislature. *Bentley v. The Rotherham Local Board*, 46 Law J. Rep. Chanc. 284; Law Rep. 4 Ch. D. 588.

By a local Act of 1863, a Board of Health was authorised to construct waterworks, and purchase and establish markets, and to exercise compulsory powers for the purchase of land for those purposes. These compulsory powers ex-



pired on the 13th of July, 1870, and on the 1st of August, 1870, a second Act was passed, to extend the time for the compulsory purchase of lands and completion of the waterworks, and to authorise the board to construct gas works, and for other purposes, not including the establishing of markets. On motion by the owner of property required for establishing a market to restrain the board from compulsorily taking the property under a notice to treat served on him in December, 1870, on the ground that the powers of the first Act had ceased to exist and could not be extended, and that the second Act must be read as creating new powers for the purposes of the second Act only.—Held, that the powers were extended as well as the time for their exercise, and that the notice to treat was effectual. *Ibid.*

(d) *Act imposing penalty.*

8.—Where a new offence is created by statute, and a penalty imposed for such offence, a person is not thereby deprived of his equitable right by injunction to stop the commission or repetition of the offence. *Cooper v. Whittingham*, 49 Law J. Rep. Chanc. 752; Law Rep. 15 Ch. D. 501.

(e) *Words whether directory or imperative.*

*Ecclesiastical Dilapidations Act*, 1871: *bishop to direct surveyor within three months.* [See CHURCH AND CLERGY, 8.]

*"It shall be lawful."* [See CHURCH AND CLERGY, 25.]

*Public Worship Regulation Act*: *requirement as to place of hearing.* [See CHURCH AND CLERGY, 27.]

*Statute requiring corporate seal.* [See PUBLIC HEALTH ACT, 9.]

*Valuation Metropolis Act*, 1869: *time for doing act not imperative.* [See RATES, 19.]

(f) *In particular cases.*

*Harbours, docks and piers clauses: act of God: liability of owner.* [See HARBOURS CLAUSES ACT, 3.]

*Pier and Harbour Act: powers of Board of Trade.* [See PIER, 2.]

*Saving clause.* [See PUBLIC HEALTH ACT, 13, 38.]

*Statutory powers to make works: powers to be exercised once for all.* [See DEED, 1.]

*Words ejusdem generis: "palimistry or otherwise."* [See ROGUE AND VAGABOND.]

(G) REPEAL OF.

(a) *By implication: general and local Acts.*

9.—By 3 & 4 Vict. c. 85. s. 6, all withs and partitions between any chimney or flue which at any time after the passing of this Act shall be built or rebuilt, shall be of brick or stone, and at least equal to half a brick in thickness. By

the Huddersfield Improvement Act, 1871 (Local and Personal), s. 111, the chimneys and flues of every new building shall be constructed in such a mode and of such materials and dimensions as shall from time to time be determined on and approved by the corporation. A builder built a chimney having a partition of stone slate of less than half a brick in thickness, and was convicted of so doing contrary to the above Act, but he had submitted a plan and detailed section of the building to the corporation, in accordance with which it was built, under section 103 of the Local Act, and such plans had been approved by them:—Held, that there was not such a contrariety between the two Acts as to make the subsequent local Act repeal by implication the prior general statute, so as to enable the corporation to dispense with the requirements of the former statute, and the conviction was held good. *Hill v. Hall* (App. Div.), 45 Law J. Rep. M.C. 153; Law Rep. 1 Ex. D. 411.

[And see CHURCH AND CLERGY, 25.]

(b) *Special and general provisions.*

10.—By a local Act the Oldham Corporation were generally empowered to lay sewers in streets and courts not being highways, with certain special provisions as to sewerage S. Road, which it was admitted had not been complied with. The same Act repealed all the other general Acts on the subject, so far as they applied to the borough, but made no mention of the Sewage Utilisation Act, 1865, which was passed a few days before the local Act, and which gave the corporation general powers to lay sewers. The Public Health Act, 1875, repeals the Sewage Utilisation Act, and itself empowers sewer authorities to lay sewers in any "road or street or place laid out as or intended for a street." After the passing of the Public Health Act, the corporation proceeded to sewer S. Road, which was a private way, with houses on each side, for the passage along which a toll was taken by the plaintiffs, in whom it was vested. A motion by the plaintiffs for an injunction to restrain the corporation was refused. The Court held, first, that the corporation had power to sewer S. Road, independently of the local Act, under the Public Health Act, 1875, s. 16, as continuing the power given by the Sewage Utilisation Act, which it only repealed for the purpose of consolidation and re-enactment; and secondly, that S. Road was a street within the meaning of the Acts. *Taylor v. The Corporation of Oldham*, 46 Law J. Rep. Chanc. 105; Law Rep. 4 Ch. D. 395.

(c) *Effect of repeal of special words on general words.*

11.—In order to ascertain the effect of a repealing statute the repealed words must be looked at. Where in any statute special words are followed by general words, any subject-matter which is aptly described by the special words, comes within the purview of the statute by force

of the special words, and not of the general words. If, therefore, the special words are repealed, the subject-matter ceases to be within the purview of the statute, though aptly described by the general words in the absence of the special words. *The Attorney-General v. Lamplough* (App.), 47 Law J. Rep. Exch. 555; Law Rep. 3 Ex. D. 214.

#### (D) INCORPORATION OF.

12.—By a private Act of Parliament a company were empowered to do certain acts, paying compensation to injured parties to be assessed by a special tribunal for arbitration provided by the private Act. By the same Act the Lands Clauses Consolidation Act, 1845, was incorporated therewith, "except where expressly varied" by the special Act:—Held, that the provisions of section 84 of the Lands Clauses Consolidation Act as to the costs of arbitration were not "expressly varied" by the section of the special Act, which provided a new tribunal of arbitration, and therefore applied to arbitrations under that section. *Sharpe v. The Metropolitan District Railway Company* (App.), 48 Law J. Rep. Q.B. 325; affirmed by the House of Lords, 50 Law J. Rep. Q.B. 14; Law Rep. 5 App. Cas. 425.

The assessment of costs by a master under section 1 of the Lands Clauses Consolidation Act, 1869, is not a condition precedent to the claimant's right to bring an action for such costs where the right to costs is disputed. *Ibid.*

*Municipal Corporations Act: incorporation of, into subsequent statute imposing penalty.* [See MUNICIPAL CORPORATION, 18.]

#### STATUTORY DUTY.

*Dock company: overflow of water: negligence.* [See NEGLIGENCE, 11.]

*Duty to repair bridge: notice to perform duty.* [See STATUTE, 5.]

*Excess of powers by corporation: remedy for.* [See RAILWAY, 10.]

*Impossibility of performance: mandamus.* [See MANDAMUS, 4.]

*Incorporated persons: negligence: water.* [See PUBLIC BODY, 1.]

*Metropolis Management Act: neglect to remove refuse.* [See METROPOLIS, 18-20.]

*Remedy by action: specific remedy by injunction given.* [See NEGLIGENCE, 25.]

*Railway company, of, to fence land.* [See RAILWAY, 27, 28.]

*Waterworks Clauses Act: remedy by action.* [See ACTION, 2.]

#### STAYING PROCEEDINGS.

[See ADMIRALTY, 18, 25, 52; ARBITRATION, 4-6; BANKRUPTCY, M 43, 44; N; COMPANY, H 80-87; INJUNCTION, 6-11; PRACTICE, EE; SCOTCH LAW, 20.]

#### STOCK EXCHANGE.

1.—A member of the Stock Exchange was declared a defaulter, and the official assignees of the Stock Exchange gave notice to his bankers not to part with any balance standing to his credit. He owed debts on the Stock Exchange to the amount of 24,790*l.*, and owed other debts to the amount of 107,000*l.* His assets were 8,000*l.*, including a sum of 5,000*l.* at his bankers. He attended a meeting of his Stock Exchange creditors, and stated that he had no other creditors. He was requested to hand over the 5,000*l.* to the official assignees for distribution among his Stock Exchange creditors, and he did so. In so doing he was acting in conformity with the rules of the Stock Exchange. By those rules he had, upon being declared a defaulter, ceased to be a member, but could be re-admitted by the committee, if he paid 6*s.* 8*d.* in the pound to his Stock Exchange creditors. The committee had also a general power of dispensing with the rules. When the payment was made, neither the official assignees nor the creditors had had notice of any act of bankruptcy having been committed by the defaulter. A large part of the 5,000*l.* was distributed among the Stock Exchange creditors, and after this the defaulter filed a liquidation petition, and was adjudicated a bankrupt:—Held, that the payment of the 5,000*l.* was a fraud upon the bankrupt law, and that the money must be repaid by the Stock Exchange assignees to the trustee in the bankruptcy. *Ex parte Saffery; in re Cook* (App.), 46 Law J. Rep. Bankr. 34; Law Rep. 4 Ch. D. 555; affirmed in the House of Lords, 47 Law J. Rep. Bankr. 11; Law Rep. 3 App. Cas. 213 (*nom. Tomkins v. Saffery*).

2.—According to the rules of the London Stock Exchange, when a member is declared a defaulter, all contracts for sale and purchase of stocks made by him for the next account day are closed at the market prices at time of default by a person appointed by the Stock Exchange called the official assignee, and those members who owe differences to the defaulter must pay the same to the official assignee on pain of being declared defaulters, and that officer is bound to employ the moneys thus received by him in the first place in paying to those members, to whom, upon the same footing, differences are due upon their contracts with the defaulter, the differences so due to them:—Held, that the moneys thus received by the official assignee, being an artificial fund created by the rules of the Stock Exchange, do not form part of the assets of the defaulter, and do not pass to his trustee in bankruptcy. *Tomkins v. Saffery* (see last case) distinguished. Held also, that, even if the payments made to the official assignee of a defaulter ought to have been made to the trustee in bankruptcy, yet, as the official assignee claimed them adversely, the trustee could not recover them from him. *Ex parte Grant; in re Plumby* (App.), Law Rep. 13 Ch. D. 667.

3.—The plaintiffs employed a solicitor to sell securities; the solicitor employed the defendant, a stockbroker, in the sale. The defendant had notice that the solicitor was only an agent to sell and receive the price. The defendant paid the purchase-money to the solicitor partly by cheque and partly by carrying the balance to his credit:—Held, that the defendant was liable to the plaintiffs for that balance. *Pierson v. Scott*, 47 Law J. Rep. Chanc. 705; Law Rep. 9 Ch. D. 198 (*nom. Pearson*).

Any custom of the Stock Exchange to the contrary would not be binding on persons who had no notice of such custom. *Ibid*.

"Differences:" *wagering contract*. [See **BROKER**, 3.]

*Entries in day-book: evidence*. [See **EVIDENCE**, 8.]

*Infant transferee of shares: liability of stock-jobber: rules of Stock Exchange*. [See **COMPANY**, D 89, 90.]

*Purchase and sale of shares: "time bargain": contract between broker and principal: wagering contract*. [See **CONTRACT**, 13.]

*Right to follow money paid to stockbroker*. [See **BROKER**, 2.]

*Sale of shares passing right to subsequent dividends*. [See **SALE OF GOODS**, 8.]

#### STOP ORDER.

[See **PRACTICE**, FF.]

#### STOPPAGE IN TRANSITU.

[See **SALE OF GOODS**, 26-33.]

#### STOWAGE OF CARGO.

[See **SHIPPING LAW**, B 4.]

#### STREET.

[See **HIGHWAY**, 13, 15; **METROPOLIS**, 8, 10, 12, 13, 14; **PUBLIC HEALTH ACT**, 18-28; **STATUTE**, 10.]

#### STRIKING OUT PLEADINGS.

[See **PRACTICE**, W 3-15.]

#### SUB-AGENT.

[See **PRINCIPAL AND AGENT**, 17.]

#### SUB-CONTRACTOR.

[See **MASTER AND SERVANT**, 15; **NEGLIGENCE**, 19, 20.]

#### SUBMISSION TO ARBITRATION.

[See **ARBITRATION**, 1-8.]

#### SUBSTITUTED SERVICE.

[See **PRACTICE**, BB 1-8.]

#### SUBSTITUTIONAL GIFT.

[See **WILL CONSTRUCTION**, N.]

#### SUCCESSION DUTY.

- (a) *Contract made bona fide for valuable consideration.*
- (b) *Predecessor: power under a disposition taking effect on death.*
- (c) *Allowance for cesser of annuity on succession.*
- (d) *Previous payment of same duty.*
- (e) *Settlement by female British subject on marriage with foreigner.*
- (f) *Scotch entail: predecessor.*
- (g) *Right of tenant for life to be recouped out of corpus.*
- (h) *Mortgage of base fee.*

- (a) *Contract made bona fide for valuable consideration.*

1.—Questions under the Succession Duty Act are to be decided on a general view of its meaning, and not on a nice criticism of any particular section. *Fryer v. Morland*, 45 Law J. Rep. Chanc. 817; Law Rep. 3 Ch. D. 675.

"Entitled," in section 2, means "entitled in possession." *Ibid*.

A disposition of property by way of *bona fide* sale in consideration of a sum of money payable on the death of the purchaser, and secured by a charge on the property, does not come within the provisions of the Succession Duty Act. *Ibid*.

An estate was limited to such uses as father and son should jointly appoint, and in default to the father for life, with remainder to the son for life, with remainders over. The son's mortgagee foreclosed his life estate in remainder, and devised it to the plaintiff, who conveyed it to trustees nominated by the father in consideration of a sum of money down, and a further sum payable at the father's death, which was charged on the estate by an exercise of the joint power of appointment. In a suit for specific performance between the vendor and a subsequent purchaser of the charge,—Held, that the transaction did not create a succession. *Ibid*.

- (b) *Predecessor: power under a disposition taking effect on death.*

2.—St. J., tenant for life in possession, and W., tenant in tail in remainder of certain estates, barred the entail and settled the estates to such uses as they should jointly appoint. On the following day they appointed the estates to such uses as they should jointly appoint, and in default of appointment to St. J., for life, remainder to W. for life, remainder to the first and

other sons of W. in tail male, remainder to such uses as St. J. and T. should jointly appoint, and in default of appointment to T. for life, remainder to the first and other sons of T. in tail male, with remainders over. W. died in 1864, a bachelor, without having exercised his power of appointment. In 1866 St. J. and T. appointed the estates, subject to the life estate of St. J., in the events which happened, to the use that A., the widow of St. J., should receive an annuity, and subject thereto, and to an annuity given in certain events which have not happened, to the wife of T., to the use of D. during so much of a certain period as she should live. St. J. died in 1873, and the uses limited in favour of A. and D. thereupon took effect:—Held (affirming the Court of Appeal, 46 Law J. Rep. Exch. 750; Law Rep. 2 Ex. D. 398; *nom.* *The Attorney-General v. Charlton*, which had reversed the Exchequer Division, 45 Law J. Rep. Exch. 354; Law Rep. 1 Ex. D. 204), that the case fell within section 2 and was not within section 4 of the Succession Duty Act. And held, following *Lord Braybrooke v. The Attorney-General* (9 H.L. Cas. 150; 31 Law J. Rep. Exch. 177), *The Attorney-General v. Floyer* (9 H.L. Cas. 477; 31 Law J. Rep. Exch. 404), and *The Attorney-General v. Smythe* (9 H.L. Cas. 497; 31 Law J. Rep. Exch. 404), that duty was payable upon the interests of A. and D. as successions derived from W. as predecessor. *Charlton v. The Attorney-General* (H.L.), 49 Law J. Rep. Exch. 86; Law Rep. 4 App. Cas. 427.

(c) *Allowance for ceasing of annuity on succession.*

3.—Entailed estates were, by a disentailing deed, conveyed to such uses as a father, tenant for life, and his son, tenant in tail, should jointly appoint. By indenture of even date made between the father, the son, the son's intended wife and trustees, the father and son, under the powers of the disentailing deed, conveyed the estates to trustees, by way of mortgage, to secure 20,000*l.*, and the father covenanted with the trustees that he would, so long during his life as the said sum of 20,000*l.* should remain due to the trustees, pay them interest on the same, or so much thereof as, for the time being, should remain due, at three per cent. per annum. And it was declared that the trustees should stand possessed of the 20,000*l.*, and the interest thereon, on the trusts of the marriage settlement of the son, namely, on trust for him for life, with the usual trusts over for wife and children. The marriage took place, and the son received, under the mortgage and settlement deeds, the yearly sum of 600*l.* (being interest, at three per cent., on the 20,000*l.*), until the death of his father. The son then succeeded to the estates, and the annuity ceased:—Held (affirming the decision of the Court below, 44 Law J. Rep. Exch. 216), that the annuity was other property, which the successor, on taking the succession, was bound to relinquish or was deprived of, and in respect of which he was entitled to an allowance under

the 38th section of the Succession Duty Act, 1853. *Le Marchant v. The Commissioners of Inland Revenue* (App.), 45 Law J. Rep. Exch. 247; Law Rep. 1 Ex. D. 185.

(d) *Previous payment of same duty.*

4.—Under the will of the uncle of A., made in 1818, A. was tenant for life, with remainder to B., his eldest son, in fee, of lands in which the legal estate was outstanding. In 1849 A. mortgaged his equitable life estate, and in 1852, B. mortgaged his remainder in fee to the same persons, with powers of sale. Default was made, and in 1864, the mortgagees in exercise of the powers of sale conveyed a portion of the lands to C., by a deed, which recited (as the fact was) that the purchase-money had been apportioned between the life estate and the remainder according to a valuation, the propriety of which was not disputed. C. devised the purchased lands to D., his nephew, for life, with remainders over, and D. paid the duty on his succession. A portion of the purchased lands was afterwards sold. Upon a summons by the purchaser, under the Vendor and Purchaser Act, 1874,—Held, that the mortgagees' powers of sale were properly exercised. Held also, that upon the death of A., no duty would be payable on the succession of A. to the original testator, as it had been already paid at the same rate as the succession of D. Part 2 of the 15th section and the 38th section of the Succession Duty Act (16 & 17 Vict. c. 51) explained. *In re Cooper*, 46 Law J. Rep. Chanc. 133; Law Rep. 4 Ch. D. 802.

(e) *Settlement by female British subject on marriage with foreigner.*

5.—By a settlement, made on the marriage of a female British subject with a foreigner, a sum of 3 per cent. Rentes, and some shares in the Bank of France, the property of the wife, were vested in trustees, three of whom were British subjects. The husband and wife, in exercise of a power contained in the settlement, appointed the trust funds, subject to their own life interests, amongst their children, who were domiciled foreigners. Both parents having died,—Held, that the funds were liable to the payment of succession duty. *In re Ogala's Settlement*, 47 Law J. Rep. Chanc. 166; Law Rep. 7 Ch. D. 351.

(f) *Scotch entail: predecessor.*

6.—The appellant succeeded his uncle under two deeds of strict entail, the makers of which were his lineal ancestors:—Held, that the "predecessor" of the appellant was his uncle and not the makers of the deeds. *Zetland, Earl of, v. The Lord Advocates* (H.L. Sc.), Law Rep. 3 App. Cas. 505.

(g) *Right of tenant for life to be recouped out of corpus.*

7.—Where a person was absolutely entitled in reversion to personal property settled upon

himself, his wife, and children in succession, and upon the property falling into possession paid the succession duty thereon out of his own moneys, and carried the amount to a suspense account in his cash book, having then some intention of not requiring repayment,—Held (on demurrer), that he was entitled to a charge on the property for the amount of the duty. *Cud-don v. Cud-don*, 46 Law J. Rep. Chanc. 257; Law Rep. 4 Ch. D. 257.

(A) *Mortgage of base fee.*

8.—Conveyance to the use of the grantor for life, with remainder to his sons successively in tail male, remainder to his daughters in tail general. The grantor died, leaving two sons, Edward (a lunatic), and Reginald, and one daughter, Frances. Reginald conveyed, subject to Edward's estate, to the use of himself in fee, and then mortgaged the base fee so created to a bank for 124,000*l.*, being more than the fee-simple value of the property. Subsequently by arrangement between all interested, Reginald, Frances and the husband whom she had in the meantime married, with the consent of the Lord Chancellor as protector of the settlement, conveyed the property to trustees in fee, subject to Edward's estate tail, discharged of the mortgage and Reginald's equity of redemption, upon trust after the death of Edward to raise 37,000*l.* by sale, and after paying off the mortgage to convey to the use of other trustees, in trust for Frances for life, with remainder to her husband for life, with remainder to their sons in succession in tail male, with remainders over. Edward died without issue. Frances and her husband died, leaving the defendant, their eldest son:—Held, that the defendant derived his succession for the purposes of succession duty from his mother Frances, and not from his uncle Reginald. *The Attorney-General v. Dowling*, 49 Law J. Rep. Exch. 621; Law Rep. 5 Ex. D. 139. Affirmed on appeal, 50 Law J. Rep. Exch. 192; Law Rep. 6 Ex. D. 177.

SUING AND LABOURING CLAUSE.

[See MARINE INSURANCE, 15.]

SUMMARY CONVICTION.

*A bar to action for assault.* [See ASSAULT, 1.]  
*Appeal.* [See CRIMINAL LAW, 1.]  
*Notice of appeal.* [See ALIENHOUSE, 24.]

SUMMARY JURISDICTION.

[See JUSTICE OF THE PEACE.]

[Amendment of the law relating to the Summary Jurisdiction of Magistrates, 42 & 43 Vict. c. 49.]

*Court of: friendly society.* [See FRIENDLY SOCIETY, 8.]

*Court of: proceedings for recovery of poor rates: distress warrant.* [See RATES, 24.]

SUNDAY.

*Observance of.* [See ALIENHOUSE, 21; COVIN AND COLLUSION.]

SUPERANNUATION ACT.

[See PETITION OF RIGHT, 4.]

SUPERFLUOUS LANDS.

[See LANDS CLAUSES ACT, 43–45.]

SUPERIOR AND VASSAL.

[See SCOTCH LAW, 22–24.]

SUPERVISION ORDER.

[See COMPANY, H 104.]

SUPPORT.

*Lateral support of house by adjoining soil.* [See EASEMENT, 1.]

*Lateral: liability of principal for acts of agent in removing house.* [See PRINCIPAL AND AGENT, 2.]

*Lateral: party wall: implied covenant.* [See LANDLORD AND TENANT, 8.]

*Lateral: prospective damages, right to.* [See DAMAGES, 13.]

*Surface, of: grant of land reserving minerals.* [See MINES, 6.]

*Surface, of: implied covenant by vendor owning other adjoining lands.* [See INJUNCTION, 21.]

*Surface, of: subordination.* [See MINES, 11.]

*Surface, of, adjacent land: excavation by owners of land not immediately adjacent.* [See MINES, 4.]

*Surface, of: working of minerals under railway.* [See LANDS CLAUSES ACT, 11.]

SUPREME COURT OF JUDICATURE.

[The Judicature Acts 1873 and 1875 amended. 40 Vict. c. 9.]

[Constitution of a Supreme Court of Judicature for Ireland. 40 & 41 Vict. c. 57.]

[Amendment of the Supreme Court of Judicature Act (Ireland) 1877. 41 & 42 Vict. c. 37.]

[The Judicature Acts amended as to Officers of the Supreme Court. 42 & 43 Vict. c. 78.]

SURCHARGE.

*Opening settled accounts.* [See PRINCIPAL AND AGENT, 20.]

*Partnership account: errors appearing in books.* [See ACCOUNT, 1.]

SURETY.

[See PRINCIPAL AND SURETY.]

## SURGEON.

[See MEDICAL PRACTITIONER.]

## SURRENDER.

*Lease, of.* [See LEASE, 19; LIMITATIONS, STATUTE OF, 16; PRINCIPAL AND SURETY, 12.]*Shares, of.* [See COMPANY, D 85.]

## SURVEYOR OF HIGHWAYS.

[See HIGHWAY, 17, 18, 20, 21.]

## SURVIVORSHIP.

*Period of.* [See WILL CONSTRUCTION, N 5, 6.]*Presumption: husband and wife drowned at sea.* [See HUSBAND AND WIFE, 10.]*"Surviving," read "other."* [See WILL CONSTRUCTION, N 7-10.]

## SUSPENSION.

*Sentence of.* [See CHURCH AND CLERGY, 30, 34.]*Of certificate of master of ship.* [See MERCHANT SHIPPING ACTS, 4, 5.]

## SYNDICATE.

*Promoters.* [See COMPANY, A 6.]

## TAXATION OF COSTS

[See COSTS, 77-102.]

## TEA.

[Prohibition of importation of extracts, &amp;c., except in transit or for exportation. 39 &amp; 40 Vict. c. 36, s. 42.]

## TEINDS.

[See SCOTCH LAW, 25, 26.]

## TELEGRAPH.

## (A) TELEGRAPH COMPANY.

(a) *Duty of, as to delivery of telegrams.*(b) *Purchase of undertaking by Government: compensation to officers.*

## (B) TELEGRAM.

[Further provisions respecting the Post Office Telegraphs. 41 &amp; 42 Vict. c. 76.]

## (A) TELEGRAPH COMPANY.

(a) *Duty of, as to delivery of telegram.*

1.—The plaintiffs, merchants at Valparaiso, received through the defendants a telegram purporting to come from London and addressed to

them, ordering a large shipment of barley. No such message was ever in fact sent to the plaintiffs. The misdelivery of the message was caused by the negligence of the defendants, and occasioned heavy loss to the plaintiffs, in consequence of a fall in the market price of barley. In an action to recover the amount of this loss,—Held (affirming the decision below, 46 Law J. Rep. C.P. 197; Law Rep. 2 C.P. D. 62) that there was no duty owing by the defendants to the plaintiffs in the matter, either by contract or law, and therefore no action would lie. *Dixon v. Reuter's Telegraph Company (Lim.)* (App.), 47 Law J. Rep. C.P. 1; Law Rep. 3 C.P. D. 1.

(b) *Purchase of undertaking by Government: compensation to officers.*

2.—By the Telegraph Act, 1868 (31 & 32 Vict. c. 110. s. 8, sub-s. 7), officers who have been for a fixed period in the employment of a telegraph company whose undertaking has been purchased by the Postmaster-General under the provisions of the Act, and who have been in receipt of a yearly salary, or of remuneration not less than 50*l.* a year, are entitled, in the event of their receiving no offer of an appointment from the Postmaster-General in the telegraphic department of equal value to that held under the company, to an annuity by way of compensation for loss of their office, equal to a certain portion of the annual emolument derived by them from their office. S. was an officer of a telegraph company whose undertaking had been purchased by the Postmaster-General, and was entitled, so far as salary and term of office were concerned, to compensation under the Telegraph Act, 1868. It was part of his duty, when required, to travel on the company's business. When he so travelled, his ordinary salary ran on, but his additional expenses were paid by the company, who agreed that he should receive certain fixed weekly sums in lieu of making him bring in an account of his expenditure, and then repaying him:—Held (affirming the decision of the Queen's Bench Division, 45 Law J. Rep. Q.B. 609; Law Rep. 1 Q.B. D. 658), that the amount saved by S. out of the sums so paid to him for travelling expenses was to be taken into consideration in calculating the annual emolument derived by him from his office. *Reg. v. The Postmaster-General* (App.) 47 Law J. Rep. Q.B. 435; Law Rep. 3 Q.B. D. 428.

*Inhabited house duty: liability to pay.* [See INHABITED HOUSE DUTY, 4.]

## (B) TELEGRAM.

3.—Notice by telegram of an order of the Court may, under certain circumstances, be sufficient to render a person disobeying the order liable to committal for contempt; but as the liberty of the subject is to be affected, those who allege that notice in fact has been received must prove it beyond doubt. *Ex parte Smith; ex parte Langley; in re Bishop* (App.) 49 Law J. Rep. Bankr. 1; Law Rep. 13 Ch. D. 110.

A sheriff's officer receiving notice by telegram of bankruptcy proceedings, and *a fortiori* of an order founded upon them, if he has any doubt as to its authenticity, should communicate either with the Bankruptcy Court or the sheriff's agent in London, to find whether the telegram was correct. *Ibid*.

The auctioneer should, under similar circumstances, communicate with the person under whose instructions he sells. *Ibid*.

The doctrine of notice through the medium of an agent cannot apply to the case of a sheriff's officer who has no actual notice of an order, and consequently a sheriff's officer cannot be committed for contempt when he has not received notice of the order of the Court, although such notice has been received and the order disobeyed by his subordinate. *Ibid*.

A London solicitor who obtains an order of Court restraining a sale should not telegraph direct to the auctioneer or sheriff's officer, but should telegraph to a solicitor at the place as agent for him, and instruct him to go and give notice of the order. The person affected by the order would, if such a course were adopted, have the benefit of the personal responsibility of an officer of the Court. *Ibid*.

*Damages for non-transmission of.* [See DAMAGES, 17.]

#### TENANT.

[See LANDLORD AND TENANT; LEASE.]

#### TENANT-FOR-LIFE AND REMAINDER-MAN.

##### (A) RIGHT OF TENANT-FOR-LIFE TO CUSTODY OF DEEDS.

##### (B) ADJUSTMENT OF RELATIVE RIGHTS AS BETWEEN CORPUS AND INCOME.

- (a) *Gift of farming implements.*
- (b) *Calls on shares.*
- (c) *Gift of legacy and interest.*
- (d) *Keeping down interest: charge of debts.*
- (e) *Settled leaseholds: compulsory purchase.*
- (f) *Conversion of wasting property.*
  - (1) *Leaseholds.*
  - (2) *Long annuities.*
  - (3) *Enjoyment in specie: bonus.*
- (g) *Renewable leaseholds.*
- (h) *Payment by tenant-for-life for benefit of estate.*
- (i) *Accumulations of dividends to recoup advance to tenant-for-life.*
- (k) *Accumulation of income beyond twenty-one years.*
- (l) *Valuation of reversion.*

##### (A) RIGHT OF TENANT FOR LIFE TO CUSTODY OF DEEDS.

1.—The Court will not interfere with the right of a legal tenant-for-life in possession to the custody of the title deeds, unless there is danger to the safety of the deeds, or the Court is carry-

ing into effect the trusts of the property and the deeds are required for that purpose. *Leathes v. Leathes*, 46 Law J. Rep. Chanc. 562; Law Rep. 5 Ch. D. 221.

##### (B) ADJUSTMENT OF RELATIVE RIGHTS AS BETWEEN CORPUS AND INCOME.

###### (a) *Gift of farming implements.*

2.—A testator gave all his estate, "including all my farming implements and stock, live and dead," to his wife for life, and after her decease, to his children. And he declared that his wife should "not be liable to account for any diminution" in the farming implements and stock:—Held, that the wife took the farming implements and stock absolutely. *Bretton v. Mockett*, 47 Law J. Rep. Chanc. 754; Law Rep. 9 Ch. D. 95.

###### (b) *Calls on shares.*

3.—A testator bequeathed residuary personality to trustees upon trust, either to continue existing investments or sell any part of the estate, and invest in certain stocks, shares and bonds. He directed calls, if any, which, at or after his death, might be or become due in respect of shares for the time being constituting part of his residuary personal estate, to be paid out of income:—Held, that the direction applied to calls on railway shares held by the testator at his death, but not to such shares acquired by the trustees. *Bovan v. Waterhouse*, 46 Law J. Rep. Chanc. 331; Law Rep. 3 Ch. D. 752.

###### (c) *Gift of legacy and interest.*

4.—A testator bequeathed a legacy, "with interest for the same from my decease," in trust to pay the income to A. for life, and then to transfer the capital. Money was paid by the executors from time to time on account of the legacy:—Held, that the legatee-for-life was entitled to receive such a proportion of such payments as would represent interest on each payment from the date of testator's death. *In re Tinkler's Estate*, 45 Law J. Rep. Chanc. 135; Law Rep. 20 Eq. 456.

###### (d) *Keeping down interest: charge of debts.*

5.—Where a testator has charged his real estates with debts, the tenant-for-life of the real estates must keep down the whole of the interest. The principle of *Allhuson v. Whittell* (36 Law J. Rep. Chanc. 929; Law Rep. 4 Eq. 295) applied to real estate. *Griesley v. The Earl of Chesterfield* (13 Beav. 288) not followed. *Marshall v. Crowther*, Law Rep. 3 Ch. D. 199.

###### (e) *Settled leaseholds: compulsory purchase.*

6.—Where leaseholds settled on one for life with remainder over are purchased compulsorily by a corporation under the Lands Clauses Act, the tenant-for-life is entitled to have the fund in Court, whether the income therefrom would be more or less than the net rental of

the leaseholds, applied so as to produce an annuity for the number of years the lease would have run. *Ashew v. Woodhead* (App.), 49 Law J. Rep. Chanc. 320; Law Rep. 14 Ch. D. 27.

(f) *Conversion of wasting property.*

(1) *Leaseholds.*

7.—The defaults of a feme trustee during coverture are chargeable to her husband. Testator appointed his wife and two others executors and trustees; directed his business and a leasehold house to be sold, and gave the residue (which was principally leasehold property) to his wife, directing that if she married again it should be settled to her separate use for life—then he bequeathed the house “if not sold, and the money settled as above stated and all money, &c., so settled upon her for her lifetime” to certain other persons; but if his wife should not marry again he left the property to her own disposal at her death. The widow married again two years after the testator's death; the leaseholds were not converted, and she received the entire income till her death, twenty-nine years afterwards, by which time the greater portion of the terms of years had run out. Her second husband, who survived his wife and her co-trustees, never acted in the trust:—Held, that the leaseholds ought to have been converted upon the widow's second marriage, and that the second husband was liable as a trustee having legal control over the trust property, for a breach of trust in permitting the tenant-for-life to receive the entire income of the unconverted property. *In re Smith's Estate. Clifford v. Washington*, 48 Law J. Rep. Chanc. 205.

The husband was ordered to recoup to the trust estate the difference between the income of the leaseholds received by himself or his wife during the coverture, and the dividends which would have been produced by a sale thereof at the time of her marriage and investment of the proceeds in consols. *Ibid.*

Seemle, that the excess of income thus received by the tenant-for-life must be held as received by her husband through her hands. *Ibid.*

8.—The rule that residuary property of a perishable nature is to be converted for the benefit of those entitled in remainder will not be followed in a case where a testator has given his trustees a discretion either to sell or to retain the property in specie as they may think fit. *Gray v. Siggers*, 49 Law J. Rep. Chanc. 819; Law Rep. 15 Ch. D. 74.

(2) *Long annuities.*

9.—Gift of residue of real and personal estate to trustees upon trust to pay rents and profits to testator's widow for life, followed by bequests of leaseholds (without direction for conversion) and of moneys, with ultimate gift of residue equally to five persons *nominatim*. Power to the trustees to allow moneys to re-

main in same state of investment as at testator's decease, unless circumstances should render it advisable to dispose of his bank shares:—Held, that the widow was not entitled to enjoyment in specie of certain long annuities belonging to the testator, but that the same must be treated as converted. Order as in *Brown v. Gollaly* (Law Rep. 2 Chanc. 751). *Porter v. Baddoley*, Law Rep. 5 Ch. D. 542.

(3) *Enjoyment in specie: bonus.*

10.—A testator gave by his will all the residue of his estate, including his furniture and property over which he had a general power of appointment, to A. L. After the date of the will he married a second time, and then executed a codicil, giving to his wife the income of his entire estate, and postponing the payment of all legacies, and the distribution of all estates vested in him, or over which he could appoint, until after her decease:—Held (by James, L.J., and Theaiger, L.J., affirming Hall, V.C., but Baggallay, L.J., dissenting), that there was no sufficient evidence of an intention that the widow should enjoy the estate in specie expressed in the will and codicil, and that the usual rule for the conversion of the estate must be applied. *Macdonald v. Irvine*, 47 Law J. Rep. Chanc. 494; Law Rep. 8 Ch. D. 101.

The testator bequeathed a house held on a lease for lives, and a policy of assurance for 3,000*l.* on one of the lives, with all bonuses and additions, to be settled on E. L. and her children, “she paying the future premiums in respect thereof.” The testator had, during his life, taken the bonuses by way of reduction of premium:—Held (affirming Hall, V.C.), that the bonuses must be added to the policy; but held (reversing Hall, V.C.), that the premium was not charged on the rents of the leaseholds, which were given by the codicil to the plaintiff for her life, but ought to be paid by E. L., or be raised by a charge on the policy. *Ibid.*

(g) *Renewable leaseholds.*

11.—A testator bequeathed his share in renewable leaseholds (which he expressed himself to be entitled to under a lease, but which were in fact held under a trust, whereby the entirety was vested in trustees with powers for renewal) upon trust to renew the lease from time to time out of the income, and to divide the surplus during his wife's life as therein mentioned, with a direction that after her decease the same should fall into his residuary estate; and he empowered his executors at any time to sell the leaseholds and invest the proceeds in consols. Renewal having become impossible,—Held, that the will shewed not a mere discretionary power for the trustees to renew, but a paramount intention that the property should be enjoyed in succession, and that therefore the remainder of the term must be sold, and the renewal fund treated as capital, and not paid to the tenants-for-life. *Tardiff v. Robinson* (27 Beav. 629 *n.*), distin-



guished. *Maddy v. Hale* (App.), 45 Law J. Rep. Chanc. 791; Law Rep. 3 Ch. D. 527.

12.—A testator made his will in 1851, and thereby gave renewable leaseholds to his wife for life and then over, and gave his personal estate to trustees upon trust to repair and insure and renew his leaseholds at the accustomed times, and then to pay the annual proceeds to his wife for life, and after her death to pay the corpus to charities. The testator died in 1873. The time for renewing the leaseholds had expired at the time of his death, and renewal had become impossible:—Held, that the trust for renewal had failed altogether. Held, also, that dilapidations on the leaseholds at the death of testator, must be provided for out of the corpus of the personal estate. *Pinfold v. Shillingford*, 46 Law J. Rep. Chanc. 491.

13.—A tenant-for-life of leaseholds for years is not to contribute to the expense of renewal beyond a proportion calculated in reference to the extent of his enjoyment of the newly-created interest, although the settlement may contain a trust for renewal out of rents and profits. *Semble. Isaac v. Wall*, 46 Law J. Rep. Chanc. 576; Law Rep. 6 Ch. D. 706.

The tenant-for-life of freeholds and leaseholds devised in strict settlement, purchased the reversions in fee of two of the leaseholds which were then (subject to the life estate) vested absolutely in the first tenant in tail. One of the reversions was conveyed to the tenant-for-life to hold upon the trusts of the will:—Held, that the first tenant in tail was as against the remaindermen entitled to an interest in the enfranchised property equal to the residue of the extinguished term. *Ibid.*

The other reversion was conveyed to the tenant-for-life absolutely:—Held, that the enfranchised property did not follow the limitations of the settled freehold, but became (subject to the estate and charge of the tenant-for-life) the absolute property of the first tenant in tail. *Ibid.*

14.—Where a testator, possessed of leaseholds which he was bound by a covenant in the lease to renew, gave his estate to one for life, and afterwards upon trust to sell and pay certain legacies, and pay the residue to a charity:—Held, that the costs of a renewal obtained during the life tenancy were payable out of the testator's general assets, and not out of the impure personality alone. *Trail v. Jackson*, 46 Law J. Rep. Chanc. 684; Law Rep. 4 Ch. D. 7.

15.—Lands let on lease for lives, with right of perpetual renewal at the same rent on payment of a fine on the dropping of each life, were settled to the use of A. for life with remainder over, and the settlement contained powers of leasing at rack rent only, and of sale and exchange, with a declaration that moneys arising from any sale should be laid out in land to be settled to the same uses:—Held (reversing the decision of one of the Vice-Chancellors), that the tenant-for-life was entitled to all fines payable on renewals, under the original lease,

during his life. *Brigstocke v. Brigstocke* (App.), 47 Law J. Rep. Chanc. 817; Law Rep. 8 Ch. D. 537.

(h) *Payments by tenant-for-life for benefit of estate.*

16.—A tenant-for-life of residuary estate which comprised an annuity and a policy on the life of the annuitant paid premiums upon the policy, which the trustees had power to retain in specie and keep up:—Held, that the payments had been made for the benefit of the estate, and were not repayable. *In re Waugh's Trusts*, 46 Law J. Rep. Chanc. 629.

*Payment of succession duty: right of tenant-for-life to be recouped.* [See SUCCESSION DUTY, 7.]

(i) *Accumulation of dividends to recoup advance to tenant-for-life.*

17.—Devise of real estate in strict settlement with direction that residuary personality should be laid out in purchase of land to be settled to same uses. Deed by testator subsequent to will assigning specific personality to the persons named as trustees and executors of his will upon trusts not referring to, but corresponding with, the trusts of the will, except in one remote contingency. The mansion-house requiring to be rebuilt, the Court ordered, on the application of the tenant-for-life, that 24,000*l.* out of the personality comprised in the deed should be advanced to him to pay for the rebuilding, and that out of the same fund 40,000*l.* should be set aside and the dividends accumulated for twenty years until an amount of 24,000*l.* should be saved to recoup the same fund. *Donaldson v. Donaldson*, Law Rep. 3 Ch. D. 743.

(k) *Accumulation of income beyond twenty-one years.*

18.—Where the income of a particular fund is directed by a testator to be accumulated for more than twenty-one years from his death, and the residue of the personal estate is given to A. for life, with remainder over, the income of the particular fund, and of the accumulations, forms, after the twenty-one years, part of the income of the tenant for life, and does not fall into the capital of the residue. *In re Phillips. Phillips v. Levy*, 49 Law J. Rep. Chanc. 198.

(l) *Valuation of reversion.*

19.—Bequest of reversionary interests to A. for life, with remainders over. A. died shortly before the reversionary interests fell into possession:—Held, that A.'s estate was entitled to 4 per cent. on the value of the reversion, calculated as at the end of a year from the death of the testatrix, and assuming that the reversion would fall in when it in fact did. *Wilkinson v. Dumas* (23 Beav. 467) followed. *Wright v. Lambert*, Law Rep. 6 Ch. D. 649.

*Compensation for injuriously affecting land.* [See LANDS CLAUSES ACT, 6.]

*Heirlooms: sale of, at instance of tenant-for-life.* [See HEIRLOOMS, 1.]

*Power of leasing: covenant by tenant-for-life to grant lease in reversion expectant on determination of subsisting term.* [See CHARITY, 23.]

*Powers of: Places of Worship Sites Act.* [See PLACES OF WORSHIP SITES ACT.]

*Power of sale: exercise of, after death of tenant-for-life.* [See POWER, 25.]

*Waste: right to proceeds of timber.* [See WASTE, 2.]

#### TENANT IN COMMON.

1.—The owner of two adjoining premises granted one, subject to a proviso that the wall between them should remain a "party wall."—Held, that the wall was held by the adjoining owners as tenants in common. One tenant in common of a wall, raised a portion for the purpose of supporting the end of a shed:—Held, that the other tenant in common was justified in removing the raised part of the wall. *Watson v. Gray*, 49 Law J. Rep. Chanc. 243; Law Rep. 14 Ch. D. 192.

2.—A partition between two or more persons may be effected through a power of sale and exchange. *In re Frith*, 45 Law J. Rep. Chanc. 780; Law Rep. 3 Ch. D. 619.

By a marriage settlement, an undivided moiety of lands was vested in trustees, who were thereby empowered to sell, dispose of and convey the same, or any part thereof, by way of sale, for such a price in money, or by way of exchange for such equivalent in other lands, as they should deem reasonable; and for that purpose to revoke the old and to limit new uses of the same. In pursuance of an agreement for partition, the trustees, in exercise of the aforesaid power, revoked the uses of an undivided moiety of one part of the lands, and appointed the same to the use of the owners of the other undivided moiety, in consideration of an undivided moiety of the other parts or part of the lands being conveyed to the trustees of the settlement:—Held, that a valid partition of the estate was thereby effected; and semble, that a partition between any number of owners of undivided shares of real estate may be effected under similar powers of sale and exchange. *Ibid.*

3.—Where two partners in a farming business purchased the share of a third in real estate used for partnership purposes and continued so to use it, and the land was conveyed to them as joint tenants,—Held, that they were in fact tenants in common. *Davies v. Games*, Law Rep. 12 Ch. D. 813.

*Party wall: rights as to, in metropolis and at common law.* [See METROPOLIS, 1.]

#### TENANT-IN-TAIL.

*Disentailing deed: protector.* [See FINES AND RECOVERIES ACT.]

*Disentailing deed: equitable estate tail of married woman: curtesy.* [See HUSBAND AND WIFE, 42.]

*Disentailing deed: lunatic's estate: consent of Court as protector.* [See LUNATIC, 15.]

*Lunatic's estate: permanent improvements.* [See LUNATIC, 13.]

*Renewable leaseholds: purchase of reversion.* [See TENANT-FOR-LIFE, 13.]

*Payment out of Court to.* [See LANDS CLAUSES ACT, 34; SETTLED ESTATES ACT, 9.]

*Vesting order: trustee of unsound mind.* [See TRUSTEE ACTS, 16.]

#### TENANT PUR AUTRE VIE.

*Production of cestui que vie.* [See CESTUI QUE VIE.]

#### TENDER.

Where the amount payable as a composition of a debt due was tendered to the clerk of the creditor, who was a solicitor, and the clerk refused to receive the money, saying that his master was out and that he had "no instructions,"—Held (per Coleridge, C.J., *diss.* Denman, J.), a good tender. *Finch v. Boning*, Law Rep. 4 C.P. D. 143.

*Bingham v. Allport* (1 Nev. & M. 398) distinguished, as there the clerk said that he had "no authority." *Ibid.*

*Acceptance of.* [See CONTRACT, 17.]

*At hearing of bankruptcy petition.* [See BANKRUPTCY, C 7.]

*By contractors: implied warranty: plans and specifications.* [See CONTRACT, 88.]

*Part of debt: refusal.* [See BANKRUPTCY, C 4.]

*To one of several creditors.* [See BANKRUPTCY, M 30.]

#### TERMS.

*Legal year: setting aside award.* [See ARBITRATION, 20.]

#### TEST ACTION.

[See PRACTICE, F 2; G 2; EE 5.]

#### TESTAMENTARY EXPENSES.

[See ADMINISTRATION, 53; PROBATE, 37.]

#### THAMES.

(A) CONSERVANCY ACT: RIPARIAN OWNER.  
(B) WATERMEN ACT.

## (A) CONSERVANCY ACT: RIPARIAN OWNER.

1.—There is no distinction between the position of a riparian owner of land abutting on a tidal and that of an owner of land abutting on a non-tidal stream, as far as regards right of access from the stream to his own land, and *vice versa*. *Lyon v. The Wardens, &c., of the Fishmongers' Company and the Conservators of the River Thames* (H.L.), 46 Law J. Rep. Chanc. 68; Law Rep. 1 App. Cas. 662.

Such right of access is a private right distinct from the right of navigating the stream, which is common to the riparian owner and the rest of the public; and it is not to be interfered with by a license to embark, under section 53 of the Thames Conservancy Act, 1857 (20 & 21 Vict. c. 147), but is protected by section 179 of that Act. *Ibid*.

*Rateable occupation: derrick on Thames.* [See RATES, 6.]

## (B) WATERMEN ACT.

2.—By section 66 of the Thames Watermen Act, 1859, no barge, &c., shall be worked or navigated within the limits of this Act, unless there be in charge of such craft a lighterman duly licensed or an apprentice qualified as there-inbefore mentioned:—Held, that barges in tow of a steamer were being "worked and navigated" within the meaning of the Act; and that it was necessary, in order that the requirements of the Act should be complied with, that there should be some person duly qualified in charge of each barge. *Elmore v. Hunter*, 47 Law J. Rep. M.C. 8; Law Rep. 3 C.P. D. 116.

*Collision: infringement of Thames by-laws.* [See SHIPPING LAW, E 26.]

*Pilotage compulsory on.* [See SHIPPING LAW, R 1.]

## THEATRE.

[Statutory regulations as to theatres. 41 & 42 Vict. c. 32. ss. 11–13, 21–23 (Metropolis); 43 & 44 Vict. c. 20. s. 43. sub-s. 5 (Sale of Liquors).]

A new renter of Drury Lane Theatre under 1 Geo. 4. c. lx. is entitled to a free admission to any disengaged stall, the stalls being a portion of the "usual audience part of the theatre" within the meaning of section 3 of that Act. But it was held (reversing the decision of the Court below, 44 Law J. Rep. C.P. 53), that when once the new renter has given up his ticket and been shewn to a seat in that portion of the usual audience part to which he first seeks admission, he is entitled, during the remainder of the performance, to no greater privilege than an ordinary member of the public who has been admitted by payment to that portion of the usual audience part of the theatre. *Dawney v. Chatterton* (App.), 45 Law J. Rep. C.P. 293.

*Theatrical engagement: performance prevented by illness: condition precedent.* [See CONTRACT, 30, 31.]

## THELLUSSON ACT.

A testator gave property upon trust, after the second marriage of his widow, to pay to her out of the income an annuity, and during her life to invest the surplus income, and after her death he directed certain legacies to be paid out of the trust fund and accumulations of income, and gave the residue thereof, after answering the purposes aforesaid, to A. The widow, having married again, lived more than twenty-one years after the testator's death:—Held (affirming the decision of Hall, V.C., 46 Law J. Rep. Chanc. 622), that there was no gift to the residuary legatee entitling him to payment of the fund or income, subject to a provision for the annuity and legacies, before the death of the annuitant, and that the surplus income, accruing when the trust for accumulation had failed, was undisposed of. *Weatherall v. Thornburgh* (App.), 47 Law J. Rep. Chanc. 658; Law Rep. 8 Ch. D. 261.

[And see TENANT-FOR-LIFE, 18.]

## THIRD PARTY.

[See PRACTICE, W 75–85.]

## THREATS.

*Testatrix prevented by force and threats from altering her will: practice.* [See PROBATE, 31.]

## THRESHING MACHINES.

[Statutory regulations. 41 & 42 Vict. c. 12.]

## TICKET.

*Passenger travelling without.* [See RAILWAY, 14–18.]

*Condition on back of, effect of.* [See CARRIER, 8, 9.]

## TIDAL RIVER.

[See RIVER.]

## TIMBER.

[See FRAUDS, STATUTE OF, 4; MORTGAGE, 10; WASTE, 3.]

## TIME.

[Expressions of time occurring in Acts of Parliament, deeds and other legal instruments, defined to refer in the case of Great Britain to Greenwich time, and in the case of Ireland to Dublin time. 43 & 44 Vict. c. 9.]

*Appeal, for.* [See PRACTICE, B 24–59.]

*Computation of: delivery of list of members of company to registrar within fourteen days after general meeting.* [See COMPANY, C 3.]

*Dismissal of action for want of prosecution.* [See PRACTICE, H 2, 3, 4.]

*Enrolment of decree, for.* [See PRACTICE, I 2.]

*Essence of the contract, when time is of.* [See SHIPPING LAW, D 4; SPECIFIC PERFORMANCE, 26; VENDOR AND PURCHASER, 16, 17.]

*Fractions of day: keeping dog without license.* [See DOG LICENSE.]

*Giving time to principal.* [See PRINCIPAL AND SURETY, 16, 17.]

*Information before justices.* [See HIGHWAY, 14; JUSTICE OF THE PEACE, 9; PUBLIC HEALTH ACT, 15.]

*Motion to commit.* [See BANKRUPTCY, M 23.]

*New trial, motion for.* [See PRACTICE, T 1-14.]

*Proceedings under Local Government Act.* [See PUBLIC HEALTH ACT, 25-28.]

*Sentence of criminal.* [See IMPRISONMENT.]

*Statute, of operation of.* [See STATUTE, 1.]

*Twenty-one days' residence in Scotland.* [See DIVORCE, 12.]

#### TIME POLICY.

[See MARINE INSURANCE, 10, 23.]

#### TITHE COMMUTATION MAP.

[See EVIDENCE, 15.]

#### TITHES.

[The Tithe Commutation Acts amended. 41 & 42 Vict. c. 42.]

#### TITLE.

[See SPECIFIC PERFORMANCE; VENDOR AND PURCHASER.]

*Of book: copyright in.* [See COPYRIGHT, 2, 3.]

#### TITLE DEEDS.

*Delivery up of: power to order.* [See MORTGAGE, 23.]

*Missing deed: redemption: action by mortgagor for indemnity.* [See MORTGAGE, 20.]

*Mortgage by deposit of.* [See MORTGAGE, 23, 35, 38.]

*Right of tenant-for-life to custody of.* [See TENANT-FOR-LIFE, 1.]

*Solicitor's lien on.* [See SOLICITOR, 29-35.]

#### TITLE PAGE.

[See TRADE MARK, 24.]

#### TOBACCO.

[Statutory regulations as to duties, &c. 41 & 42 Vict. c. 15. ss. 3, 25; 42 & 43 Vict. c. 21. ss. 4, 27.]

#### TOLL.

Where a local Act authorizes a proprietor of land to exact a toll, he must provide the accommodation for which the toll is exacted. *Aiton v. Stephen* (H.L. Sc.), Law Rep. 1 App. Cas. 456.

*Construction of Acts of Parliament imposing tolls on the public.* [See RAILWAY, 20.]

*Pier company: publication of rate authorised.* [See PIERS AND HARBOURS, 1.]

[And see COLONIAL LAW, 19; RAILWAY, 22.]

#### TOMB.

*Bequest for repair of tomb.* [See CHARITY, 12, 13.]

*Inscription on tombstones: "reverend:" dissenting minister.* [See CHURCH AND CLERGY, 11.]

#### TORT.

*Action founded on: costs.* [See COSTS, 14-18.]

#### TOTAL LOSS.

[See MARINE INSURANCE, 18-22.]

#### TOWAGE.

[See SHIPPING LAW, V.]

#### TOWING PATH.

[See LEE CONSERVANCY BOARD.]

#### TOWN.

*Meaning of word: construction of statute.* [See PUBLIC HEALTH ACTS, 39.]

#### TOWN AGENT.

[See SOLICITOR, 15.]

#### TOWNSHIP.

*Liability to repair highway.* [See HIGHWAY, 6.]

#### TRADE.

*Covenant not to carry on business.* [See COVENANT, 6-10.]

*Employing testator's assets in.* [See EXECUTOR, 21.]

*Injury to: libel.* [See LIBEL, 3, 11, 13-15.]

*Restraint of.* [See COVENANT, 2-4; CONTRACT, 4-6.]

#### TRADE MARK.

(A) REGISTRATION OF.

(a) *Under Trade Marks Registration Act, 1875.*

(1) *Mark capable of registration.*

- (2) *Opposition to application to register.*
- (3) *Cotton marks: committee of exports.*
- (4) *Removal from register.*
- (5) *Costs of unsuccessful applicant.*
- (b) *Under Copyright Act, 1862.*
- (B) INFRINGEMENT OF.
  - (a) *Right to injunction.*
  - (b) *Property in mark: custom of trade.*
  - (c) *Use of name connected with expired patent.*
  - (d) *Name of colliery.*
  - (e) *Name of shop: intention to deceive.*
  - (f) *Fraud or misrepresentation.*
  - (g) *Musical publication: title page.*
  - (h) *Bottles impressed with name of trader.*
  - (i) *Article not manufactured by trader.*
  - (k) *Secret preparation: use of name of discoverer.*
  - (l) *Practice in action for.*
    - (1) *Discovery: names of consignees.*
    - (2) *Costs: lien.*

[Amendment of the Trade Marks Registration Act, 1875.]

[Extension of time for registration of certain trade marks. 40 & 41 Vict. c. 36.]

#### (A) REGISTRATION OF.

- (a) *Under Trade Marks Registration Act, 1875.*
  - (1) *Mark capable of registration.*

1.—A mere word is not capable of registration as a trade mark under section 10 of the Trade Marks Registration Act, 1875. *In re The Trade Marks Registration Act, 1875; ex parte Stephens*, 46 Law J. Rep. Chanc. 46; Law Rep. 3 Ch. D. 659.

2.—A single letter which has been used by a firm as a trade mark before the passing of the Trade Marks Registration Act, 1875, is not a trade mark within the definition contained in section 10 of that Act, and cannot be registered thereunder. *In re Mitchell's Trade Mark*, 46 Law J. Rep. Chanc. 876; Law Rep. 7 Ch. D. 36.

3.—Whatever has been used in accordance with law as a trade mark, and protected as such before the passing of the Trade Marks Registration Acts, 1875 and 1876, may be registered under them. *In re The Trade Marks Registration Acts and Barrows & Sons*, 46 Law J. Rep. Chanc. 450; Law Rep. 5 Ch. D. 363.

Initials, coupled with a symbol or word, are trade marks within the Acts. *Ibid.*

4.—Registration of initials coupled with symbols. *In re The Trade Marks Registration Acts, 1875 and 1876, and In re Messrs. Barrows & Sons* (App.), 46 Law J. Rep. Chanc. 726; Law Rep. 5 Ch. D. 353.

5.—When a mere word, not used as a trade mark before the Trade Marks Registration Act, is put on the register, any dealer who has used the word in his trade in connection with or as descriptive of an article in which he deals, is

a person aggrieved by the registration, within the meaning of section 5. *In re The Trade Marks Registration Act, 1875. Rose v. Evans*, 48 Law J. Rep. Chanc. 618.

Semble, user before the Act of a word as part of a trade mark, is not sufficient to render the word registrable as a mark. *Ibid.*

Whether the scientific name of a particular tree, limetta, is a distinctive word capable of registration as an old mark in respect of lime juice, a product of the tree, or preparations of lime juice, quare. *Ibid.*

6.—R. & Co. applied under the Trade Marks Registration Act, 1875, to register the word "Tod" written in Arabic characters, as a trade mark. The Registrar of Trade Marks declined to register the mark, stating that he was acting in accordance with a regulation, established for his guidance by the Commissioners of Patents, that applications to register words in foreign character could not be entertained:—Held (by Bacon, V.C., and by the Court of Appeal), that the Commissioners of Patents had no power to make the rule referred to, and that R. & Co. were entitled to have their trade mark registered. *In re Rotherham & Sons' Trade Mark* (App.), 49 Law J. Rep. Chanc. 511; Law Rep. 14 Ch. D. 585.

7.—The Court will under rule 19 direct a trade mark to be registered, if satisfied of its dissimilarity to marks actually registered, without enquiring whether it be distinguishable from other marks the subject of pending applications to register. *In re The Trade Marks Registration Acts; in re Dugdale's Application*, 49 Law J. Rep. Chanc. 303.

Semble, when a trade mark is claimed consisting of a device associated with certain words, those words may be regarded in estimating the distinctiveness of the mark. *Ibid.*

8.—The plaintiffs had, for fifteen years and upwards, manufactured and sold a medicine under the name of "Reinhardt's Celebrated Family Salve," and in the year 1876 they registered the words "Family Salve" as their trade mark in connection with such medicine, under the Trade Marks Registration Acts. The defendant in 1868 registered at Stationers' Hall a similar preparation under the title of "Spalding's Universal Family Salve," and he had since manufactured and sold the salve under that name. Both salves were sold in packets encased in wrappers bearing the above titles in full, but the wrappers were so folded that until the packets were opened the words "Family Salve" alone were visible. In an action by the plaintiffs for an injunction,—Held, that the words "Family Salve" were both a "distinctive heading," and also "special and distinctive words used before the passing of the Act," within section 10 of the Trade Marks Registration Act, 1875; that the plaintiffs having by the registration acquired a *prima facie* right to the exclusive use of the two words "family salve," the *onus* lay on the defendant to displace that right; and that the defendant having failed to

discharge that *onus*, an injunction must be granted. *Raggett v. Findlater* (43 Law J. Rep. Chanc. 64) distinguished. *Reinhardt v. Spallling*, 49 Law J. Rep. Chanc. 57.

9.—Where the registration of a trade mark is opposed on the ground that it so nearly resembles an existing registered trade mark in the same class of goods as to be calculated to deceive within section 6 of 38 & 39 Vict. c. 91 (both parties being engaged in the same trade), the test is, assume the two marks are in some respect distinct and yet in other respects similar, and supposing them both to be registered and both to be fairly used with the same colour, would the proposed mark be calculated to deceive any person who only used ordinary observation? *In re Worthington & Company* (App.), 49 Law J. Rep. Chanc. 646; Law Rep. 14 Ch. D. 8.

Semble, the Trade Marks Registration Act is to be construed liberally: and if a proposed trade mark so far resembles a registered trade mark as that it may be so used as to be practically calculated to deceive, registration will be refused. *Ibid*.

10.—There being under the Trade Marks Registration Act, 1875, four trade marks including an anchor registered in respect of goods in class 42 of the 1st schedule to the rules made under the Act, the Court refused to give leave to the Registrar to register a new trade mark, including an anchor, in respect of goods in the same class but different in character from those goods for which the four trade marks had been registered. *In re Hargreaves' Trade Mark*, Law Rep. 11 Ch. D. 569.

#### (2) Opposition to application to register.

11.—Where under rule 16 of the Trade Mark Rules, 1876, an opposed application for the registration of a trade mark stands for the determination of the Court, the proper course is for the Registrar to require the opponent to apply for a direction as to the mode of trial, whereupon the person seeking to register is usually directed to take out a summons which is adjourned into Court. The application to the Court referred to in rule 44 of the Trade Mark Rules, 1876, means an application by the person seeking to register, and therefore a motion on behalf of the opponents for an injunction to restrain the proposed registration is irregular. *In re Simpson, Davies & Sons' Trade Mark*, Law Rep. 15 Ch. D. 525.

#### (3) Cotton marks: committee of experts.

12.—The committee of experts appointed under rule 59 of the Trade Marks Rules, 1876, are not a judicial tribunal. Their decision, though entitled to great weight, and throwing the burthen of proof on any one who seeks to register a trade mark in opposition to it, does not relieve the Court from examining the facts of the case. The Court must, in all cases, decide upon the merits, whether the applicant has a

good right to register under the Acts, and, if satisfied of that, must rectify the register. Where a label or mark, in addition to particulars which are not distinctive, contains other particulars which are distinctive, the latter may be registered as a trade mark. *Archibald Orr Ewing & Company v. The Registrar of Trade Marks* (H.L.), 48 Law J. Rep. Chanc. 707; Law Rep. 4 App. Cas. 479.

Decision of the Court of Appeal (47 Law J. Rep. Chanc. 807; Law Rep. 8 Ch. D. 794), reversing the decision of Hall, V.C. (47 Law J. Rep. Chanc. 180), varied. *Ibid*.

#### (4) Removal from register.

13.—Where a person who claimed 41 years' user of a trade mark, which for the greater part of that time had been a common mark, and which he knew to have been used by other firms for more than six years, registered such mark—Held (on the motion of persons who had used the mark for 20 or 30 years), that the mark, must be ordered to be removed from the register. The mark had been advertised in the Trade Marks Journal, but the applicants were not aware of this, and had, therefore, not opposed the registration. Held, that the respondent must pay the costs of the application. *In re Hyde & Company's Trade Mark*, Law Rep. 7 Ch. D. 724.

#### (5) Costs of unsuccessful applicant.

14.—Where an application to register a trade mark is unsuccessful, the applicant may be ordered to pay the costs of persons opposing the application, from the time when, under rule 16 of the Trade Marks Registration Rules, the matter is deemed to stand for the determination of the Court, but cannot be ordered to pay any costs incurred before that time. *In re Brandreth's Trade Mark*, 47 Law J. Rep. Chanc. 816; Law Rep. 9 Ch. D. 618.

#### (b) Under Copyright Act, 1862.

15.—A person who had been using for upwards of a year a trade mark bearing the word "registered," it having been registered under the Copyright Act, 1862 (25 & 26 Vict. c. 68), applied for its registration under the Trade Marks Registration Act, 1875; but the registrar acting on the instructions of the Commissioners of Patents, one of whom is the Lord Chancellor, who is empowered by the Act to make general rules as to registration, declined either to register the trade mark with the word "registered," or to allow the advertisements required by the Act before registration to be issued bearing the word "registered" as part of the trade mark. An application under the 5th section of the Act, for an order directing the registrar to take the necessary steps for the registration of the trade mark in its entirety, was refused. *In re Meikle's Trade Mark*, 46 Law J. Rep. Chanc. 17.

Semble, the Copyright Act, 1862 (25 & 26 Vict. c. 68), is not applicable to trade marks. *Ibid*.

## (B) INFRINGEMENT OF.

(a) *Right to injunction.*

16.—A trade mark for worsted goods described as "a white selvage on each side of the piece having a red and white mottled thread interwoven the full length of the selvage between the edge of the piece and the edge of the selvage," was registered by M. & Co., who deposited a specimen at the Patent Office Museum. This specimen was undyed, with a white selvage, the warp being white cotton and the woof white mohair, and nearly in the middle of the selvage was a compound warp thread composed of a thread of white cotton and a thread of Turkey red cotton intertwined. On the goods being dyed black the cotton threads took the dye imperfectly, so that the warp threads in the selvage became grey, while the woof became black, thus making the selvage dark grey, with a dark red mottled line running along it. The defendants sold black mohair goods with a dark grey selvage of nearly the same shade as that of M. & Co., with a twisted thread running along its inner edge, which thread was originally white, red and yellow, but in the course of dyeing the white became dark grey, and the yellow a dark olive, which could hardly be distinguished. There was evidence that the selvage, though not actually white, was what was known in the trade as a white selvage. M. & Co. brought an action and moved for an injunction:—Held (by Jessel, M.R.), that as their selvage was not white, and the mottled thread of the defendants was different, and in a different position from that of M. & Co., there was no infringement, and that an injunction must be refused. Held (by the Court of Appeal), that the principles according to which the Court acts in preventing a man from passing off his goods as those of another are not altered by the Trade Marks Registration Act, and that the question could not be disposed of by simple inspection of the patterns without considering whether the selvage was not, according to the understanding of the trade, a white selvage, and if it was, then whether the differences in quality and position of the defendants' mottled thread were sufficient to distinguish the defendants' goods from those of M. & Co., so as to prevent purchasers from being misled, and that as there was a conflict of evidence on these points the motion must stand over till the trial, the defendants undertaking to keep an account. *Mitchell v. Henry* (App.), Law Rep. 15 Ch. D. 181.

*Title of book.* [See COPYRIGHT, 2, 3.]

*Trial by jury: action in respect of trade name: issues of fact.* [See PRACTICE, HH 22.]

(b) *Property in mark: custom of trade.*

17.—Where a manufacturer consigned goods through a shipping agent to a merchant abroad and a trade mark for such goods was invented by the parties and adopted by them,—Held,

that neither the manufacturer nor the shipping agent had any exclusive right to the mark. An alleged custom in Manchester under which the right to the trade mark belonged to the shipping agent was held upon the evidence not to exist. *Robinson v. Finlay. Ward v. Robinson*, Law Rep. 9 Ch. D. 487.

(c) *Use of name connected with expired patent.*

18.—C., a patentee of a filter, after the expiration of his patent, sold filters marked "C's patent filter." W., a rival manufacturer, sold filters made according to the expired patent, marked "C's patent filter, manufactured by W.:"—Held (reversing the decision of Bacon, V.C., 46 Law J. Rep. Chanc. 365), to be no infringement of C's trade mark. *Cheavin v. Walker* (App.), 46 Law J. Rep. Chanc. 686; Law Rep. 5 Ch. D. 850.

19.—The plaintiffs, under patents, made floor-cloth of a new substance marked with the word linoleum:—Held, that "linoleum" being the only name of the new substance, the plaintiffs, at the expiration of the patents, were not entitled to the exclusive use of that word. *The Linoleum Manufacturing Company v. Nairn*, 47 Law J. Rep. Chanc. 430; Law Rep. 7 Ch. D. 834.

(d) *Name of colliery.*

20.—The plaintiffs were owners in fee of, and worked all the coal pits in the parish of Radstock. The defendants were lessees of a colliery, the coal raised from which was of a class known as Radstock coal, and was in the district of Radstock railway station for the purpose of goods traffic. The defendants were restrained from advertising themselves as "The Radstock Colliery Proprietors." *Braham v. Beauchamp*, 47 Law J. Rep. Chanc. 348; Law Rep. 7 Ch. D. 848.

(e) *Name of shop: intention to deceive.*

21.—A bootmaker having a shop running up Bedford Street with the front and entrance in the Strand, wrote up over his shop the words "Civil Service Boot Supply." The plaintiffs were at that time building a large store at the other end of Bedford Street in which, when finished, they opened a general shop, and they afterwards opened a boot and shoe shop in a street not far off. One of the plaintiffs' customers had gone to the bootmaker's shop mistaking it for that of the plaintiffs:—Held, that there was no evidence of intention on the part of the bootmaker to deceive, that no reasonable person would have been misled, and that an action for an injunction to restrain the bootmaker from using the above words could not be sustained. *The Civil Service Supply Association v. Dean*, Law Rep. 13 Ch. D. 512, and *Boulnois v. Peake*. Ibid. (n.)

In a trade mark case the fact that one person has been deceived is not conclusive as to the misrepresentation. Ibid.

A tradesman may use a name although he is

aware that a neighbouring tradesman intends to use that name. *Ibid.*

(f) *Fraud or misrepresentation.*

22.—A manufacturer using, to describe articles made by him, the name of another manufacturer, must justify the use thus made of a name not his own, by shewing that such name is understood by the trade and the public to denote a patented or other article of a particular type, structure or arrangement of parts, and not a mark or sign of a particular manufacturer. It makes no difference in this principle that such name does not appear upon the articles sold, but only in advertisements or price lists; nor that the articles bear the selling manufacturer's own trade mark and labels, stating them to be manufactured by him, and that statements to the same effect appear in the advertisements and price lists. *The Singer Manufacturing Company v. Wilson* (H. L.), 47 Law J. Rep. Chanc. 481; Law Rep. 3 App. Cas. 376.

Per the Lord Chancellor and Lord O'Hagan (*disubstantio* Lord Blackburn). Fraud is not necessary to be alleged or proved in order to obtain protection for a trade mark. *Ibid.*

The Singer Manufacturing Company sought to restrain an alleged improper use by the defendants of their trade mark or trade name. They alleged by their bill that they had attained great reputation as makers of sewing machines; that the sewing machines made by them were sold as Singer machines; that the term Singer was used by them and understood by the public as denoting machines of their manufacture, and not any specific principle of construction or mechanical arrangement of parts; that the defendants made and sold machines describing them in price lists and advertisements as Singer machines, whereby purchasers were likely to be and had been misled into the belief that the machines so sold by the defendants were of the plaintiffs' manufacture. The plaintiffs tendered affidavits in support of their allegations. The defendants tendered affidavits, and applied for leave to adduce *vice versa* evidence in reply to the plaintiffs' evidence. The Master of the Rolls held that the plaintiffs' evidence would not, even if uncontradicted or unshaken by cross-examination, entitle them to relief, and that it was unnecessary to consider the defendants' application, and dismissed the bill with costs, without reading the defendants' affidavits. The Court of Appeal affirmed this decision, 45 Law J. Rep. Chanc. 490; Law Rep. 2 Ch. D. 434. On appeal to the House of Lords their Lordships expressed their disapproval of the form of the decree, as calculated, in a case where there may be a rehearing and an appeal, to lead to delay and expense, and they remitted the case to the Chancery Division for the production of the defendants' evidence. *Ibid.*

23.—An article, the secret making of which was known only to one maker, had acquired a

trade name. An injunction was granted, restraining the application of that name to a different article of the same class, so as to induce the belief that it was the plaintiff's article. *Siebert v. Findlater*, 47 Law J. Rep. Chanc. 132; Law Rep. 7 Ch. D. 801.

(g) *Musical publication: title page.*

24.—The plaintiffs were the proprietors of a musical work called "Hemy's Royal Modern Tutor for the Pianoforte," but had no exclusive right to the use of the word "Hemy." The defendants, who were proprietors of a musical work called "Joussé's Royal Standard Pianoforte Tutor," brought out a new edition of their work, and employed Hemy to revise and re-edit it, and called it "Hemy's New and Revised Edition of Joussé's Royal Standard Pianoforte Tutor," and made the word "Hemy" the most prominent word on their title page:—Held, on the evidence, that the defendants had so used the word "Hemy" on the title page of their work as to lead the public to believe that in purchasing the defendants' work they were purchasing the plaintiffs' work, and an injunction was granted accordingly. *Moteler v. Wood* (App.), 47 Law J. Rep. Chanc. 625; Law Rep. 6 Ch. D. 606.

(h) *Bottles impressed with name of trader.*

25.—A perpetual injunction will be granted to restrain a trader from filling and sending out to the public articles of his own manufacture in bottles, casks or other receptacles having indelibly impressed thereon the name of another trader who manufactures an article of a like description, even although such trader place on such bottles, casks or receptacles a label having his own name thereon. *Rose v. Loftus*, 47 Law J. Rep. Chanc. 576.

(i) *Article not manufactured by trader.*

26.—The office of a trade mark is to denote that the article bearing it was manufactured by the owner of the trade mark; and a man has no right to affix a trade mark to an article not manufactured by himself, except for the purpose of shewing that the article was selected or examined or certified by himself. *Hirsch v. Jonas*, 45 Law J. Rep. Chanc. 364; Law Rep. 3 Ch. D. 584.

The plaintiff, a London cigar dealer, registered a label at Stationers' Hall, and communicated the same to a manufacturer of cigars at Havannah, who supplied the plaintiff with a particular description of cigars under that label, with the addition of the manufacturer's name and address. Afterwards, the manufacturer commenced to sell the same description of cigars under the same label through a London agent. Upon motion by the plaintiff, who alleged that he had an exclusive right, in the nature of trade mark, to the label,—Held, that the trade mark was the manufacturer's; and in the absence of evidence of a contract binding him to supply



cigars of the particular brand to no one but the plaintiff, the Court refused to grant an interim injunction to restrain the London agent from selling the cigars under the same label. *Ibid.*

(h) *Secret preparation: use of name of discoverer.*

27.—A person who has, without fraud, acquired the knowledge of the recipe of an unpatented preparation may make use of his knowledge and compound and sell the preparation himself in his own name, though it be the same as that of the inventor, provided that he does not represent that his is the only genuine preparation, or induce the public to believe that it is that of the original inventor or his representatives, or he may form a company to compound and sell the preparation, to be named after him, provided the company conform to the conditions and restrictions which would be binding upon him as an individual. *Massam v. Thorley's Cattle Food Company (Lim.)*, 36 Law J. Rep. Chanc. 707; Law Rep. 6 Ch. D. 574. [See, however, Law Rep. 14 Ch. D. 748.]

*Dissolution of partnership: right to use name.*  
[See PARTNERSHIP, 13.]

(i) *Practice in action for.*

(1) *Discovery: names of consignees.*

28.—The plaintiffs by their bill alleged that goods bearing counterfeit trade marks similar to their own trade marks were being sold in large quantities in V. and elsewhere. They also alleged that the defendants, who were shippers at L., had shipped large quantities of these goods to V. They wrote to the defendants asking for the names and addresses of the persons who had shipped the goods. On receiving no answer they commenced an action for discovery. The defendants demurred:—Held, overruling the demurrer, that the defendants must answer interrogatories within one month. *Orr v. Diaper*, 46 Law J. Rep. Chanc. 41; Law Rep. 4 Ch. D.

(2) *Costs: Lien.*

29.—In an action to restrain the infringement by the principal defendant of the plaintiff's trade mark,—Held (reversing the decision of Fry, J.), that the co-defendants, who were wharfingers, and had received the goods bearing the pirated trade mark in the ordinary course of business without any knowledge or notice of fraud, and had submitted to act as the Court should direct "on having their charges for warehouse rent, and their costs of the action paid or provided for," were entitled to be paid their costs of the action by the plaintiffs, and had a lien on the goods in their possession for their warehouse charges in priority to the lien (if any) which the plaintiffs might have on the same for their costs of the action. And semble, that when the pirated trade mark was removed, the plaintiffs had no lien whatever on the goods for

their costs of the action. *Moist v. Pickering* (App.), 47 Law J. Rep. Chanc. 527; Law Rep. 6 Ch. D. 770.

## TRADES UNIONS.

[The Trade Union Act, 1871, amended. 39 & 40 Vict. c. 22.]

1.—An action by the executive of a central trade union against officers of a branch, to recover funds of the union, was held a proceeding within section 4 (3) (a) of the Trades Unions Act, 1871, and (inasmuch as some rules of the union were in restraint of trade) judgment was given for the defendants. *Duke v. Littleboy*, 49 Law J. Rep. Chanc. 802.

2.—The object of the Trades Unions Act, 1871, was to make trades unions, which were illegal on account of their rules being in restraint of trade, legal for certain purposes, such as to enable them to sue and be sued and to hold property, but was not to make contracts of members of such unions legal *inter se* and capable of being enforced. An action was brought by an expelled member against the trustees and committee of a trades union registered under the Act, some of whose rules were in restraint of trade, for a declaration that he was entitled to participate in the benefits of the union, and for an injunction to restrain the defendants from excluding him therefrom:—Held, that irrespective of the Trades Unions Act, 1871, the union was an illegal association and that the action could not be sustained. But held also, that the Act did not assist the plaintiff, as by the 4th section, nothing in the Act is to enable any Court to entertain any legal proceeding instituted with the object of directly enforcing *inter alia* any agreement "for the application of the funds of a trade union to provide benefits to members," which, in effect, was the relief claimed by the plaintiff in his action. *Rigby v. Connol*, 49 Law J. Rep. Chanc. 328; Law Rep. 14 Ch. D. 482.

The foundation of the jurisdiction of a Court of equity to interfere in the case of a society or club on the expulsion of a member is the invasion of some right of property in the member, and therefore if the society or club has no property, the Court cannot interfere. Such right of property must be alleged in the statement of claim, as otherwise it will be demurrable. *Ibid.*

## TRAMWAYS.

### *Deposit.*

1.—Where a limited company empowered by a provisional order of the Board of Trade to make a tramway has not made such tramway within the time limited for the purpose, and has been ordered to be wound up by the Court, and an application is made for the return of the deposit under the Board of Trade rules, which provide that in such cases the deposit shall either be forfeited, or in the discretion of the

Court be paid to the liquidator, or be otherwise applied as part of the assets of the company for the benefit of the creditors, the creditors only, and not the shareholders, are to be considered. The only creditors to be considered under such circumstances are meritorious creditors; and the promoters are not by any subterfuge or device, either directly or indirectly, to get the benefit of the deposit if the tramway is not made. *In re The Lowestoft, Yarmouth and Southwold Tramways Company*, 46 Law J. Rep. Chanc. 893; Law Rep. 6 Ch. D. 484.

2.—An Act incorporating a tramway company provided that in certain events (which happened) a parliamentary deposit, or such portion thereof as should not be required for compensations as therein mentioned, should be forfeited to the Crown and paid to the account of the Exchequer in such manner as the Court of Chancery should direct, or in the discretion of the Court of Chancery if the company were insolvent and had been ordered to be wound up, or a receiver had been appointed, should wholly or in part be paid to such receiver or to the liquidator of the company, or be otherwise applied as part of the assets of the company for the benefit of the creditors thereof:—Held (reversing the decision of Malins, V.C., Law Rep. 2 Ch. D. 373), that the company was not insolvent within the meaning of the Act, and the deposit payable to the liquidator, because the company was wound up as unable to pay its debts, but that only such part (if any) of the deposit was payable to the liquidator as, after exhausting the unpaid capital, was required to satisfy the creditors of the company. *In re The Bradford Tramway Company* (App.), 46 Law J. Rep. Chanc. 89; Law Rep. 4 Ch. D. 18.

*Expenses of superintendence of road authority.*

3.—Where a tramway company, without giving notice to the road authorities, at different times took up and relaid paving stones between and within eighteen inches on each side of their rails in order to raise the rails of their tramway, which had sunk down, to the same level as the road,—Held, that section 28 of the Tramways Act, 1870 (33 & 34 Vict. c. 78), and not section 26, applied to the case, and that the vestry were not entitled to recover expenses for superintendence from the tramway company. *The Vestry of St. Luke's v. The North Metropolitan Tramways Company*, Law Rep. 1 Q.B. D. 760.

*Agreement with conductor: forfeiture of deposit: jurisdiction of magistrates.* [See CONTRACT, 16.]

*Statutory powers of company: power to increase fares: Scotch law.* [See SCOTCH LAW, 27.]

### TRANSFER.

*Of action or proceeding.* [See PRACTICE, GG.]

*Of mortgage.* [See MORTGAGE, 17.]

*Of property for value.* [See PLEDGE.]

*Of shares.* [See COMPANY, D 88-97.]

*Of stock into Court.* [See TRUSTEE ACTS, 9.]

### TRAVELLER.

[See ALKHOVER, 21; INNKEEPER, 1.]

### TREASURY.

[Incorporation of the Solicitor to the Treasury. Further provisions respecting the grant of administration of the estates of deceased persons for the use of the Crown. 39 & 40 Vict. c. 18.]

[Limitation and regulation of the Treasury Chest Fund. 40 & 41 Vict. c. 45.]

### TREATY.

[See EXTRADITION, 2; PETITION OF RIGHT, 3.]

### TREES.

*Overhanging highway: order of justices: owner or occupier.* [See HIGHWAY, 22.]

*Poisonous to cattle.* [See NEGLIGENCE, 5.]

### TRESPASS.

1.—By the Public Health Act, 1875, highways (not being turnpike roads) are, in urban districts, vested in and put under the control of the urban authority for the district, which in some places is the local board. In 1771 the Commissioners, under an Enclosure Act, set out E. and C. as private roads. In 1818 E. became a public road, and as such has since been repaired by the parish. C. has always continued to be a private way. Until 1863 the surveyor of highways, and subsequently the local board (to whom the office of surveyors of highways was then transferred, and who in 1875 became the urban authority for the district under the Public Health Act), were accustomed, year by year, to let the right of pasturage on the sides of E. and C., though several persons in the neighbourhood had insisted on the right to put cattle in both places without making any payment. In February, 1876, the local board let to the plaintiff the right of herbage on the sides of both E. and C. for a term, notwithstanding which the defendant insisted, during the continuance of the term, on turning out his cattle to graze on the sides of both roads. The plaintiff thereupon brought an action for trespass against the defendant:—Held, that the action was maintainable, so far as related to the sides of E., which, by virtue of section 149 of the Public Health Act, 1875, had become vested in the local board in such a way as to confer the right of pasture; but that the plaintiff's claim failed as regarded C., the local board having no title, and there being no such actual or conclusive possession on the part of the plaintiff as would enable him to maintain an action for trespass

against the defendant. *Coverdale v. Charlton*, 47 Law J. Rep. Q.B. 446; Law Rep. 3 Q.B. D. 376.

2.—A person who is out hunting with foxhounds for the purpose of sport cannot justify a trespass in entering the lands of another on the ground that he is in fresh pursuit of a fox. *Paul v. Summerhayes*, 48 Law J. Rep. M.C. 33; Law Rep. 4 Q.B. D. 9.

Whether a person could justify a trespass, on the ground that his only object and intent was to destroy a noxious animal, which could not otherwise be got rid of—*quære*. *Ibid*.

*Action by reversioner.* [See COPYHOLDS, 2.]

*Bill of sale holder taking possession after expiration of grantor's tenancy a trespasser as against landlord.* [See INJUNCTION, 16.]

*Interference of relative for protection of goods of deceased person.* [See EXECUTOR, 10.]

*Right of married woman to bring action for: Married Woman's Property Act, 1870.* [See HUSBAND AND WIFE, 54.]

*Several oyster fishery.* [See FISHERY, 2.]

*Title by possession.* [See LANDS CLAUSES ACT, 33, 35.]

## TRIAL.

### Of criminal.

A person deaf and dumb from four years of age was indicted for larceny from the person, and not answering when called upon to plead, the jury found the prisoner "mute by the visitation of God." The Court then ordered a plea of not guilty to be entered, and the trial to proceed. A relation, who could in some degree communicate with the prisoner by means of signs, was sworn to interpret the nature of the proceedings and the evidence, and the Court assigned counsel to the prisoner. At the conclusion of the case, after the summing up of the presiding Judge, the jury found the prisoner guilty, but in answer to a question left to them in the summing up, found that the prisoner "was not capable of understanding, and as a fact had not understood, the nature of the proceedings:"—Held, that the above finding shewed that the prisoner was at the time of the trial of non-sane mind; therefore that the Court ought to have discharged the jury, and ordered the prisoner to be detained during Her Majesty's pleasure, under 39 & 40 Geo. 3. c. 94. s. 2; and the conviction was quashed. *Reg. v. Berry* (C.O.R.), 45 Law J. Rep. M.C. 123; Law Rep. 1 Q.B. D. 447.

*Of action.* [See PRACTICE, HH.]

## TROVER.

### *Res judicata: proceedings before police magistrates.*

1.—By 2 & 3 Vict. c. 71. s. 40, metropolitan police magistrates are empowered, upon a complaint to them of the unlawful detention of

goods of less value than 15*l.*, to summon the person complained of, and to enquire into the title thereto, or to the possession thereof, and to order the goods to be delivered up to the owner thereof either absolutely or upon certain terms, provided that no such order shall bar any person from recovering possession of the goods so delivered by action at law. To an action for the conversion of goods, the defendant pleaded an estoppel, setting up 2 & 3 Vict. c. 71. s. 40, and alleging that the plaintiff had complained of the detention of the goods to a metropolitan police magistrate, who summoned the defendant before him, and after enquiring into the title to the goods, dismissed the summons, and thereby adjudicated in favour of the defendant. On demurrer,—Held, that such dismissal and adjudication did not bar the action, and that, therefore, the plea was bad. *Dover v. Child*, 45 Law J. Rep. Exch. 462; Law Rep. 1 Ex. D. 172.

### *Assignment of chattels in fraud of creditors.*

2.—The plaintiff, in order to defeat his creditors, assigned and delivered certain goods to Alcock, the defendant being privy to the transaction. Alcock, without the knowledge of the plaintiff, and not in furtherance of the fraud agreed on between himself and the plaintiff, and while it remained unaccomplished, sold the goods to the defendant. No composition was made by the plaintiff with his creditors, none of whom were paid or settled with:—Held, that the plaintiff was entitled to recover back the goods. *Taylor v. Bowers*, 45 Law J. Rep. Q.B. 163; affirmed on appeal, 46 Law J. Rep. Q.B. 39; Law Rep. 1 Q.B. D. 291.

### *For cheques stolen or misappropriated.*

3.—An indorsement forged "by procuration" is within 16 & 17 Vict. c. 59. s. 19, affording protection to bankers. *Charles v. Blackwell*, 45 Law J. Rep. C.P. 542; Law Rep. 1 C.P. D. 548; affirmed on appeal, 46 Law J. Rep. C.P. 368; Law Rep. 2 C.P. D. 151.

The plaintiffs, trading under the name of "Smith & Co.," employed as their agent K., who was authorised to receive payment on their behalf, and through K. they supplied goods to the defendants. The defendants paid for the goods by cheque drawn on the C. bank, payable to Smith & Co. or order, and delivered the cheque to K. The cheque was presented to the C. bank indorsed "Smith & Co., per K., agent," and was cashed by the C. Bank. Neither the cheque nor the money ever reached the plaintiffs, and they sued the defendants in trover for the cheque and also for the amount of the cheque and for goods sold:—Held, that, inasmuch as K. was the agent of the plaintiffs authorised to receive, there was an absolute and good payment between the defendants and the plaintiffs, and as the cheque was not improperly paid by the bank, so as to entitle the plaintiffs to sue on the cheque or in trover, no action would lie. *Ibid*.

4.—The plaintiffs, merchants in New York, enclosed in a letter to W. & Co., their correspondents in England, a cheque drawn on Smith & Co., bankers, London, and indorsed by the plaintiffs to W. & Co. The letter was placed with others for the purpose of being posted, but was abstracted, and the cheque was some time after presented to the defendants by one C., the cheque at that time bearing a forged indorsement to C. At the request of C., the defendants obtained cash for the cheque from Smith & Co., and allowed C. to draw for the amount:—Held, there being no evidence of negligence in the plaintiffs disentitling them to sue, that they were entitled to recover from the defendants the amount of the cheque, for the property in the cheque never having passed out of the plaintiffs, the defendants were guilty of a conversion, and therefore the plaintiffs were entitled to waive the tort, and hold the proceeds of the cheque to be money received to the plaintiffs' use. *Arnold v. The Cheque Bank; The Same v. The City Bank*, 45 Law J. Rep. C.P. 562; Law Rep. 1 C.P. D. 573.

*Conversion, what amounts to.* [See PLEDGE; SHIPPING LAW, F 7.]

#### TRUCK ACT.

[See MASTER AND SERVANT, 18.]

#### TRUST AND TRUSTEE.

##### (A) TRUST.

- (a) *Declaration of.*
  - (1) *Signature: Statute of Frauds.*
  - (2) *Ineffectual assignment operating as valid declaration.*
  - (3) *Legal title not transferred to trustee.*
  - (4) *Secret trust.*
  - (5) *Illegal consideration: failure of trust.*
  - (6) *Trust or power to sell.*

- (b) *Executory trust.*
- (c) *Implied trust.*
  - (1) *Charge of debts.*
  - (2) *Precoatory trust.*

##### (d) *Resulting trust.*

##### (B) TRUST FUNDS.

- (a) *Duty to concert.*
- (b) *Investment of.*
  - (1) *"Real securities."*
  - (2) *Foreign stocks.*
  - (3) *Specified investments authorised with power to change into "any other."*
  - (4) *Statutory powers: cash under control of Court.*

##### (C) BREACH OF TRUST.

- (a) *Liability of trustee for.*
- (b) *Legal life estate of bankrupt trustee.*
- (c) *Right of co-trustee to indemnity.*
- (d) *Following trust moneys.*
- (e) *Notice of incumbrance.*
- (f) *Enquiry: wilful default.*

##### (D) TRUSTEE.

- (a) *Appointment and removal of.*

##### (b) *Powers and duties.*

- (1) *Sale of trust property with other property.*
- (2) *Exercise of trust by heir of surviving trustee.*
- (3) *Purchaser of trust property.*
- (4) *Lease of different trust properties.*
- (5) *Moneys to be laid out in land: expenditure on repairs.*
- (6) *Power to give receipts by anticipation.*
- (c) *Discretion of trustees: application of fund for maintenance.*
- (d) *Personal liability of trustee.*
  - (1) *For breach of trust.*
  - (2) *Holding bank shares.*
- (e) *Right of, to costs, charges and expenses.*
- (f) *Devolution of estate of trustee.*
  - (1) *Devise of trust estate.*
  - (2) *"Bare trustee."*

##### (E) CESTUI QUE TRUST.

- (a) *Conversion and re-conversion.*
- (b) *Election by, to take as realty.*
- (c) *Whether exclusive object of trust.*

#### (A) TRUST.

##### (a) *Declaration of.*

##### (1) *Signature: Statute of Frauds.*

1.—A declaration of trust to satisfy the Statute of Frauds must be signed by the beneficial owner of the property sought to be made subject to the trust. The signature to a letter was held not to relate to a postscript written on a separate piece of paper. *Kronheim v. Johnson*, 47 Law J. Rep. Chanc. 132; Law Rep. 7 Ch. D. 60.

##### (2) *Ineffectual assignment operating as valid declaration.*

2.—A husband, by a voluntary deed-poll, after reciting that he was possessed of certain leasehold ground-rents "thereby intended to be settled upon his wife," "settled and assigned" them "unto his wife as though she were a single woman:"—Held, that the deed-poll, though ineffectual as an assignment, operated as a valid declaration of trust; and that, therefore, the wife became absolutely entitled to the leasehold property comprised in the deed-poll. *Baddoley v. Baddoley*, 48 Law J. Rep. Chanc. 36; Law Rep. 9 Ch. D. 113.

3.—A husband being about to go abroad, executed a deed, whereby he purported to grant, assign, transfer and set over to his wife a leasehold house and furniture, to hold the same unto his said wife as her separate estate:—Held, that it was the intention of the husband to settle the property on the wife, and that he thereby became trustee of the property for the separate use of the wife. The wife handed the title deeds of the house to an agent in order to raise 200*l.* The agent, falsely representing himself as the agent of the husband, by forged documents purported to mortgage the property to H. & S. (to whom

the deeds were delivered) for 1,200*l.*, which he appropriated. The wife repeatedly, but in vain, pressed the agent to return her the title deeds. The fraud being discovered,—Held, that the wife had not been guilty of such negligence as to deprive her of her right to relief against H. & S., and that the forged documents must be delivered up to be cancelled, and the title deeds handed over to her. *Fox v. Hawks*, 49 Law J. Rep. Chanc. 579; Law Rep. 13 Ch. D. 822.

[And see VOLUNTARY SETTLEMENT, 2.]

(3) *Legal title not transferred to trustee.*

4.—A testatrix, who had lent 300*l.* to S. on his promissory note, payable on demand, directed him, after her death to pay the interest to her sister for her life, and afterwards to divide the principal among her sister's children, which S. agreed to do. The testatrix died without having demanded payment of the note, which was found uncanceled, among her papers at her death:—Held, that as the testatrix had not parted with her legal title to the money, the direction did not create a trust. *In re Caplen's Estate. Bulbeck v. Silvester*, 45 Law J. Rep. Chanc. 280.

(4) *Secret trust.*

5.—A testatrix having executed a will and three codicils, made a fourth codicil as follows: "I do hereby bequeath to J. B. (to whom I have willed my landed property) also all my personalty, such as cash, furniture, &c., to be applied as I have requested him to do." The wishes of the testatrix as communicated to J. B. appeared fully from his affidavit in the action, and in part from a memorandum drawn up by him (but not signed by the testatrix) immediately before the execution of the codicil, and it also appeared thereby that the testatrix did not intend to alter her previous dispositions, except for the purpose of giving effect to her wishes as stated to J. B.:—Held, that the Court would give effect to the trust intended to be reposed by the testatrix in J. B., and that he held as trustee for the objects specified in the will and three codicils, subject to the alterations contained in the new dispositions shewn by his affidavit. Held also, that the words, "cash, furniture, &c." were not sufficient to cut down the general expression, "all my personalty;" and that, therefore, the fourth codicil extended to and comprised the whole personal estate of the testatrix. Held further, that, assuming that effect could not have been given to the trust reposed in J. B., the will and three codicils would nevertheless have remained in operation, since the fourth codicil would in that case have been executed for the purpose of creating new interests which failed. Held also, that one of the witnesses to the codicil, being interested under the parol trust, such interest failed. *In re Fleetwood. Sidgreaves v. Bremer*, 49 Law J. Rep. Chanc. 514; Law Rep. 5 Ch. D. 594.

[And see CHARITY, 19.]

(5) *Illegal consideration: failure of trust.*

[See SETTLEMENT, 5.]

*Illegal company.* [See COMPANY, C 4; LOTTERY ACTS.]

(6) *Trust or power to sell.*

6.—F. H. was a proprietor of a newspaper. By his will he gave all his real and personal estate, including the proprietorship of the newspaper, to his eldest son and two others, as trustees, upon trust to carry on the trade during the life of his wife, and for that purpose to set apart annually, as a reserve fund, one-fourth of the profits, and to divide the remainder in equal sixth parts between his wife and five children. He then proceeded as follows:—"And in case any of my children shall survive my wife and die before he or she shall have received his or her share of the trust estate, and without leaving lawful issue, then I give such share equally between my surviving children and the lawful issue of my deceased child, such issue taking their, his or her parents' share only, equally amongst them if more than one. And from and after the decease of my said wife (or during her life, if she and the majority of my children and my trustees shall think it proper and expedient so to do), at the sole discretion of my trustees, to sell and absolutely dispose of all my real and personal estate, and my trade or profession, and the goodwill thereof, and to divide the proceeds thereof among my said wife and children, and their lawful issue, if the division be made in the lifetime of my said wife; but if the division be made after her death, then amongst my children and their lawful issue only. I hereby further declare my will to be that in case under the clause hereinbefore contained, it shall be agreed, or my trustees shall decide, to sell my stock in trade and proprietorship of the newspaper, and my sons, or any of them, shall by writing offer to purchase and carry on the same, the trustees or trustee of my will may, and they are hereby authorised and requested to sell the same to them at 500*l.* less than the market price of such trade or profession:—Held (reversing the decision of the Lords Justices of Appeal), that these words created, not a mere power of sale, but an absolute trust for sale, subject to a discretion in the trustees as to the manner and time in which the sale should be carried out. *Minors v. Battison* (H.L.), 46 Law J. Rep. Chanc. 2; Law Rep. 1 App. Cas. 428.

Two of the trustees during the life of the widow, filed a bill for administration of the estate, and for an enquiry whether it would be fit and proper, and for the benefit of all parties, that the business should be carried on:—Held, that by so doing they had surrendered to the Court their discretion to postpone the sale, if such discretion ever existed. *Ibid.*

*Booty of war: royal warrant.* [See BOOTY OF WAR.]

(b) *Executory trust.*

7.—A precatory trust in favour of "children" *simpliciter* is well executed by limiting the share of a daughter to her separate use. *Willis v. Kymor*, 47 Law J. Rep. Chanc. 90; Law Rep. 7 Ch. D. 181.

8.—A direction to settle, contained in a will dated in 1810, was held to authorise a power of sale. *Wise v. Piper*, 49 Law J. Rep. Chanc. 611; Law Rep. 13 Ch. D. 848.

*Shifting clauses: remoteness: trusts of leaseholds by reference to uses of freeholds.* [See REMOTENESS, 16.]

(c) *Implied trust.*(1) *Charge of debts.*

9.—A devisee of an estate charged with the payment of debts, who is also one of the executors, may make a good title to a *bona fide* purchaser or mortgagee, and such purchaser or mortgagee is not bound to look to the application of the purchase or mortgage money. *Orser v. Cartwright* (H.L.), 45 Law J. Rep. Chanc. 605; Law Rep. 7 E. & I. App. 781.

Whatever may be the effect of a general charge of debts as giving to the executors an implied power of sale, this implied power cannot be executed so as to override anything done by such a devisee and executor as above mentioned, and to displace an estate which he had absolute power to convey and had in fact conveyed. *Ibid.*

In the case of a mortgage from such a devisee and executor, the circumstance that the solicitor of the mortgagee was also solicitor of the mortgagor, was held not to fix the mortgagee with constructive notice of an intended misapplication of the mortgage money, the solicitor expressly denying that he knew of or suspected the intended misapplication. *Ibid.*

In considering the validity of such a mortgage, it is not material that the mortgage deed does not on the face of it state the intention to apply the mortgage money in payment of the debts. *Ibid.*

(2) *Precatory trust.*

10.—An immediate bequest to testator's wife, "for her to do justice to testator's relations," but under no restriction to any stated property, but to be at liberty to give what and to whom she pleased:—Held, not to create a precatory trust. *Cole v. Hawes*, 46 Law J. Rep. Chanc. 488; Law Rep. 4 Ch. D. 238.

11.—A testatrix bequeathed all her personal estate to her executors on trust to convert into money, and, after payment of debts and certain legacies, to hold the residue "in trust for such of my nieces A. and B. as shall be living at my death, my desire being that they shall distribute such residue as they think will be most agreeable to my wishes:—Held, that A. and B. were beneficially entitled. *Stead v. Mellor*, 46 Law J. Rep. Chanc. 880; Law Rep. 5 Ch. D. 225.

*Briggs v. Penny* (3 Mac. & G. 546; 21 Law J. Rep. Chanc. 265) considered. *Ibid.*

12.—Gift by testator of all his property to his wife for her sole use and benefit, adding "it is my wish that whatever property my wife might possess at her death be equally divided between my children:—Held, that the wife took absolutely. *Parnell v. Parnell*, Law Rep. 9 Ch. D. 96.

(d) *Resulting trust.*

13.—Settlement of real estate to the use of A. and B. successively as tenants for life, with remainder to the sons of B. in tail, with remainders over, subject to a paramount joint power of appointment by A. and B., and with a power of sale in trustees on consent of A. and B. By a deed, expressed to be for the purpose of facilitating a sale to certain purchasers, A. and B. appointed to trustees upon trust for sale, the proceeds to be held upon trusts declared by deed of even date. No such deed of even date was ever executed:—Held, that the proceeds of sale remained subject to the trusts of the settlement. *Biddulph v. Williams*, Law Rep. 1 Ch. D. 203.

14.—A husband and wife appointed by way of mortgage some real estate legally settled, but subject to an absolute power in the husband and wife. On redemption it was provided that the re-conveyance should be reserved to the uses of the settlement. There was a power of sale under which any surplus purchase-money was to be held on trust for the husband, his heirs, executors, administrators and assigns. The power of sale was exercised after the death of the husband:—Held, that the surplus purchase-money belonged to the personal representative of the husband. *Jones v. Davies*, 47 Law J. Rep. Chanc. 654; Law Rep. 8 Ch. D. 205.

*Evidence: person not heard of for seven years.* [See PRESUMPTION, 2.]

*General power: failure of appointment: resulting trust.* [See POWER, 12.]

## (B) TRUST FUNDS.

(a) *Duty to convert.*

1.—A testator gave by his will all the residue of his estate, including his furniture and property over which he had a general power of appointment, to A. L. After the date of the will he married a second time, and then executed a codicil, giving to his wife the income of his entire estate, and postponing the payment of all legacies, and the distribution of all estates vested in him, or over which he could appoint, until after her decease:—Held (by James, L.J., and Thesiger, L.J., affirming Hall, V.C., but Baggalley, L.J., dissenting), that there was no sufficient evidence of an intention that the widow should enjoy the estate in specie expressed in the will and codicil, and that the usual rule for the conversion of the estate must

be applied. *Macdonald v. Irvine*, 47 Law J. Rep. Chanc. 494; Law Rep. 8 Ch. D. 101.

[And see TENANT-FOR-LIFE, 8-10.]

*Executor: conversion of speculative securities by.*  
[See EXECUTOR, 17.]

(b) *Investment of.*

(1) "*Real securities.*"

2.—Under a power to invest in "real securities," trust funds were invested on mortgage of long leaseholds. The mortgagee of a one-sixth share of the trust fund commenced an action against the trustee to administer the trust estate, alleging that the investment was improper, and that the trust funds were in danger of being lost. Pending the action, the trustee paid the remaining five-sixth shares to the other persons entitled, who had not been made parties to the action in any way, and paid the plaintiff's share into Court:—Held, that the trust funds had been improperly invested. But held also (affirming Vice-Chancellor Hall, 47 Law J. Rep. Chanc. 80), that, under the circumstances, the action had been instituted unnecessarily, and therefore that the trustee was justified in partly distributing the fund, and was entitled to be paid his costs of the action, and costs, charges and expenses as trustee out of the share in Court. *In re Chennell. Jones v. Chennell*, 47 Law J. Rep. Chanc. 583; Law Rep. 8 Ch. D. 492.

3.—Cash under the control of the Court cannot be invested in mortgage of long leasehold terms; and semble, such securities do not answer the description of "real securities." *In re Boyd's Settled Estates*, 49 Law J. Rep. Chanc. 806; Law Rep. 14 Ch. D. 626.

(2) *Foreign stocks.*

4.—Trustees under a will were authorised to invest in the Government stocks or funds of the United Kingdom, or the stocks or funds of the Government of the "United States of America or of the Government of France or any other foreign government":—Held, to authorise an investment in the funds or bonds of the separate States of America. *Cadett v. Earle*, 46 Law J. Rep. Chanc. 798; Law Rep. 5 Ch. D. 710.

(3) *Specified investments authorised with power to change into "any other."*

5.—Residue was bequeathed to two trustees on trust to invest in the Parliamentary stocks or funds or upon real securities at interest in the names of the trustees, with a proviso for change of investment to "any other funds or securities whatsoever." The property having been invested in bank annuities, the two acting trustees sold these and purchased Russian railway bonds transferable by delivery, half of which were kept in the custody of one trustee, and half of the other. One trustee absconded, having converted the bonds in his hands:—Held, that the investment was, on the terms of the will, authorised. But, that the innocent

trustee having on the construction of the trust committed a breach of trust in leaving the securities in his co-trustee's hands, was liable at the option of the *cestui que trust* to replace the bonds, or to pay the amount for which they were sold, or, if that could not be ascertained, the market value at the date when they were left in the hands of the defaulter. *Lewis v. Nobbs*, 47 Law J. Rep. Chanc. 662; Law Rep. 8 Ch. D. 591.

(4) *Statutory power: cash under control of Court.*

6.—Trustees may, under the powers conferred by 23 & 24 Vict. c. 88, s. 11, invest the trust funds subject to the trusts of their settlement in the same securities in or upon which cash under the control of the Court may be invested, notwithstanding they are by the instrument creating the trust expressly forbidden from investing in other than Government or Parliamentary securities. *In re Wedderburn's Settlement Trusts*, 47 Law J. Rep. Chanc. 743; Law Rep. 9 Ch. D. 112.

*Investment: advice of Court: person of unsound mind.* [See TRUSTEE RELIEF ACT, 10.]

*Lands Clauses Act: payment out, to trustees.*  
[See LANDS CLAUSES ACT, 29-31.]

(C) BREACH OF TRUST.

(a) *Liability of trustee for.*

1.—By a marriage settlement the husband assigned a policy of assurance on his life to the two trustees of the settlement, and covenanted to pay the premiums. One trustee disclaimed; and the other, by assigning the policy to a single new trustee, enabled the husband to mortgage and dispose of the policy and a bonus thereon:—Held, that such breach of trust being an act of commission and not of omission only, the trustee so assigning to the new trustee was liable to pay to the trust estate the money actually received for the policy. *Hobday v. Peters* (28 Beav. 603) distinguished. *Kingdon v. Castleman*, 46 Law J. Rep. Chanc. 448.

2.—A trustee who on untenable grounds withholds trust money from his *cestui que trust* may have committed what in equity may be considered a fraud, without being chargeable with personal fraud. *Thomson v. Eastwood* (H.L. Ir.), Law Rep. 2 App. Cas. 215.

3.—Where a sole trustee of a fund for the separate use of a married woman transferred the fund without her knowledge into the joint names of her husband and himself, and after his death the husband sold the fund and deserted the wife,—Held, that the husband and the estate of the trustee were liable to make good the fund with arrears of interest since the sale by the husband. *Dixon v. Dixon*, Law Rep. 9 Ch. D. 587.

4.—Where A., one of three executors, paid interest regularly to a person entitled to a life interest in a legacy, and after his death his executors continued to pay the interest without

intermission.—Held (by Fry, J.), that as the executors of A. could not properly have paid the interest after his death, unless the executors of the original testator had assented to the legacy and set apart a fund in the hands of A. to meet it, it must be assumed that such appropriation had been made, and that therefore the legatees could sue the executors of A. alone without making the other trustees of the original testator parties to their action. On appeal, the objection as to parties was waived, and the judgment of Fry, J., affirmed. *Wilson v. Rhodes* (App.), Law Rep. 8 Ch. D. 777.

*Directors of company: misfeasance.* [See COMPANY, D 18-37.]

*Leaving securities in hands of co-trustee: Liability for.* [See B 5 supra.]

(b) *Legal life estate of bankrupt trustee.*

5.—Devise of real estate for life to A. one of the executors and trustees of the will. A. committed breaches of trust, and then filed a petition for liquidation:—Held, that the life estate being legal, could not, as against the trustee under the liquidation, be taken and applied in replacing losses occasioned by the breach of trust. *Fox v. Buckley* (App.), Law Rep. 3 Ch. D. 508.

(c) *Blight of co-trustee to indemnity.*

6.—Three trustees advanced trust moneys on mortgage of land and houses to a builder. The builder had purchased the land from one of the trustees, to whom he was also indebted in respect of other matters, and the money advanced by the trustees was applied by the builder in payment of the price of the land and of the other debts due from him to the trustee from whom he had purchased the land. The security was alleged to be insufficient. A bill was filed by the other trustees against the trustee who had received the money, and a new trustee, seeking to realize the security, and make the trustee who had received the money make good any deficiency:—Held (affirming the decision of Fry, J., 46 Law J. Rep. Chanc. 548; Law Rep. 5 Ch. D. 554), that in the absence of any proof that the money had been wilfully lent on insufficient security, the indirect benefit which the trustee who received the money obtained was too remote to support a bill of this kind, and that it must be dismissed with costs. *Butler v. Butler* (App.), 47 Law J. Rep. Chanc. 77; Law Rep. 7 Ch. D. 116.

(d) *Following trust moneys.*

7.—There is no distinction between a person occupying one fiduciary position or another as to the right of the beneficial owner to follow the trust fund; accordingly, when a bailee of bonds sold them, and paid the money to his account at his banker's, the bailor was held entitled to follow the money into the banking

account, and to have a charge on the balance in the banker's hands. *Ex parte Dale & Co.* (48 Law J. Rep. Chanc. 600; Law Rep. 11 Ch. D. 772) dissented from. A trustee improperly sold Russian bonds and paid the proceeds to the credit of his account at his bank, mixing them with his own private moneys. After such payment in he paid in sums of his own, and also drew out others by cheques for his own purposes. There was a balance standing to his credit at his death:—Held (by Jessel, M.R., and Baggallay, L.J., *dissentiente* Thesiger, L.J., reversing the decision of Fry, J., 48 Law J. Rep. Chanc. 734; Law Rep. 13 Ch. D. 696), that the rule of *Clayton's Case* (1 Mer. 572) does not apply as between trustee and *cestui que trust*, and that the trustee must be taken to have drawn out his own money, and not the trust money. *Pennell v. Deffell* (4 De Gex, M. & G. 372; 20 Law J. Rep. Chanc. 115), on this point, overruled. *In re Hallett's Estate. Knatchbull v. Hallett. Cotterell v. Hallett* (App.), 49 Law J. Rep. Chanc. 415; Law Rep. 13 Ch. D. 696.

Semble, where trust moneys belonging to different trusts have been paid in by a trustee into his banking account, and have become mixed, if the ultimate balance at his bank is insufficient to meet the full amount of all the trust moneys so paid in, the strict application of the rule of *Clayton's Case* as between the different *cestuis que trust* is correct. *Ibid.*

8.—A policy on the life of a *cestui que trust*, the settlor, was vested in trustees and settled, bonuses being excluded. The settlor misappropriated some of the trust funds, and died insolvent. The trustees were not allowed to retain bonuses received after the death of the settlor to make good the settlor's defalcations. *Hallett v. Hallett*, 49 Law J. Rep. Chanc. 61; Law Rep. 13 Ch. D. 232.

(e) *Notice of incumbrance.*

9.—The trustee of a fund, who has a charge upon it, is not bound, in the absence of express enquiry, to communicate the existence of such charge to a person who gives him notice of a subsequent charge, nor will he lose his priority by not communicating the same. *Ex parte Garrard; in re Lower. Ex parte Wilkes* (App.), Law Rep. 5 Ch. D. 61.

[And see CHOSE IN ACTION, 2.]

(f) *Enquiry: wilful default.*

10.—It is not necessary to direct an enquiry previous to charging the defendants as for wilful neglect and default. *De Cordova v. De Cordova* (P.C.), Law Rep. 4 App. Cas. 692.

*Defaulting: writ of attachment: discretion of Judge: Debtors Act.* [See DEBTORS ACT, 3, 4.]

*Notice to solicitor not notice to trustee.* [See MORTGAGE, 26.]



## (D) TRUSTEE.

## (a) Appointment and removal of.

1.—The Court has jurisdiction on petition to remove a trustee who has compounded with his creditors, even though he has paid the amount of the composition before the presentation of the petition. *In re Adam's Trusts*, 48 Law J. Rep. Chanc. 618; Law Rep. 12 Ch. D. 634.

2.—The bankruptcy of a sole trustee is sufficient ground for his removal wherever the nature of the trust is such that there are moneys for him to receive or property which he can misappropriate, nor does an order of discharge obtained pending the hearing of the petition vary the case. *In re Barker's Trusts*, 45 Law J. Rep. Chanc. 52; Law Rep. 1 Ch. D. 43.

## (b) Powers and duties.

## (1) Sale of trust property with other property.

3.—A trustee for sale may properly sell the trust property, together with other property, for an entire price, where a sale in that manner will be more beneficial for the *cestui que trust*, provided the purchase-money be properly apportioned, and the conditions of sale affecting the other property are not such as to injure the sale of the trust property. *In re Cooper*, 46 Law J. Rep. Chanc. 133; Law Rep. 4 Ch. D. 802.

A purchaser under such circumstances ought to see that the purchase-money is properly apportioned before completion. *Ibid*.

## (2) Exercise of trust by heir of surviving trustee.

4.—Where real estate is devised to trustees and their heirs upon trust that, after death of a tenant-for-life, "the said trustees or trustee, or the trustees for the time being," shall sell, the trust may be exercised by the heir of the surviving trustee, although there is a power given in the will to appoint new trustees. Decision of Jessel, M.R., affirmed. *In re Morton and Hallett* (App.), 49 Law J. Rep. Chanc. 559; Law Rep. 15 Ch. D. 143.

Quere, whether *Cooke v. Crawford* (13 Sim. 91; 31 Law J. Rep. Chanc. 406) can be considered as overruled. *Ibid*.

[See POWER, 26.]

## (3) Purchase of trust property.

5.—Trustees of the marriage settlement of H.'s wife purchased at his instigation real estate of which H. was sole trustee for sale. H. was employed as solicitor in the purchase and advanced some of the purchase-money. H.'s *cestui que trust* disputed the sale.—Held, that the sale was not impeachable. *Hickley v. Hickley*, 45 Law J. Rep. Chanc. 401; Law Rep. 2 Ch. D. 190.

## (4) Lease of different trust properties.

6.—A lease comprising different properties held upon different trusts cannot be properly granted unless under very special circumstances. *Tolson v. Sheard* (App.), 46 Law J. Rep. Chanc. 815; Law Rep. 5 Ch. D. 19.

An agreement by trustees of two properties held on different trusts for a mining lease of both at a rent of so much per acre worked:—Held, a breach of trust, and specific performance at the suit of the trustees refused. *Ibid*.

## (5) Moneys to be laid out in land: expenditure on repairs.

7.—Trustees of a settled estate having, out of moneys in their hands, in trust to be laid out in lands to be settled to the same uses, purchased a farm for 20,000*l.*, the Court, in an action, authorised 1,000*l.* of the same moneys to be applied in repairing, improving and rebuilding the farm buildings and cottages upon the purchased lands. *Cowley v. Wellesley*, 46 Law J. Rep. Chanc. 869.

## (6) Power to give receipts by anticipation.

8.—A fund was vested by a settlement in trustees for A. for life and over, and the reversion had been subsequently settled:—Held, that A. and the trustees of the subsequent settlement were entitled to call for a transfer of the trust fund, and could give the original trustees an effectual discharge although the settlement did not provide for a transfer or payment by anticipation. *Anson v. Potter*, Law Rep. 13 Ch. D. 141.

Majority of trustees cannot bind trust estate. [See MORTGAGE, 41.]

## (c) Discretion of trustees: application of fund for maintenance.

9.—Trustees were directed to pay income for the maintenance and support of the testator's son and his wife, and their children under twenty-one and unmarried, in such shares and proportions as they in their discretion should think proper, and in like manner to pay the income unto and for the benefit of any widow whom his son might leave, and any such children as aforesaid. The testator's son died, and his widow married again. All the children of the son attained twenty-one. On claim by the second husband to income after the youngest child attained twenty-one,—Held, that the trustees, being desirous of paying the income to the wife for her separate use, should be at liberty to do so as long as they pleased. *Austin v. Austin*, and *Austin v. Boyce*, 46 Law J. Rep. Chanc. 92; Law Rep. 4 Ch. D. 233.

Semble, that words which give income for "the maintenance and support" of a wife and children, are sufficient to create a separate use in the wife. *Ibid*.

10.—A testator devised real estate, and bequeathed his residuary personal estate to

trustees upon trust, that they, in their discretion, and of their uncontrollable authority, should pay and apply the whole or such portion only of the annual income of his real and residuary personal estate as they should think expedient to or for the maintenance of his wife (a lunatic) at such time or times and in such proportions and manner in all respects as his trustees should think most conducive to her comfort, enjoyment and convenience, without being liable to account for such payment and application. The lunatic became, on her husband's death without issue, entitled under her marriage settlement to a life interest in certain funds, and absolutely to other funds therein respectively comprised. By an order of the Lords Justices in Lunacy it was ordered that without prejudice to the question as to the primary liability of the testator's estate to provide for the maintenance of the lunatic, the sum of 696*l.* a year should be applied for that purpose:—Held (affirming the decision of the Court of Appeal, with a slight variation), that the trustees had an absolute discretion as to whether or not they would apply any and what part of the income of the testator's estate for the maintenance of the lunatic, and that the Court was not entitled to control or interfere with such discretion. *Gisborne v. Gisborne* (H.L.), 46 Law J. Rep. Chanc. 556; Law Rep. 2 App. Cas. 300.

11.—Under a marriage settlement certain funds were vested in trustees, upon trust (in the events which had happened) "in their uncontrolled and absolute discretion," to pay the income or any part thereof for the maintenance of the husband and wife, or one of them. The wife was unable to live with her husband on account of his intemperate habits. The trustees, in the exercise of their discretion, paid the whole of the income to the husband. The wife having applied, by summons, that the trustees might be ordered to pay a competent part of the income for her maintenance,—Held, that in the absence of *mala fides* on their part, the Court could not interfere with the absolute discretion given to the trustees. *Tabor v. Brooks*, 48 Law J. Rep. Chanc. 130; Law Rep. 10 Ch. D. 273.

*Discretionary power to trustees to postpone payment of shares of residue.* [See SCOTCH LAW, 28.]

(d) *Personal liability of trustee.*

(1) *For breach of trust.* [See C 1-4 supra.]

(2) *Holding bank shares.*

12.—An unlimited Scotch banking company was registered under the Companies Act, 1862. The appellants took a transfer of stock, and were described in the books of this company as "trust disponees." The company was wound up voluntarily:—Held, that the appellants were personally liable as contributories to the company, and that their liability was not limited to

the amount of the trust estate. *Lumsden v. Buchanan* (4 Macq. 450) followed. *Muir v. The City of Glasgow Bank* (H.L. Sc.), Law Rep. 4 App. Cas. 337.

13.—In the case of the same bank the resignation of a trustee under 24 & 25 Vict. c. 84, s. 1, with consent of his co-trustees and beneficiaries, before the commencement of the winding up, but after the stoppage of the company, was held to be too late to exempt the trustee from his personal liability as a contributory. *In re The City of Glasgow Bank. Mitchell's Case* (H.L. Sc.), Law Rep. 4 App. Cas. 548, 567, and *Rutherford's Case*, *ibid.* 548, 581. The like was held in a similar case where the trustee was entered on the register as executor, and had acted as a shareholder for over twenty years. *In re The City of Glasgow Bank. Buchan's Case* (H.L. Sc.), Law Rep. 4 App. Cas. 549, 583.

14.—In the case of the same bank, shares were transferred into the names of four persons as trustees and executors. One of the four signed mandates to the bank authorizing the payment of dividends, sanctioned the purchase of additional bank stock, and signed the minutes of meetings of the trustees:—Held, that he was rightly put on the list of contributories. *In re The City of Glasgow Bank. Bell, Lang and Others' Case* (H.L. Sc.), Law Rep. 4 App. Cas. 547, 550.

Two surviving trustees executed a deed assuming new trustees. New and old trustees passed a unanimous resolution that stock in the bank standing in the names of the old trustees should be transferred into the names of the new and old trustees; and a note of the assumption was made by the bank officials. All the trustees signed a minute stating that one of their number had tabled the scrip of the bank stock, shewing the transfer of the stock as directed at the previous meeting:—Held, that the assumed trustees, except one, a female, who was a minor and unmarried, at the date of the resolution to transfer, were liable as contributories. *Ibid.*

The name of the minor was removed from the list without prejudice to the right to place thereon the names of her husband and herself in her right.

15.—In the case of the same bank, where a trustee was appointed in 1855, and registered as a shareholder, together with his co-trustees, and together with them signed a transfer, in which they were described as trustees nominated under an antenuptial contract, signed a dividend warrant in 1856, and resigned office in 1868, which was accepted but not intimated to the bank, so that his name remained on the register until the stoppage of the bank,—Held, that he was liable as a contributory. *In re The City of Glasgow Bank. Kerr's Case* (H.L. Sc.), Law Rep. 4 App. Cas. 550, 598.

16.—A. and B., who were in partnership with C., purchased for the purposes of their partnership stock in the City of Glasgow Bank, and

took a transfer in favour of themselves "and the survivor of them for behoof of the firm." In the liquidation of the bank A. and B. were each placed individually on the list of contributories as holders of 1,000*l.* of stock as "trustees for the firm." In an application to vary the list by expunging the words "trustee for the firm," and to place A. and B. on the list as contributories for 500*l.* each,—Held, that A. and B. were trustees for the partnership, and were jointly and severally liable for all calls in respect of the stock. *Gillespie v. The City of Glasgow Bank* (H.L. Sc.), Law Rep. 4 App. Cas. 632.

17.—One of five trustees under a marriage contract signed a note approving of the purchase of bank stock in the same bank, and the names of the trustees appeared in the transfers of stock and on the register of members. A., one of the trustees, did not sign the transfers, but signed a letter to the company, authorising the payment of dividends:—Held, that A. was liable as a contributory. *Cunninghame v. The City of Glasgow Bank* (H.L. Sc.), Law Rep. 4 App. Cas. 607.

Held also, that the trustees were liable in *solidum* for the whole of the stock, and not *pro rata* for one-fifth part only. *Ibid.*

(e) *Right of, to costs, charges and expenses.*

19.—A suit was instituted by a next friend, on behalf of infants interested in the administration of a testator's estate, for the purpose of setting aside an agreement which had been entered into by the executors and trustees for the disposal of the testator's business, and the bill contained charges of gross misconduct against T., one of the trustees and executors. T. defended the suit, and the bill was dismissed with costs, the Court being of opinion that the agreement was for the benefit of the estate, and that the charges against T. were unfounded. The next friend being insolvent, T. applied in a suit for the administration of the testator's estate to be allowed his costs out of the estate, but they were refused, on the ground that he had not previously obtained leave to defend. But, on appeal, the decision was reversed and the costs were allowed. *Walters v. Woodbridge* (App.), 47 Law J. Rep. Chanc. 516; Law Rep. 7 Ch. D. 504.

[See B 2 *supra*.]

(f) *Devolution of estate of trustee.*

(1) *Devise of trust estate.*

20.—The trust estates of an intestate dying before the Land Transfer Act, 1875, vest, in the absence of conveyance or other act duly done under the Vendor and Purchaser Act, 1874, in the heir-at-law of such intestate. *Christie v. Ovington*, Law Rep. 1 Ch. D. 279.

(2) *"Bare trustee."*

Semble, a "bare trustee" is a trustee who has no duty to perform, and who, on request, would

be compellable in equity to convey or transfer to his *cestui que trust*. *Ibid.*

21.—Neither an unpaid vendor nor any other person having a beneficial interest, is a "bare trustee" within the Land Transfer Act, 1875, s. 48. *Morgan v. The Swansea Urban Sanitary Authority*, Law Rep. 9 Ch. D. 582.

Quære, whether a trustee without a beneficial interest, but having active duties to perform, is a "bare trustee." *Ibid.*

*Accounts of trustees and executors, how to be taken.* [See PRACTICE, A 7.]

*General devise, whether trust estates pass by.* [See WILL CONSTRUCTION, E 6, 8.]

*Trust for sale: sale by heir of surviving trustee.* [See POWER, 26.]

(E) CESTUI QUE TRUST.

(a) *Conversion and re-conversion.*

1.—An estate was appointed by will, subject to a charge for raising a sum of money to be applied upon certain trusts. The money was duly raised in the lifetime of the appointee. After his death the trusts failed, and the charge sank for the benefit of the estate:—Held, that the money belonged to the legal personal representatives of the appointee. *In re Cooper's Trusts* (23 Law J. Rep. Chanc. 25) explained. *In re Newbery's Trusts*, 46 Law J. Rep. Chanc. 612; Law Rep. 5 Ch. D. 746.

2.—Where a testator directs personal estate to be laid out in the purchase of lands to be held upon trusts which ultimately fail, lands purchased before the failure of the trusts go to the next-of-kin as real estate. *Curtis v. Wormald* (App.), Law Rep. 10 Ch. D. 178.

*Reynolds v. Godlee* (Johns. 536, 582) overruled. *Ibid.*

3.—A testator by his will directed his executors "to sell his landed property" (specifying it) "for its full value." He then gave legacies, and specifically devised other lands to L., with remainder to T. He then gave other legacies, and concluded, "I constitute the said T. my residuary legatee."—Held, that the real estate not specifically devised was converted out and out for the general purposes of the will, and that the surplus, after satisfying those purposes, went to the residuary legatee, and not to the heir-at-law. *Singleton v. Tomlinson* (H.L. Ir.), Law Rep. 3 App. Cas. 404.

(b) *Election by, to take as realty.*

4.—A testator gave his real and personal estate to A. and B., whom he appointed his executors, as to the real estate in trust for sale, the proceeds to be considered as part of his personal estate; and gave his personal estate, after the death of his wife (who died in his lifetime), to his son C. absolutely. A. died in the testator's lifetime. B. renounced probate in the common form, and survived the testator for three years and then died, without having acted as trustee:—Held, under the circumstances, that the renunciation of the probate operated as a dis-

claimers of the trusts of the will, so that the legal estate in land of which the testator died seised vested in C. as his heir-at-law. *In re Gordon's Estate. Roberts v. Gordon*, 46 Law J. Rep. Chanc. 794; Law Rep. 6 Ch. D. 531.

The testator died seised of a farm, part of which was freehold and the rest copyhold. C. never procured himself to be admitted tenant of the copyhold portion of the farm, nor took any part in the management thereof, but received the rents through his local agents in the same manner as his father had done, until his death nine years afterwards:—Held, in an action by the personal representative of C. against C.'s heir-at-law and customary heir, that C. had by his conduct elected to take the farm as real estate. *Ibid.*

Semble, the decision would have been the same if the legal estate had not been at home in C. *Ibid.*

5.—Persons holding freehold property in trust for sale for payment of legacies, and entitled to the proceeds subject to such payment, may, with the assent of the legatees, elect to take the property as realty. *Multon v. Bigg* (App.), 45 Law J. Rep. Chanc. 282; Law Rep. 1 Ch. D. 385.

Long acquiescence by legatees, entitled to require a sale for payment of their legacies, in no sale being made, may be construed as an assent to their legacies becoming simple charges. *Ibid.*

Quære, whether the trust was such as to have prevented the application of the Statute of Limitations if there had been no election. *Ibid.*

6.—A testator devised his real and personal estate to trustees upon trust for sale and conversion, and out of the income of the moneys arising therefrom to pay an annuity of 750*l.* to his widow during widowhood, and subject thereto to pay the residue during such widowhood to his son, G. M., unless and until he did any act to deprive himself of the whole or any part thereof, and in case his estate determined, upon trust to pay the income to the widow during such widowhood, and after her death or second marriage, as to one moiety of the capital for G. M. absolutely, and as to the other moiety, in case his estate had not determined, then upon trust for G. M., his heirs, executors and administrators; but in case it should have determined, then upon certain trusts in favour of G. M., his wife and children. G. M. during his life resided with his mother on part of the devised estates in Sussex, and died in the lifetime of his mother without having done any act whereby his estate determined, having by his will devised the Sussex estate in strict settlement, and bequeathed his personalty upon trust for his children equally at twenty-one or marriage:—Held, that G. M. had the right to elect to take the Sussex estate as realty, and that he had done enough in his lifetime and by his will to shew that he intended to elect so to take it, and that the property was therefore part of his real

estate. *Meek v. Devonish*, 47 Law J. Rep. Chanc. 57; Law Rep. 6 Ch. D. 566.

7.—Devise of real estate in trust for sale, "with all convenient speed," to raise a charge of 500*l.*, and subject thereto for A. (a *feme covert*) and B. absolutely. Seven years after the trust for sale became exercisable, A. died. The property had not been sold, and A.'s husband had paid off the 500*l.* with A.'s money, and supported a petition in opposition to a railway which proposed to pass through the property:—Held, that A. had elected to take as real estate. *In re Davidson. Martin v. Trimmer. Davidson v. Trimmer* (App.), Law Rep. 11 Ch. D. 341.

(c) *Whether exclusive object of trust.*

8.—Bequest of 1,200*l.* and the accumulated income thereof upon trust to purchase an advowson, and to present some fit person until the testator's son should die or be presented to a benefice of 1,000*l.* a year, and after such death or presentation, the advowson (or the fund if no purchase had been made) was to be in trust for his son, his executors or administrators. The son having been presented to a benefice of less than 1,000*l.* a year before any advowson had been bought, claimed the fund:—Held, that, as the son was not the exclusive object of the trust, and as the trustees were willing to carry it out by purchasing an advowson and presenting a fit person, the son was not entitled. *Gott v. Nairne*, Law Rep. 3 Ch. D. 278.

TRUSTEE ACTS.

(A) PETITION WHEN TO BE PRESENTED IN LUNACY.

(B) APPOINTMENT OF NEW TRUSTEES.

(a) *Who is a trustee within the Act.*

(b) *Residence abroad.*

(c) *Appointment of continuing trustees in place of retiring trustees.*

(d) *Appointment of new trustees of separate fund.*

(C) VESTING ORDER.

(a) *Irish railway stock.*

(b) *Land in Ireland.*

(c) *Death of trustee without representative.*

(d) *Form of order.*

(1) *Order in lunacy.*

(2) *Tenant in tail of unsound mind.*

(3) *Where improper investments not to be vested.*

(4) *Vesting order in chambers: jurisdiction.*

(D) COSTS: LUNATIC MORTGAGEE.

(A) PETITION WHEN TO BE PRESENTED IN LUNACY.

1.—Where a new trustee of a settlement had been appointed in the place of a trustee who had become of unsound mind, a petition for an order appointing the new trustee by the Court and vesting the real estate, and the right to call

for a transfer of the personal property in the new trustee, together with the continuing trustee, was directed by the Court to be entitled in Chancery as well as in Lunacy. *In re Pearson* (App.), 46 Law J. Rep. Chanc. 670; Law Rep. 5 Ch. D. 982.

2.—A petition under the Trustee Acts, for the appointment of new trustees in the place of two deceased trustees, and of one of the surviving trustees who was lunatic, though not so found by inquisition, need not be presented in Lunacy, no vesting order being asked for. *In re Vickers' Trusts*, 46 Law J. Rep. Chanc. 16; Law Rep. 3 Ch. D. 112.

3.—Where a sole trustee is of unsound mind and out of the jurisdiction, a petition for appointment of new trustees and a vesting order need not be presented in Lunacy as well as in Chancery any more than in the case of any other trustee out of the jurisdiction. *In re Gardner's Trusts*, Law Rep. 10 Ch. D. 29.

#### (B) APPOINTMENT OF NEW TRUSTEE.

##### (a) *Who is a trustee within the Act.*

4.—Where executors invested a legacy to which an infant would become absolutely entitled on attaining twenty-one, subject to trusts for maintenance, &c., in the meantime, in the joint names of themselves and the infant, and afterwards died, and an order was made to bring the fund into Court,—Held, that the infant was a trustee within the Trustee Acts. *Gardner v. Cowles*, Law Rep. 3 Ch. D. 304.

##### (b) *Residence abroad.*

5.—Where all the persons beneficially interested under a will are permanently resident in a place out of the jurisdiction, the Court will, in a proper case, appoint as new trustees persons resident in the same place, even though some of the beneficiaries are infants. *In re Liddiard's Trusts*, 49 Law J. Rep. Chanc. 373; Law Rep. 14 Ch. D. 310.

##### (c) *Appointment of continuing trustees in place of retiring trustees.*

6.—One of four trustees of a will desiring to retire,—Held, that the Court had jurisdiction under section 32 of the Trustee Act, 1850, to appoint the remaining three as trustees in the place of themselves and the fourth. *In re Shipperdon's Trusts*, 49 Law J. Rep. Chanc. 619.

7.—Where one of the four trustees of a will had absconded, the Court has jurisdiction under section 32 of the Trustee Act, 1850, to appoint the remaining three as sole trustees in place of themselves and the fourth. *In re Stokes' Trusts* (41 Law J. Rep. Chanc. 235; Law Rep. 13 Eq. 833) followed. *In re Harford's Trusts*, Law Rep. 13 Ch. D. 185.

##### (d) *Appointment of new trustee of separate fund.*

8.—The Court will, in a proper case, appoint new trustees of a separate fund under a will. *In re Cunard's Trusts*, 48 Law J. Rep. Chanc. 192.

A testator, by his will, gave a separate fund of 20,000*l.* to A. and B., as trustees, upon certain trusts for the benefit of his daughter C. and her children. B. desired to retire from the trusts of the will, so far as they related to this fund. On the petition of A., and C. and her children (all of whom were of age), the Court appointed a new trustee of the fund. *Ibid.*

#### (C) VESTING ORDER.

##### (a) *Irish railway stock.*

9.—One of two trustees having become of unsound mind, an order was made under the Trustee Act, 1850, s. 5, appointing a person to concur with the other trustee in transferring into Court certain Irish railway stock standing in the names of the two trustees. Before the order was drawn it was found out that, owing to section 56, such an order could not be made as to Irish stock. An order was made appointing a person trustee of the Irish stock in the place of the person *non compos*, and directing him to concur in the transfer into Court. *In re Hodgson. Lord Kenlis v. Hodgson* (App.), Law Rep. 11 Ch. D. 889.

##### (b) *Land in Ireland.*

10.—Where the surviving trustee of property consisting in part of land in Ireland had become lunatic, an order appointing new trustees and vesting the Irish land in them, was made on petition in Lunacy and in the Chancery Division. *In re Lamotte* (App.), Law Rep. 4 Ch. D. 325.

##### (c) *Death of trustee without representative.*

11.—A vesting order under section 34 operates as a conveyance or assignment by the person in whom the legal estate is vested. Consequently, where a sole trustee of leaseholds is dead, and has no legal personal representative, a vesting order is of no avail and will not be made. *In re Driver's Settlement* (Law Rep. 19 Eq. 352) explained. *In re Dalgleish's Settlement*, 45 Law J. Rep. Chanc. 68; Law Rep. 1 Ch. D. 46. Reversed on appeal, Law Rep. 4 Ch. D. 143.

12.—Where the surviving trustee of leaseholds was dead and there was no legal personal representative, the Court, new trustees having been appointed, made an order vesting the leaseholds in them for all the estate of the deceased trustee. *In re Dalgleish's Settlement* (see last case) not followed. *In re Rathbone* (App.), 45 Law J. Rep. Chanc. 531; Law Rep. 2 Ch. D. 483.

13.—Where the survivor of two trustees of stock under a will had died leaving no legal personal representative, and the *cestui que trust* and two new trustees, who had been appointed under a power in the will, presented a petition asking that the right to transfer the stock—which was then standing in the names of the deceased trustees—might vest in the new trustees, under section 28 of the Trustee Act, 1850, the Court made the order—considering itself

bound by *In re Dalgleish's Settlement* (Law Rep. 4 Ch. D. 143)—but without reappointing the new trustees. *In re Croome's Trusts*, Law Rep. 14 Ch. D. 304.

14.—Form of vesting order as to stock settled by will where the survivor of the two original trustees has died without a legal personal representative, and new trustees have been appointed under the will. *In re Croome's Trusts* (Law Rep. 14 Ch. D. 304; see last case) corrected. *In re Croome's Trusts* (No. 2), Law Rep. 14 Ch. D. 610.

(d) *Form of order.*

(1) *Order in lunacy.*

15.—Where the sole surviving trustee of a sum of stock had become of unsound mind, and the *cestuis que trust* petitioned in Lunacy for an order vesting in them the right to transfer the stock and receive the dividends,—Held, that this would be administering a trust in Lunacy, contrary to the settled rule, but that the petition should be amended, and intituled in the Chancery Division as well as in Lunacy, and an order made appointing the petitioners trustees, and vesting the right to transfer and receive the dividends in them in that capacity. *In re Currie* (App.), Law Rep. 10 Ch. D. 93.

(2) *Tenant in tail of unsound mind.*

16.—An order under the Trustee Act, 1850, vesting the estate of a trustee tenant in tail who is of unsound mind in any person, should only direct the land to be vested for all the estate which the trustee could convey if sane, and need not refer to the Fines and Recoveries Act, or to the execution of a disentailing assurance. *Mason v. Mason*. *In re Mason* (App.), Law Rep. 7 Ch. D. 707.

(3) *Form of order where improper investments not to be vested.*

17.—Form of order on the appointment of new trustees where the trust funds are invested in unauthorised securities, and it is desired not to transfer them into the names of the new trustees but to sell them immediately, in order that the proceeds may be re-invested in accordance with the trusts of the settlement. *In re Peacock* (App.), 49 Law J. Rep. Chanc. 228; 50 Law J. Rep. Chanc. 380; Law Rep. 4 Ch. D. 212.

(4) *Vesting order in chambers: jurisdiction.*

18.—In an administration action commenced by writ, an order for accounts was made in chambers under Order XV., and subsequently an order was made in chambers directing the plaintiff and the defendant to transfer certain stock into Court. The defendant could not be found, and an order was made in chambers, vesting the right to transfer the stock in the plaintiff, and directing him to transfer it into Court. The bank objected to act on this order, on the ground of its having been made in chambers;

and on motion Jessel, M.R., made an order directing the bank to act upon the order so made:—Held, on appeal, that having regard to the 18 & 19 Vict. c. 134. s. 16, Consolidated Order XXXV. rule 1, and the course of practice, there was so much doubt as to the jurisdiction as to render it unsafe to make such a vesting order in chambers, and that the order directing the bank to act upon it ought to be discharged. *Frodsham v. Frodsham* (App.), 50 Law J. Rep. Chanc. 233; Law Rep. 15 Ch. D. 517.

*Estate of mortgagee.* [See MORTGAGE, 56, 57.]

(D) COSTS: LUNATIC MORTGAGEE.

19.—A trustee having advanced money on mortgage became lunatic. Upon redemption of the estate and a petition to appoint a person to re-convey, it appearing that the mortgagor had no knowledge that the money was trust money, the costs of the application were ordered to be paid out of the trust estate. *In re Jones* (App.), 45 Law J. Rep. Chanc. 688; Law Rep. 2 Ch. D. 70.

20.—A mortgagee having become of unsound mind, not so found, the mortgagor applied for a vesting order on payment of the mortgage debt into Court, making the mortgagee a respondent to the petition:—Held, that the Court had no jurisdiction to order the costs to be paid out of the mortgage debt, but that each party must bear his own costs. *In re Sparks* (App.), Law Rep. 6 Ch. D. 361.

TRUSTEE IN BANKRUPTCY.

[See BANKRUPTCY, E.]

TRUSTEE RELIEF ACT.

(A) PAYMENT INTO COURT.

- (a) *By trustees of settlement in case of appointment by donee of general power.*
- (b) *Of policy moneys by insurance company.*
- (c) *Of bank deposit by bankers.*
- (d) *Where address of party entitled unknown.*

(B) PAYMENT OUT OF COURT.

- (a) *Petition by person not named in trustee's affidavit.*
- (b) *Service: numerous parties.*

(C) TIME FOR APPEAL.

(D) JURISDICTION: PETITION FOR ADVICE OF COURT.

(A) PAYMENT INTO COURT.

- (a) *By trustees of settlement in case of appointment by donee of general power.*

1.—Where the donee of a general testamentary power of appointment over a fund comprised in a settlement exercises the power, and at the same time appoints an executor, such executor is the proper party to receive and dis-

tribute the fund. If, therefore, the trustees of the settlement pay the money into Court under the Trustee Relief Act, they will be liable for all costs improperly occasioned by their so doing. *In re Hoskins' Trusts*, 46 Law J. Rep. Chanc. 274; Law Rep. 5 Ch. D. 229, 6 Ch. D. 281.

In such a case the executor, and not the appointees, should be the petitioner to get the fund out of Court. *Ibid*.

(b) *Of policy moneys by insurance company.*

2.—A, having assured his life in 1852, assigned the policy to B. absolutely, who afterwards assigned it to C. absolutely. A. died, and C.'s claim was admitted by the assurance society, subject to proof that a charge created by an assignment by A. in 1851 was no longer subsisting. C. refused to produce that proof, on the ground that no claim had ever been made in respect of the charge, and it must be presumed to be satisfied, whereupon, in July, 1875, the assurance society paid the policy money into Court. On a petition by C. for payment out of the policy moneys,—Held, that, prior to the commencement of the Judicature Act, 1873, the Trustee Relief Act did not authorise an assurance society to pay policy money into Court in case of a disputed claim, unless the policy money belonged to a trust, but that the objection could not be taken on a petition entitled in the matter of the Act. *In re Haycock's Policy*, 45 Law J. Rep. Chanc. 247; Law Rep. 1 Ch. D. 611.

Held also, that the assurance society had a right to proof of the charge being no longer subsisting, as, if the charge had not been satisfied, the incumbrancer might have sued the society in his own name, by virtue of the Policies of Assurance Act, 1867. *Ibid*.

3.—An assurance company is not a trustee but a debtor, and is not justified in paying policy moneys into Court under the Trustee Relief Act, nor is it discharged by such payment. Therefore where M. had become entitled, by assignment (of which the statutory notice had been given to the company), to certain policy moneys, and the company had paid the moneys into Court, not being satisfied as to M.'s title thereto, the fund being also claimed by the executors of the assured, the company was held not to be discharged by such payment, and was ordered to pay to M. the amount of the policy with interest, and the costs of the action. *Matthew v. The Northern Assurance Company*, 47 Law J. Rep. Chanc. 562; Law Rep. 9 Ch. D. 80.

An ordinary debtor can be described as a stakeholder only in the limited sense that he can bring an action of interpleader when his creditor has so dealt with the debt that he cannot find out whose debt it is. *Ibid*.

A debtor who, not being satisfied as to the title of his creditor, compels him to bring an action to prove it, is liable to pay the costs. *Ibid*.

(c) *Of bank deposit by bankers.*

4.—A banking company, in consequence of conflicting claims to a sum of money placed on deposit with them, paid such sum into Court under the Trustee Relief Act, deducting therefrom their costs of payment in. Upon a petition for payment out under the Trustee Relief Act,—Held, that the proviso in section 25, subsection 6 of the Judicature Act did not apply to the case, as that section only applies to a debt which has been the subject of an absolute assignment in writing, and that therefore the bank, not being trustees within the Trustee Relief Act, were not justified in paying the money into Court. *In re Sutton's Trusts*, 48 Law J. Rep. Chanc. 350; Law Rep. 11 Ch. D. 175.

Held, however (following *In re Haycock's Policy*, 45 Law J. Rep. Chanc. 247; Law Rep. 1 Ch. D. 611), that the petitioner, by the act of petitioning, had submitted to the jurisdiction under the Trustee Relief Act, and could not, therefore, charge the bank with the costs of payment in. *Ibid*.

(d) *Where address of party entitled unknown.*

5.—When, on payment into Court under the Trustee Relief Act, the address of the person entitled to the fund is not known, the Court has no jurisdiction to dispense with the notice required to be given by the Chancery Funds Amendment Orders, 1874, rule 4, nor to direct how such notice should be given. The party paying in the fund must take that responsibility upon himself. *In re Hardley* (App.), 48 Law J. Rep. Chanc. 335; Law Rep. 10 Ch. D. 664.

Suggestions as to the best method of giving notice in such cases. *Ibid*.

(B) PAYMENT OUT OF COURT.

(a) *Petition by person not named in trustee's affidavit.*

6.—Where a fund has been paid into Court under the Trustee Relief Act, a person not mentioned in the trustee's affidavit can apply by petition to the Court for the distribution of the fund, and need not bring an action. *In re Puttrell*, 47 Law J. Rep. Chanc. 11; Law Rep. 7 Ch. D. 647.

7.—A fund paid into Court under the Trustee Relief Act, can be dealt with only on petition. Such petition may be presented by a beneficiary not named in the trustee's affidavit. *Pelling v. Goddard*, 47 Law J. Rep. Chanc. 647; Law Rep. 9 Ch. D. 185.

A person claimed by action a fund paid into Court by trustees who had not named him in their affidavit. The Judge declared the plaintiff entitled to the fund, and directed a petition to be presented asking for payment to him. *Ibid*.

(b) *Service: numerous parties.*

8.—Where, on a petition for payment out of Court under the Trustee Relief Act, of a fund to

which numerous parties were entitled, most of whom were not before the Court, it appeared that a former order had been made, directing class enquiries, and that the Chief Clerk had made his certificate; liberty was given to the petitioner to serve a copy of the petition, the former order, and the Chief Clerk's certificate, together with the order then made, upon the several persons named in the certificate, and the petition was directed to stand over until such service had been effected. *In re Batterby's Trusts*, Law Rep. 10 Ch. D. 228.

#### (C) TIME FOR APPEAL.

9.—Under Order LVIII rules 9, 15, an appeal from an order made upon a petition under the Trustee Relief Act must be brought within twenty-one days. *In re Baillie's Trusts* (App.), 46 Law J. Rep. Chanc. 330; Law Rep. 4 Ch. D. 785.

*Jurisdiction under: rectification of deed on petition.* [See SETTLEMENT, 298.]

#### (D) JURISDICTION: PETITION FOR ADVICE OF COURT.

10.—Where a married woman who was of unsound mind, but not so found by inquisition, was entitled for her separate use to the income of certain trust funds, and her written consent was also required to the investments by the trustees,—Held, upon a petition under the Trustee Relief Act (22 & 23 Vict. c. 35. s. 30) for the advice of the Court, that the Court had jurisdiction to entertain the petition, and that the whole income might be paid to the husband, on his undertaking to apply it to the maintenance of his wife, and that her consent to investments might be dispensed with. *In re T—*, Law Rep. 15 Ch. D. 78.

#### TUG.

[See SHIPPING LAW, R 4; V.]

#### TURBARY.

[See COMMON, 4.]

#### TURKEY.

*Consular Court.* [See CONSTANTINOPLE.]

#### TURNPIKE.

[Perpetuation and repeal of certain Turnpike Acts. 39 & 40 Vict. c. 39.]

[Continuation and repeal of certain Turnpike Acts. 41 & 42 Vict. c. 62.]

[Certain Turnpike Acts repealed. 42 & 43 Vict. c. 46.]

[Certain Turnpike Acts continued and repealed. 43 & 44 Vict. c. 12.]

#### *Disused tollhouse.*

1.—Where a tollhouse had ceased to be used as such since 1867, but was used as a dwelling-

house for one of the men employed in the repair of the road, and the trustees had no intention of reimposing the toll at that point,—Held, that the tollhouse had become "useless and was no longer required for the purposes of the road" within the meaning of section 57 of 4 Geo. 4. c. 95; that the turnpike trustees were not entitled to maintain it as a dwelling-house, it being an encroachment on the road within section 118 of 3 Geo. 4. c. 126; and that the adjoining landowner, as being a person using the road, had a right to call upon the trustees by *mandamus* to pull down and remove the materials of the tollhouse. *Reg. v. The Greenlaw Turnpike Trustees*, 48 Law J. Rep. Q.B. 409; Law Rep. 4 Q.B. D. 447.

#### *Repair of road.*

2.—A private Act of Parliament (5 Geo. 4. c. xciv.), after authorising certain trustees to establish a ferry and make roads in communication therewith, provided that the roads when made, as well as the ferry, should be maintained and repaired out of certain tolls thereby authorised to be taken. The Act specified no limit of time for the expiration of the trust, but it was provided that if the execution of the authorised works should not be completed within the space of ten years, all the powers and authorities thereby given should cease and determine, save only as to so much of the work as should have been completed within that time. The ferry was established, and all the roads made with one exception; but the funds derived from the tolls being insufficient to keep one of the roads so made in repair, an order was made by Justices in special sessions, under the provisions of 4 & 5 Vict. c. 59. s. 1, for contribution out of the highway rates towards the repair of such road.—Held, that the road in question was a turnpike road within the meaning of 4 & 5 Vict. c. 59, and that, as the funds of the trust were inadequate to keep it in repair, the Justices had a discretion to appropriate a portion of the highway rate towards its maintenance. Held also, that the completion by the trustees of the whole system of roads specified in the Act of 5 Geo. 4. c. xciv. was not a condition precedent to the right to call upon the parish to contribute towards the repair of the roads that had been made. *Rea v. Cumberworth* (1 Law J. Rep. M.C. 86); *Rea v. Edge Lane* (5 Law J. Rep. M.C. 91); and *Rea v. Cumberworth* (4 Ad. & E. 731) dissented from. *Reg. v. French* (App.), 47 Law J. Rep. M.C. 74; Law Rep. 4 Q.B. D. 507.

#### *Tolls: bicycle.*

3.—A private Act (3 Will. 4. c. lv.) imposed a toll of 5s. on every carriage of whatever description, drawn, impelled or set in motion by steam or by any other power or agency than being drawn by horses or beasts of draught.—Held, that a bicycle was not a "carriage" within the meaning of the Act, which was clearly intended



to apply only to carriages impelled by mechanical power. *Taylor v. Goodwin* (48 Law J. Rep. M.C. 104) distinguished. *Williams v. Ellis*, 49 Law J. Rep. M.C. 47; Law Rep. 5 Q.B.D. 175.  
*Road*. [See HIGHWAY, 4, 11.]

## ULTRA VIRES.

*Directors of company, ultra vires acts by*. [See COMPANY, D 25-37.]

*Railway company, contracts by*. [See RAILWAY, 10, 11.]

*Working of mines by railway company*. [See RAILWAY, 8.]

## UMPIRE.

[See ARBITRATION, 11; METROPOLIS, 2.]

## UNCERTAINTY.

*Agreement to sell part of property*. [See SPECIFIC PERFORMANCE, 8.]

*Charity, gift to*. [See CHARITY, 15, 16.]

*Lease void for*. [See LEASE, 8.]

*Will, in*. [See WILL CONSTRUCTION, G.]

## UNCONSCIONABLE BARGAIN.

1.—Advances made by a money lender to a younger son on personal security, in the expectation of payment being obtained from the borrower's relations by the pressure of bankruptcy proceedings or fear of exposure, were only allowed to stand as security for the amount actually advanced, and interest at 5 per cent. per annum. *Novill v. Snelling*, 49 Law J. Rep. Chanc. 777; Law Rep. 15 Ch. D. 679.

2.—A married woman and her brothers, persons in a humble position, being entitled in reversion expectant on the death of a tenant-for-life, to a sum of 1,500*l.* charged on land, purported to mortgage this interest to B. as security for 500*l.*, though 250*l.* only was actually advanced. B. subsequently advanced 150*l.* more, for which a further charge for 300*l.* on the same reversionary interest was taken as security. This deed of further charge contained recitals and clauses to the effect that the nature of the transaction was perfectly understood by the borrowers, and that the difference between the sums actually advanced and the sums expressed to be secured was considered reasonable remuneration for the delay that must occur before repayment, on account of the age of the tenant-for-life. The securities were prepared by B.'s solicitor, acting for all parties, and the borrowers had no independent advice. Only one year's interest was ever paid. On the death of the tenant-for-life, the 1,500*l.* was paid into Court, and upon a petition by the reversioners to set aside these securities on the ground of fraud, and for payment out of the fund,—Held,

DIGEST, 1875-1880.

that the mortgage and further charge could stand as security only for the sums actually advanced, with six years' arrears of interest only. *In re Slater's Trusts*, 48 Law J. Rep. Chanc. 473; Law Rep. 1 Ch. D. 227.

## UNDER-LEASE.

*Agreement for sale*. [See SPECIFIC PERFORMANCE, 6.]

## UNDERTAKING.

[See INJUNCTION, 80; PATENT, 84; PRACTICE, HH 82.]

## UNDERWRITERS.

[See MARINE INSURANCE.]

## UNDISCHARGED DEBTOR.

[See BANKRUPTCY, H 10-16.]

## UNDUE INFLUENCE.

[See PROBATE, 32; REVERSION; SOLICITOR, 17-22.]

*Solicitor and client: opening settled accounts*. [See COSTS, 78.]

## UNDUE PREFERENCE.

[See RAILWAY, 22-25.]

## UNIFORMITY, ACT OF.

[See CHURCH AND CLERGY, 19.]

## UNIVERSITY.

[Further provision made respecting the Universities of Oxford and Cambridge and the Colleges therein. 40 & 41 Vict. c. 48.]

The University Tests Act, 1871, having removed all restrictions, tests and disabilities from the holding of any lay office, or the taking of any lay degree in the Universities or in any college or hall subsisting at the date of the Act, afterwards, in 1874, the non-corporate body of Magdalen Hall was by Act of Parliament dissolved, and its property transferred to Hertford College, which the same Act created and incorporated as a college. Power was given by section 7 of the Act to the college to accept endowments for various purposes, upon such terms and conditions as might, with the sanction of the Chancellor of the University, be agreed on between the college and the donor; but section 13 provided that nothing in the Act contained should be construed to repeal any of the provisions of the University Tests Act, 1871. By a gift, the terms of which were sanctioned by the Chancellor and accepted by the college, a person endowed a fellowship in

Hertford College, limiting it to members of certain churches. Notice of an election of a fellow upon the foundation having been advertised, the prosecutor asked to be admitted to the examination as a Nonconformist, but was informed by the authorities of the college that he would not be elected even if successful in the examination, on the ground that, though otherwise well qualified, he was not a member of any of the specified churches. The prosecutor did not attend the examination, and a person in all respects qualified was elected:—Held (in the Queen's Bench Division, 46 Law J. Rep. Q.B. 729; Law Rep. 2 Q.B. D. 590), on demurrer to the return to a writ of *mandamus*, commanding the governing body to examine the prosecutor as a candidate for the fellowship the election for which had been advertised, that the writ must issue, on the ground that Hertford College was not *qua* the Universities Tests Act, a new creation, but in the same position in which Magdalen Hall would have been as to accepting an endowment subject to any restriction; and that section 13 of the Hertford College Act precluded the acceptance of endowments on any terms repugnant to the policy of the University Tests Act, and made the powers given by section 7 subordinate to that Act. *Ibid*.

Held also (in the Queen's Bench Division), that the fact of the fellowship having been filled up did not take away the right to proceed by *mandamus*, for a writ of *quo warranto* is not applicable to the office of a fellow of a college. *Ibid*.

Held (on appeal), that the return to the writ which set forth the facts of the case, was good on the following grounds: That the prosecutor had not presented himself for examination at the time appointed by the college, and examination was a condition precedent to the right of election. That even if he had so presented himself and had been wrongfully refused examination or election, the wrong done him would have been corrigible by the visitor of the college and not by the Courts of law. That the office was already legally full. That the University Tests Act, 1871, does not prevent the creation of new colleges in the universities, the endowments of which may be confined to the members of a particular religious community; and that Hertford College, not having been a subsisting college at the time of the passing of the University Tests Act, 1871, is not governed by that Act *proprio vigore*. That Hertford College is not made subject to the University Tests Act by the provisions of the Hertford College Act, except so far as relates to that part of the endowments which was transferred to the college from the old foundation of Magdalen Hall, and such other endowments as were already given at the time of the passing of the last-mentioned Act. *Reg. v. The Principal, Fellows and Scholars of Hertford College, Oxford* (App.), 47 Law J. Rep. Q.B. 649; Law Rep. 3 Q.B. D. 693.

Seemingly, that the University Tests Act prevents the establishment of new foundations

with religious restrictions in colleges subsisting at the date of the Act. *Ibid*.

*Unlimited company*. [See TRUST, D 12-17.]

#### UNSOUND MEAT.

*Selling: jurisdiction of justices*. [See PUBLIC HEALTH, 40.]

#### UNSOUND MIND.

[See LUNATIC.]

#### USAGE OF TRADE.

*Evidence of*. [See EVIDENCE, 3, 4.]

*General lien of packers*. [See PACKER.]

#### USE AND OCCUPATION.

*Infant not liable for*. [See INFANT, 15.]

*Vendor continuing in possession*. [See VENDOR AND PURCHASER, 11.]

#### USURY.

[See UNCONSCIONABLE BARGAIN.]

#### VACATION.

*Absence of Judge: application to appeal Judge*. [See PRACTICE, GG 12.]

*Order made in: time for appeal*. [See PRACTICE, B 56.]

#### VACCINATION.

[Amendment of the Acts relating to Vaccination in Ireland. 42 & 43 Vict. c. 70.]

By section 20 of the principal Vaccination Act, 1867, "if any public vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated, or that a child brought to him for vaccination, has already had the small-pox, he shall deliver to the parent a certificate," according to Form C in the schedule. By section 7 of the Vaccination Amendment Act, 1871, "Every certificate of a child being unfit for or insusceptible of successful vaccination, if given by any medical officer other than a public vaccinator, shall be transmitted by the parent of such child to the vaccination officer. . . ." And every person who fails to comply with any provision of this section is made liable to a penalty. The Local Government Board, by virtue of the power given to them by section 15 of the same Act, drew up a form of certificate in lieu of Form C, and which was in the alternative, to be used either in the case of a child being three times unsuccessfully vaccinated, or in the case of a child having had the small-pox, in which the former case is alone treated as "insusceptibility of successful vaccination":—Held, that section 7 imposes no obligation on the parent to transmit the certificate

to the effect that his child has had the small-pox. *Broadhead v. Holdsworth*, 46 Law J. Rep. M.C. 172; Law Rep. 2 Ex. D. 321.

#### VAGRANCY ACT.

The provisions contained in 5 Geo. 4. c. 83. s. 4, with reference to persons running away, and leaving their children chargeable to any parish, do not apply to a married woman who has been deserted by her husband, and has not the means of supporting them. *Peters v. Corrie*, 46 Law J. Rep. M.C. 177; Law Rep. 2 Q.B. D. 131.

*Construction*: "palmsy or otherwise." [See ROGUE AND VAGABOND.]

#### VALUATION LIST.

[See RATES, 18-23.]

#### VALUATION METROPOLIS ACT.

[See RATES, 19, 20.]

#### VALUED POLICY.

*Freight*. [See MARINE INSURANCE, 14.]

#### VENDOR AND PURCHASER.

[And see SPECIFIC PERFORMANCE.]

##### (A) SALE BY AUCTION: PUFFER.

##### (B) CONTRACT OF SALE AND PURCHASE.

###### (a) *Conditions and particulars of sale.*

- (1) *Misleading conditions or particulars.*
- (2) *Condition precluding enquiry into title.*
- (3) *Condition against requiring earlier title.*
- (4) *Compensation for error or misstatement: completion of purchase.*
- (b) "Outgoings": "rents and profits."
- (c) *Leaseholds.*
- (d) *Sale of concession: implied obligation to carry on business.*
- (e) *Goodwill: soliciting customers.*
- (f) *Requisition as to incumbrances.*
- (g) *Time of the essence of the contract.*
- (h) *Common mistake: purchaser buying his own property.*
- (i) *Fire insurance: fire after contract but before completion.*

##### (C) RESCISSION OF CONTRACT.

##### (D) CONVEYANCE AND COMPLETION.

- (a) *Form of, and parties to, conveyance.*
- (b) *Right to separate conveyances: right of vendor to re-let where there is delay in completion.*
- (c) *Right of purchaser to have deed stamped.*
- (d) *Possession: interest: putting up notice board.*

##### (E) APPLICATION OF PURCHASE-MONEY: DUTY OF PURCHASER TO SEE TO.

##### (F) PURCHASER FOR VALUE WITHOUT NOTICE.

##### (G) VENDOR'S LIEN.

##### (H) VENDOR AND PURCHASER ACT.

###### (a) *Evidence of title.*

###### (b) *Recital of fact.*

###### (c) *Transfer by legal personal representative.*

###### (d) *Time for appealing.*

##### (A) SALE BY AUCTION: PUFFER.

1.—Landed property was sold by public auction under conditions which stated that the highest bidder should be the purchaser, and which reserved to the vendor the right to bid once by himself or his agent. The auctioneer bid three times with the sanction of the vendor, and then the vendor stated what the reserve price was, when a person bid beyond that sum, and was thereupon declared the purchaser:—Held, that by reason of the biddings of the auctioneer the vendor had exceeded the limited right reserved to him by the condition of bidding once by himself or agent, and that therefore the sale was void at the option of the purchaser, both at law and under the statute 30 & 31 Vict. c. 48. *Parfitt v. Jepson*, 46 Law J. Rep. C.P. 529.

##### (B) CONTRACT OF SALE AND PURCHASE.

###### (a) *Conditions and particulars of sale.*

###### (1) *Misleading conditions or particulars.*

2.—B. entered into a contract for purchase of a freehold estate from H. One of the conditions of sale was, that the title to the beneficial ownership to the property should commence with the will of C., dated in 1829, and the purchaser should assume that C. was at his death beneficially entitled to the property in fee simple, free from incumbrances. On an investigation of the title it appeared that C. had in 1824 contracted for the purchase of the estate, but the vendor not at that time being able to make a good title, C. took possession and invested the purchase-money, and it was not till long after the death of C. that the title was made out and the purchase-money paid:—Held, in a suit by H. for specific performance of the contract, that the statement in the conditions of sale was erroneous and misleading, and was consequently not binding on the purchaser, and the bill was dismissed with costs, the plaintiff having declined to take an open reference as to title. *Harnett v. Baker*, 45 Law J. Rep. Chanc. 64; Law Rep. 20 Eq. 60.

3.—An estate was sold by an order of the Court in an administration action, and the vendor, the devisee in trust, who was a solicitor, submitted a statement of his title to one of the conveyancing counsel. One of the conditions of sale as settled by him required the purchaser to assume that E. B. was seised of and entitled to the property in fee simple in possession, free from incumbrances in 1835, and up to and at her death in 1861, and that it was not accurately known how she acquired the property;

and it was expressly stipulated that no other title should be required or enquired into, whether in the vendor's possession, power or knowledge or not. The statement of title submitted by the vendor shewed clearly that these assumptions were not based on fact, E. B. having been a mortgagee in possession, and having acquired a prescriptive title under the Statute of Limitations by adverse possession, commencing in 1844. The purchaser having discovered these facts brought a summons to rescind his contract for purchase:—Held (reversing the decision of Fry, J., but on further evidence which was not produced before him), that the condition was a misleading condition, and that he was entitled to have a good holding title notwithstanding the condition, and if the vendor elected to shew that title then to have a reference to chambers to ascertain whether a good holding title could be made out; and if not, rescission of the contract. *In re Banister. Broad v. Munton* (App.), 48 Law J. Rep. Chanc. 837; Law Rep. 12 Ch. D. 131.

In sales made under the order of the Court, the conveyancing counsel, though in one sense the officer of the Court, is the counsel of the vendor, so that in case of a mistake, as between vendor and purchaser, the vendor is liable to the same extent as if the mistake had been made by a counsel not appointed by the Court. *Ibid.*

A vendor is not entitled by his conditions to require a purchaser to assume that which the vendor knows not to be true; a purchaser can at the most be asked to assume something of which the vendor knows nothing. *Ibid.*

4.—In a sale of property under administration in the County Palatine Court of Lancaster, the particulars of sale described one of the lots as leasehold, held under a lease, the date and parties to which were stated. There was no attempt made to state the terms of the lease, and no mention was made of a ground rent of 43*l.* 17*s.* 6*d.*, to which the lot was subject. The lot was sold at auction for 1,400*l.* The purchaser afterwards claimed to have the sale rescinded, on the ground that the particulars being silent on the subject of ground-rent, he had been misled and induced to believe that there was no ground-rent, or only a nominal one. In his affidavit he stated that if he had known of the ground-rent he would not have bid more than 700*l.* The property had been previously valued at 1,450*l.* by a professional valuer, who had taken the ground-rent into account, and who at the sale bid 1,390*l.*—Held (affirming the decision of the County Palatine Court), that the particulars were misleading, and that the purchaser was entitled to have the sale rescinded. *Jones v. Rimmer* (App.), 49 Law J. Chanc. 775; Law Rep. 14 Ch. D. 588.

(2) *Condition precluding enquiry into title.*

5.—A contract for the sale of freehold land stipulated that the title should commence with

a conveyance of the land to a railway company, and that the purchaser should "assume and admit that everything (if anything were necessary) was done and performed by the company to enable them to sell and effectually convey the said land as surplus lands," and should "not call for or require production of any evidence to this effect." There was also a condition that, if the purchaser failed to comply with the terms of the contract, his deposit should be forfeited. The vendor having refused to comply with a requisition by the purchaser requiring some evidence to be furnished that a waiver of the rights of pre-emption conferred on the prior and adjoining owners by the Lands Clauses Consolidation Act, 1845, had been obtained, the purchaser brought an action for the return of his deposit and for damages for breach of contract. The vendor then rescinded the contract, and forfeited the deposit. Pending the action the vendor obtained a waiver of the rights of pre-emption and sold the land to a third party:—Held, that the purchaser was bound by the contract to accept such title as the vendor had, and having insisted on an objection which he was precluded from taking by the terms of the contract, was not entitled to any relief. *Hammond v. Best* (App.), 48 Law J. Rep. Chanc. 503; Law Rep. 12 Ch. D. 1 (*nom. Best v. Hammond*).

6.—A stipulation in a purchase contract that if the purchaser shall make any objection or requisition in respect of the title or of any other matter or thing whatsoever which the vendors shall be unwilling, on the ground of expense or otherwise, to comply with, the vendors shall be at liberty to annul the sale and return the deposit, without compensation, does not apply to a case where the vendors have no title whatever to the property which they have affected to sell. *Bonman v. Hyland*, 47 Law J. Rep. Chanc. 581; Law Rep. 8 Ch. D. 588.

(3) *Condition against requiring earlier title.*

7.—A condition against requiring or enquiring into title earlier than a given date does not preclude the purchaser from requiring a blot, under an instrument of earlier date which has been disclosed by the vendor, to be removed. *Smith v. Robinson*, 49 Law J. Rep. Chanc. 20; Law Rep. 13 Ch. D. 148.

(4) *Compensation for error or misstatement: completion of purchase.*

8.—A freehold waterside property on the Thames was put up for sale by auction under a decree made in a partition suit. By one of the conditions of sale it was provided that if any error or misstatement should appear in the particulars a compensation should be made to or by the purchaser as the case might be. The property was sold, the title accepted by the purchaser, who paid his purchase-money into Court, and the conveyance was executed and the purchaser let into possession. A year after

the completion of the purchase, the purchaser discovered that there was an underground culvert under the property to certain mills at some distance from the river, the existence of which, as appeared from the evidence, was unknown to the vendors, and which was injurious to the property, and for which the purchaser claimed compensation. On motion by the purchaser to have the amount of compensation claimed by him assessed and paid out of the fund in Court,—Held, that the purchase having been completed and there being no allegation of fraud or wilful misrepresentation on the part of the vendors, the purchaser was not under the conditions entitled to any compensation. *Boss v. Helsham* (36 Law J. Rep. Exch. 20; Law Rep. 2 Ex. 72) disapproved of and not followed. *Manson v. Thacker*, 47 Law J. Rep. Chanc. 312; Law Rep. 7 Ch. D. 620.

9.—In an agreement for the sale of land, it was provided by the conditions that, if any error or misstatement should be found in the parcels, it should not annul the sale, but that compensation should be made in respect thereof. After completion, and after the conveyance had been executed, an error in the quantity of land conveyed was discovered by the purchaser:—Held, that the purchaser was entitled to compensation. *Manson v. Thacker* (47 Law J. Rep. Chanc. 312; Law Rep. 7 Ch. D. 620; see last case) not followed. *In re Turner and Skelton*, 49 Law J. Rep. Chanc. 114; Law Rep. 13 Ch. D. 130.

(b) "Outgoings:" "rents and profits."

10.—By the Manchester General Improvement Act, 1851, the Town Council were empowered to order streets to be sewered and paved by the owners of the adjoining houses, and in case of default by such owners to do the work themselves, and to charge the respective owners with their proportionate part of the expenses thereof, to be recoverable by action of debt; and by way of additional remedy the Council were empowered to require payment of any such charges from the person who should then or at any time thereafter occupy any such houses, &c., and to levy the same by distress from time to time, to the extent of the rent due from the occupier to the owner:—Held, that a charge made upon the owner of houses under the above sections was an "outgoing" from the premises within the meaning of a contract between the vendor and purchaser of such houses, which provided that "all rents, rates, taxes and outgoings should be received and discharged by the vendor up to the time of completion." *Midgley and Edmondson v. Coppock* (App.), 48 Law J. Rep. Exch. 674; Law Rep. 4 Ex. D. 309.

11.—Claim for use and occupation setting out an agreement to be concluded on the 29th of September, 1869, whereby the plaintiffs (purchasers) were to be entitled to all the rents and profits from that time. The agreement was not

completed until the 13th of March, 1876, and the vendors had remained in possession, paying no rent. The claim was for rent from the 29th of September, 1869, to the 13th of March, 1876:—Held, on demurrer, that although the claim did not shew any occupation by the defendants as tenants to the plaintiffs, yet under the words "all rents and profits" were entitled to a fair occupation rent. *The Metropolitan Railway Company v. Defries* (App.), Law Rep. 2 Q.B. D. 189, 387.

(c) Leaseholds.

*Continuing breach of covenant: purchaser bound to accept title notwithstanding.* [See LEASE, 14.]

*Sale of lease: purchaser held bound to accept under lease.* [See SPECIFIC PERFORMANCE, 6.]

(d) *Sale of concession: implied obligation to carry on business.*

12.—The plaintiff sold a concession, supposed to be valuable, to a company, and by the agreement for sale, which was sanctioned by the private Act incorporating the company, it was provided that he should be paid partly in preference shares, partly by a percentage varying with the surplus available for dividends:—Held, that there was no implied contract on the part of the company with the plaintiff to carry on the business for which they were incorporated. *Hope v. Gibbs*, 47 Law J. Rep. Chanc. 82.

(e) Goodwill: soliciting customers.

13.—The vendors of a business and goodwill cannot either solicit orders from or deal with the old customers, and will be restrained by the Court from doing so. Form of injunction in such a case. *Churton v. Douglas* (Johns. 174; 28 Law J. Rep. Chanc. 841), and *Crittwell v. Lye* (17 Ves. 335) considered. *Ginesi v. Cooper*, 49 Law J. Rep. Chanc. 601; Law Rep. 14 Ch. D. 596.

14.—Where two partners dissolve partnership on the terms that one shall have the goodwill and continue the business, and the retiring partner sets up a similar business in the neighbourhood, the Court will grant an injunction to restrain the retiring partner from soliciting the old customers of the firm, but will not restrain him from dealing with them. *Ginesi v. Cooper* (see last case) disapproved. Decision of Jessel, M.R., reversed. *Leggott v. Barrett* (App.), Law Rep. 15 Ch. D. 306.

(f) Requisition as to incumbrances.

15.—A requisition as follows: Is there "to the knowledge of the vendors or their solicitors, any settlement deed, fact, omission or any incumbrance affecting the property, not disclosed by the abstract" is an improper requisition. *Solomon v. Davey* (see *Dart, Vendors and Purchasers*, 5th ed., 450n.) overruled. *In re Ford and Hill* (App.), 48 Law J. Rep. Chanc. 327; Law Rep. 10 Ch. D. 365.

(g) *Time of the essence of the contract.*

16.—A. agreed to sell freehold land to B., and to complete the contract on a given date. On that date B. wrote to rescind the contract, the legal estate being in trustees, from whom A. had agreed to purchase at two-thirds of the price agreed to be paid by B. A. afterwards obtained a conveyance and resold at a loss. Action by A. before Judicature Acts to recover damages for loss on resale dismissed, on the ground that time was of the essence of the contract, and A. was not at the time fixed for completion able to convey the legal estate to B. *Noble v. Edwards*. *Edwards v. Noble* (App.), Law Rep. 5 Ch. D. 378.

17.—The plaintiff was the purchaser of a reversion at a public auction under conditions of sale by which the purchaser was to pay a deposit of 20 per cent. into the hands of the auctioneers as part of the purchase-money, and sign agreements for payment of the remainder on or before the 17th of August, at the offices of the vendor's solicitors, when and where the purchase was to be completed, but should the completion of the purchase be delayed from any cause whatever beyond that period the purchaser was to pay interest on the balance of the purchase-money from that day until the completion of the purchase at the rate of 5 per cent. per annum. The plaintiff paid the deposit at the time of the sale, but owing to objections taken to the title the contract was not completed by the 17th. In an action against the vendor and auctioneers to recover the deposit, it was held (no question of reasonable time arising) that the plaintiff was not entitled to recover, for that by the conditions of sale, the parties had expressly contemplated a postponement of completion of the contract beyond the 17th, and that time was not therefore of the essence of the contract. *Patrick v. Milner*, 46 Law J. Rep. C.P. 537; Law Rep. 2 C.P. D. 342.

*Notice to make time of essence.* [See SPECIFIC PERFORMANCE, 26.]

*Time charter-party.* [See CONTRACT, 34.]

(h) *Common mistake: purchaser buying his own property.*

18.—A contract for sale by A. to B. of a piece of freehold land stipulated that B. should assume that M. died seised intestate in 1841, and that the purchaser should not require the production of, or investigate, or make any objection to, the prior title. No objection to the title was taken by B. within the time limited for requisitions. Being, however, unable to complete by the specified date, A. granted him further time, but before completion B. contracted to sub-sell the property to C., who in investigating the title raised the objection that the property did not in fact belong to A. at all, but to B. under an instrument prior to the death of M., but the existence of which instru-

ment appeared to be wholly unknown to A. and B. at the date of the original contract. B. therefore refused to complete his contract with A., and pleaded common mistake. A. insisted that B. was precluded from raising the objection by the terms of the contract. Upon bill filed by A. against B. for specific performance, the Court directed an enquiry as to whether the property did in fact belong to B. at the date of the original contract. *Jones v. Clifford*, 45 Law J. Rep. Chanc. 809; Law Rep. 3 Ch. D. 779.

The Court will, even in the case of a completed contract, give relief against a common mistake. *Ibid.*

*Bingham v. Bingham* (1 Ves. sen. 126) observed upon and approved. *Ibid.*

(i) *Fire insurance: fire after contract but before completion.*

19.—Contract for the sale of a house which had been insured by the vendor against fire. After the date of the contract, but before the date fixed for completion, the house was burnt, and the vendor received the insurance money from the office. The contract contained no reference to the insurance:—Held, that the purchaser was not entitled as against the vendor to the benefit of the insurance, either by way of abatement of the purchase-money or reinstatement of the premises. Quære, whether a contract of fire insurance being merely a contract of indemnity, the insurance company in such a case cannot compel the vendor to refund the money they have paid, if he gets his full purchase-money from the purchaser. *Rayner v. Preston*, Law Rep. 14 Ch. D. 297; affirmed on appeal (James, L.J., dissenting), 50 Law J. Rep. Chanc. 472.

## (C) RESCISSION OF CONTRACT.

20.—A person contracted to sell property, and shewed only an equitable title, and the purchaser required the vendor to get in the legal estate:—Held, that such requisition was as to a matter of conveyance only, and the vendor could not rescind the contract under a condition empowering him to rescind if any objection to title were made which he was unable or unwilling to remove. *Kitchen v. Palmer*, 46 Law J. Rep. Chanc. 611.

21.—A sale made subject to the approval of the purchaser's solicitor enables the purchaser to rescind for a reasonable cause. *Hudson v. Buck*, 47 Law J. Rep. Chanc. 247; Law Rep. 7 Ch. D. 689.

A sale of a leasehold house was subject to approval of the purchaser's solicitor. The house and another were included in one lease, at one rent, and subject to restrictive covenants as to the whole:—Held, that (the vendor not having proved that he could obtain an apportionment of the rent and covenants) the purchaser could rescind. *Ibid.*

22.—Contract in writing for sale of a lease

for a term of twelve and a half years unexpired, —Held not to be satisfied by assigning a lease for that term, determinable by the lessor or lessee after five years, and subject to an option for the lessor to resume possession of any part of the property for building purposes upon payment of compensation. *Weston v. Savage*, 48 Law J. Rep. Chanc. 239; Law Rep. 10 Ch. D. 736.

Though the purchaser had seen the lease itself before the contract, the vendor was not by such notice relieved from the obligation of his contract. *Ibid.*

The contract was for sale of the lease of a public-house. The objection as to deficiency of the subject-matter having been taken by the purchaser after seeing the abstract, and the vendor not offering to remove it, the purchaser demanded back his deposit, and brought an action to recover it five days before the date fixed for completion. By his defence the vendor for the first time said that he could, before the time for completion, have provided a release of the lessor's option to put an end to the term:—Held, that the purchaser having under the circumstances been put at arm's length, was entitled to demand back his deposit before the time for completion, and that, time being from the nature of the property of the essence of the contract, the defendant's offer to remove the defect was made too late. *Ibid.*

23.—After judgment for the specific performance of a contract for the purchase, by the defendant, of certain real estate, and after tender of the conveyance of the property to the defendant, and on evidence shewing his inability to pay the amount found to be due from him by the Chief Clerk's certificate,—Held, that the Court would order the contract to be rescinded and the defendant to pay the costs of the action, but would make no order in reference to any damages alleged to have been sustained by the plaintiffs by reason of the defendant's breach of the contract.—*Foligno v. Martin* (16 Beav. 586; 22 Law J. Rep. Chanc. 502), *Sweet v. Meredith* (4 Giff. 207; 22 Law J. Rep. Chanc. 147), and *Watson v. Cow* (42 Law J. Rep. Chanc. 279; Law Rep. 15 Eq. 219) not followed. *Henty v. Schroder*, 48 Law J. Rep. Chanc. 792; Law Rep. 12 Ch. D. 666.

24.—A condition of sale provided that, within a time limited from the delivery of the abstract, the purchaser should send in his objections and requisitions on title, and if the purchaser should insist on any objection or requisition which the vendor should be unable, or on the ground of expense should decline to remove or comply with, the vendor should be at liberty to rescind the contract:—Held, on the construction of the whole condition, that the objections and requisitions referred to in the latter clause were the same as those mentioned before, and to which the fixed limit of time applied, and consequently that there was no power to rescind in respect of a requisition regarding the clearing off of a

charge the existence of which was not known to the parties till after such fixed time. *In re Jackson's Sale to Oakshott. In re The Vendor and Purchaser Act*, 1874, 49 Law J. Rep. Chanc. 523; Law Rep. 14 Ch. D. 861.

Where property *bona fide* contracted to be sold free from incumbrances is afterwards discovered to be subject to a mortgage, the purchaser may require the mortgage to be paid off out of the purchase money, it being sufficient for the purpose. *Ibid.*

Acceptance "subject to title approved by solicitor." [See CONTRACT, 18.]

Contract by agent, effect of. [See FRAUDS, STATUTE OF, 12.]

Contract: Statute of Frauds: informal document. [See SPECIFIC PERFORMANCE, 10.]

#### (D) CONVEYANCE AND COMPLETION.

##### (a) Form of, and parties to, conveyance.

25.—A condition that freehold property "is sold, and will be conveyed subject to all" particularised servitudes ("if any") gives the vendor a right to have the words "subject," &c., inserted in the habendum of the conveyance, though no such servitude is shewn to exist. *Decision of Bacon, V.C.*, 46 Law J. Rep. Chanc. 373; Law Rep. 4 Ch. D. 226, affirmed. *Gale v. Squire* (App.), 46 Law J. Rep. Chanc. 672; Law Rep. 5 Ch. D. 625.

26.—A trustee for sale, with power to postpone, leased for thirty years with concurrence of beneficiaries, and subsequently he and the lessee sold by auction free from the lease, and the purchase-money was fairly apportioned after sale:—Held, that the purchaser could not require the concurrence of the beneficiaries in his conveyance. *Morris v. Debenham*, Law Rep. 2 Ch. D. 540.

*Rede v. Oakes* (4 D. J. & S. 505) observed upon. *Ibid.*

##### (b) Right to separate conveyances: right of vendor to relet property where delay in completion.

27.—A vendor of land may be required by the purchaser to convey the land in parcels by separate conveyances at the same time, on tender of the entire purchase-money and the additional costs thereby occasioned; but semble, he cannot be required by the purchaser to convey the land in parcels by separate conveyances at intervals of time, without an express stipulation that he shall be bound to do so. *The Earl of Egmont v. Smith and Smith*, 46 Law J. Rep. Chanc. 356; Law Rep. 6 Ch. D. 469.

By the conditions of sale of a freehold estate, the purchase was to be completed at Michaelmas, 1875, when the purchaser was to be let into possession or receipt of the rents and profits of the estate, which was let to yearly Lady-day tenants. Completion was delayed, and in September, 1875, the vendors, at the request of the

purchaser, who had contracted to resell portions of the estate to sub-purchasers under conditions entitling them to vacant possession at Lady-day, 1876, gave to several tenants notices to quit on that day. Afterwards, fearing that the purchaser would not be ready to complete by that day (which proved to be the case), and that the farms would be left unlet on their hands, the vendors, after notice to the purchaser, relet the farms to the old tenants, as yearly tenants from Lady-day to Lady-day, under agreements excluding the operation of the Agricultural Holdings (England) Act, 1875, and determinable at six months' notice:—Held, that the vendors were justified in reletting, and would have been bound as trustees for the purchaser so to relet under any circumstances short of an indemnity from the purchaser against the possible consequence of the farms going out of cultivation. *Ibid.*

(c) *Right of purchaser to have deed stamped.*

[See STAMP, 3.]

(d) *Possession: interest: putting up notice board.*

28.—The putting up of a notice board for the purpose of selling or letting building land by a purchaser,—Held, to render him liable to pay interest on the purchase-money. *Ballard v. Stutt*, 49 Law J. Rep. Chanc. 618; Law Rep. 15 Ch. D. 122.

*Bankruptcy of vendor before conveyance: payment of purchase-money to bankrupt.* [See BANKRUPTCY, F 16.]

(E) APPLICATION OF PURCHASE-MONEY;  
DUTY OF PURCHASER TO SEE TO.

29.—A mortgage deed contained a power of sale, and it was thereby provided that upon any sale purporting to be made in pursuance of the power, the purchaser should not be bound to see or enquire whether any default had been made in payment of any principal or interest intended to be thereby secured at the time thereinbefore appointed for payment thereof, or as to the necessity or expediency of the stipulations subject to which such sale should have been made, or otherwise as to the propriety or regularity of such sale; and that, notwithstanding any impropriety or irregularity whatever in any such sale, the same should, as far as regarded the purchaser, be deemed to be within the power, and be valid accordingly; and the remedy of the mortgagor, in respect of any irregularity or impropriety in any sale, should be in damages:—Held, that the language of the proviso enabled the mortgagee to confer a good title on a *bona fide* purchaser after the security was satisfied, and that the purchaser was not bound to enquire whether anything was owing on the security at the date

of the sale. *Dickor v. Angerstein*, 45 Law J. Rep. Chanc. 754; Law Rep. 3 Ch. D. 600.

30.—A trustee for sale may properly sell the trust property, together with other property, for an entire price, where a sale in that manner will be more beneficial for the *cestui que trust*, provided the purchase-money be properly apportioned, and the conditions of sale affecting the other property are not such as to injure the sale of the trust property. *In re Cooper*, 46 Law J. Rep. Chanc. 183; Law Rep. 4 Ch. D. 803.

A purchaser under such circumstances ought to see that the purchase-money is properly apportioned before completion. *Ibid.*

(F) PURCHASER FOR VALUE WITHOUT NOTICE.

31.—B. being in possession of land adjoining the Thames under an agreement for a lease for 80 years, notified to the District Board of Works in December, 1864, that he desired to divert a public footway and substitute a better footway, and also make a new roadway for the public to the river side between two points specified. B.'s application was agreed to by the vestry subject to the proposed new ways being properly made and thrown open to the public. In April, 1865, an order of justices was made for the stopping up and diversion of the old footway, which was done, and the new road was constructed. The owners of the fee did not assent, and there was no sufficient evidence of any actual dedication of the way to the public. In May, 1866, a lease of the land to B. was executed describing it by reference to a marginal plan habendum "subject to existing rights of way." The new road was shewn on the plan and marked "Private Road." Other rights of way existed over the land. There was nothing in the appearance of the road or in the extent of its user by the public which would convey to the mind of a person inspecting the property that there was a public right of way. B., in June, 1866, sold his interest to the B. company, who had no notice, except that given by the lease itself, of B.'s agreement or of the existence of a right of way over the road. After mesne assignments the lease became vested in W., and in the sale plan then used the road was marked "Private Road," but appeared to terminate at the Thames at a point marked "Ferry from Blackwall Stairs." The defendants, W.'s tenants, stopped up the road. In answer to an information by the Attorney-General, on the relation of the vestry, for an injunction, the defendants alleged that W. was purchaser for value without notice of the agreement between B. and the vestry:—Held (on appeal from Fry, J.), that the defendants not having by their answer alleged that the B. company were purchasers for value without notice, could not avail themselves of that defence; but that that defence as to W. was sustained, and that the agreement could not be



enforced against the defendants. *The Attorney-General v. The Biphosphated Guano Company* (App.), Law Rep. 11 Ch. D. 327.

[And see MORTGAGE, 23; VOLUNTARY SETTLEMENT, 5.]

*For value within Bankruptcy Act, 1869, s. 91.*  
[See BANKRUPTCY, F 38.]

#### (G) VENDOR'S LIEN.

32.—A vendor agreed with a trustee for a joint stock company about to be formed for the sale of the goodwill, plant, &c., of his business for 8,000*l.*, to be paid as to 6,000*l.* in cash and 2,000*l.* in paid-up shares. After the formation and registration of the company he executed an assignment to them, whereby, after reciting that he had agreed for the sale of the property to the company for 6,000*l.* to be paid as therein-after mentioned, that is to say, 50*l.* per cent. of all sums of money to be received by the company on the sale of shares, and 50*l.* per cent. upon all money borrowed; in consideration of the sum of 6,000*l.*, to be paid to him in manner thereinbefore stated, he assigned the property to the company. 2,000*l.* worth of paid-up shares were also allotted to him. No other shares were ever subscribed for, and no money borrowed. The company was wound up, and the only assets consisted of the proceeds of sale of the property conveyed to them by the vendor, and which had been resold:—Held, that the vendor had no lien on those proceeds for his unpaid purchase-money. *In re The Brentwood Brick and Coal Company; Rowe's Claim* (App.), 46 Law J. Rep. Chanc. 554; Law Rep. 4 Ch. D. 562.

33.—A vendor's lien was declared in respect of money due and future instalments, with liberty to the purchaser to apply in respect of instalments as they became due. *Nives v. Nives*, 49 Law J. Rep. Chanc. 674; Law Rep. 15 Ch. D. 649.

#### (H) VENDOR AND PURCHASER ACT.

##### (a) Evidence of Title.

34.—Upon a summons under section 9 of the Vendor and Purchaser Act, 1874, the Court has exactly the same powers as on a reference to chambers as to title in a suit for specific performance. Evidence, therefore, by affidavit and cross-examination thereon, is admissible as to the vendor's title, and it is open to the purchaser to shew that the vendor has no title. Decision of Jessel, M.R., reversed. *In re Burroughes and Lynn's Contract* (App.), 46 Law J. Rep. Chanc. 528; Law Rep. 5 Ch. D. 601.

##### (b) Recital of fact.

35.—The statement in a deed or instrument twenty years old that a person was, at the date of the execution of the particular instrument, seized in fee, is the recital of a fact, which, under 37 & 38 Vict. c. 78. s. 2, precludes a pur-

chaser from requiring the production of or enquiring into the earlier title, unless he can shew that the recital was inaccurate, the burden of proving which is on him. *Bolton v. The School Board for London*, 47 Law J. Rep. Chanc. 461; Law Rep. 7 Ch. D. 760.

##### (c) Transfer by legal personal representative.

36.—The 4th section of the Vendor and Purchaser Act, 1874, does not enable the legal personal representative of a deceased mortgagee of real estate to transfer the legal estate in it, on payment of all sums secured by the mortgage. *In re Spradbery's Mortgage*, 49 Law J. Rep. Chanc. 623; Law Rep. 14 Ch. D. 514.

##### (d) Time for appealing.

37.—The time within which an appeal can be brought from an order under the Vendor and Purchaser Act, s. 9, is twenty-one days. *In re Blyth and Young* (App.), Law Rep. 13 Ch. D. 416.

*Bare trustee: meaning of term.* [See TRUST, D 20, 21.]

*Sale by devisees of surviving trustee.* [See POWER, 26; TRUST, B 4.]

#### VENUE.

By the law as established before the operation of the Judicature Acts, 1873, 1875, no action was maintainable in the Courts at Westminster to enforce payment of arrears of freehold rent-charge issuing out of lands situate abroad, although both parties were resident in the jurisdiction. *Whitaker v. Forbes* (App.), 45 Law J. Rep. C.P. 140; Law Rep. 1 C.P. D. 51.

Quere, whether, since the operation of those Acts, an action can be maintained in England for such arrears. *Ibid.*

*Embezzlement: county in which offence committed: jurisdiction.* [See EMBEZZLEMENT, 1, 2.]

#### VESTED OR CONTINGENT INTEREST.

[See WILL CONSTRUCTION, O 9, 10.]

#### VESTING.

[See WILL CONSTRUCTION, L.]

#### VESTING ORDER.

[See TRUSTEE ACTS, 9-18.]

#### VESTMENTS.

[See CHURCH AND CLERGY, 19.]

#### VESTRY.

*Qualification and election of vestrymen.*

1.—The disqualification of the members of vestries provided by section 54 of the Metro-

polis Management Act, 1855, on their becoming bankrupt, applies to the churchwardens as well as to elected members. *Leffley v. Monnington*, 48 Law J. Rep. Exch. 543; Law Rep. 4 Ex. D. 307.

2.—The defendant occupied jointly with his father premises in the metropolitan parish of R. of sufficient value to qualify him to act as a vestryman. Up to and including April, 1876, the rates in respect of the premises had been made on the father alone. Shortly after the rate was made in April, 1876, the defendant applied to the churchwardens and overseers of R. to place his name on the rate-book as partner with his father in the firm of Williams & Son, but no step was taken by the authorities in the matter. In May the defendant was elected vestryman by poll, and the inspectors appointed under sections 17, 18, 19, 22 of the Metropolis Management Act, 1855, declared that he was duly elected. Subsequently, in the same month, the demand for the rate was made on the father alone. In June the defendant voted as a vestryman. In July he required the rate to be altered by the addition of the words "and Son." It was so altered, and the rate was paid by Williams & Son. An action having been brought against the defendant under the Metropolis Management Act, 1855, section 54, to recover a penalty for his acting as vestryman without qualification,—Held, that, as the defendant was not "rated or assessed" within section 54 of the same Act, he was liable to the penalty; that the decision of the inspectors as to the qualification of the candidate is not final; that section 4 of the Metropolis Amendment Act, 1856, is not retrospective in its operation, so as to exempt from the penalty one who pays the rate subsequently to his acting as vestryman. *Godhow v. Williams* (App.), 47 Law J. Rep. C.P. 313; Law Rep. 3 C.P. D. 382.

*Regulation of business: hour of holding vestry.*

3.—The authority to determine the hour at which a vestry meeting shall be summoned is vested in the same person or persons in whom is the authority to summon, and that, by 58 Geo. 3. c. 69, is in the vicar and churchwardens, one or both. It is not, therefore, competent to the inhabitants in vestry assembled to regulate the hour at which subsequent meetings (other than an adjournment of the present one) shall be held; and the vicar, as the summoning authority, cannot be compelled to give notice of a resolution that future meetings shall be held at a particular hour. *Reg. v. The Vicar and Churchwardens of Tottenham*, 48 Law J. Rep. Q.B. 407; Law Rep. 4 Q.B. D. 367.

4.—The vicar and churchwardens of a parish have power to fix the hour of holding vestry meetings, and the parishioners cannot, by *mandamus*, compel them to alter it. Judgment of the Queen's Bench Division affirmed. *Reg. v. The Vicar and Churchwardens of Tottenham* (App.), 49 Law J. Rep. Q.B. 870.

*Metropolis, in: duty of, to remove rubbish.* [See METROPOLIS, 18-20.]

*Vesting of soil of highway in.* [See METROPOLIS, 12.]

VESTRY CLERK.

*Payment to, for valuation list.* [See RATES, 22.]

VIBRATION.

*Nuisance by.* [See NUISANCE, 1.]

VICTORIA.

*Law of.* [See COLONIAL LAW, 45-53.]

VIS MAJOR.

[See CARRIER, 1; HARBOURS CLAUSES ACT, 3; NEGLIGENCE, 8, 11.]

VISITOR.

[See UNIVERSITY.]

VOLUNTARY ASSOCIATION.

1.—Where the land of a voluntary association, having no rules or provisions as to the disposition of its property, is sold, the proceeds belong to the members for the time being. *Brown v. Dale*, Law Rep. 9 Ch. D. 78.

2.—An association of more than twenty persons was formed in 1872, with the object of buying foreign bonds and other securities below par value, and, after payment of expenses and a fixed rate of interest to all the members, dividing the profits which should be made by the sale of the bonds, or their payment off at par, amongst some of the members, who were to be chosen by lot at annual drawings for that purpose. The association was not registered under the Companies Act. There was a trust deed which set out in detail the working of the scheme. In an action against a former trustee for alleged breaches of trust,—Held, that the action could not be maintained, inasmuch as the association was one formed for gain, and, not being registered, was illegal. Semble, that it was also illegal under the Lotteries Acts. *Sykes v. Beadon*, 48 Law J. Rep. Chanc. 186; Law Rep. 11 Ch. D. 170.

[And see CLUB; COMPANY, C 4; LOTTERY ACTS.]

VOLUNTARY SETTLEMENT.

(A) VALIDITY OF.

(a) *As against subsequent purchasers.*

(1) *Settlement of leaseholds.*

(2) *Post-nuptial settlement of wife's real estate.*

(3) *Persons not within marriage consideration.*

(4) *Post-nuptial settlement in pursuance of ante-nuptial agreement by infant.*

(b) *As against creditors.*

(B) ENFORCEMENT OF.

(a) *Covenant on marriage to surrender copyholds.*

(b) *Ineffectual assignment effectual as declaration of trust.*

(c) *Confirmation of settlement by will.*

(d) *Trust deed for creditors.*

(A) VALIDITY OF.

(a) *As against subsequent purchasers.*

(1) *Settlement of leaseholds.*

1.—There cannot be a voluntary settlement of leaseholds, since the assignees necessarily assume a liability at law in respect of the rent and covenants. So held in a case where the assignees were trustees, and had entered into no covenants on the assignment. *Price v. Jenkins* (App.), 46 Law J. Rep. Chanc. 805; Law Rep. 5 Ch. D. 619.

(2) *Post-nuptial settlement of wife's real estate.*

2.—By a post-nuptial settlement, duly acknowledged, the freehold and copyhold property of the wife was conveyed to trustees and their heirs, to the use of the wife for life, with remainder to such persons as she should by will, notwithstanding coverture, appoint; and in default of appointment, to her children, of whom she had several, in equal shares as tenants in common in fee. Subsequently the husband and wife by an acknowledged deed mortgaged the property without notice of the settlement. On a summons under the Vendor and Purchaser Act by a purchaser from the mortgagee under his power of sale,—Held, that the settlement was for a valuable consideration, and not invalid against the mortgagee under 27 Eliz. c. 4. *Goodright v. Moses* (2 W. Black. 1019), and *Currie v. Nind* (1 Myl. & Cr. 17; 5 Law J. Rep. Chanc. 71) distinguished. *Butterfield v. Heath* (15 Beav. 408; 22 Law J. Rep. Chanc. 270) disapproved. *Hewison v. Negus* (16 Beav. 594; 22 Law J. Rep. Chanc. 655) followed. *In re Foster*, 46 Law J. Rep. Chanc. 480; Law Rep. 6 Ch. D. 87 (nom. *In re Foster and Lister*).

3.—A testator devised real estate to his daughter, and expressed a wish that in case she should marry, she should settle it to her separate use for life, and to such uses as she should appoint by will. Semble, that this created no trust to settle. *Teesdale v. Braithwaite* (App.), 46 Law J. Rep. Chanc. 725; Law Rep. 5 Ch. D. 630.

A post-nuptial settlement of a wife's real estate held not voluntary, and supported against a subsequent mortgagee without notice. Decision of Bacon, V.C. (46 Law J. Rep. Chanc. 396; Law Rep. 4 Ch. D. 85) affirmed. *Ibid.*

(3) *Persons not within marriage consideration.*

4.—By a settlement upon a marriage between a widower and a widow, both of whom had

children by their former marriage, the property of the husband was settled upon trust for himself for life, and subject thereto for his son absolutely, and the property of the wife was settled upon such trusts as she should by deed or will appoint, and in default of appointment for children equally. The husband afterwards agreed to sell part of the property comprised in the settlement. On a suit by the purchaser to compel specific performance of the agreement,—Held, that the son was not within the marriage consideration, and was only a volunteer under the settlement; that the settlement therefore could not be set up against the purchaser, and that the latter was entitled to a decree for specific performance of her agreement. *Price v. Jenkins* (App.), 46 Law J. Rep. Chanc. 214 (reversed on appeal on other grounds; see No. 1 supra).

Semble, that she would have been entitled to a decree for specific performance, even if the son had not been made a party to the suit, and the question of the validity of the settlement had been left over for future litigation. *Dickenson v. Wright* (5 Hurl. & N. 401; 29 Law J. Rep. Exch. 150), and *Clarke v. Wright* (6 Hurl. & N. 849; 30 Law J. Rep. Exch. 113) considered. *Ibid.*

*Volunteers: marriage settlement: next-of-kin.*  
[See SETTLEMENT, 6.]

(4) *Post-nuptial settlement in pursuance of ante-nuptial agreement by infant.*

5.—An ante-nuptial agreement by an infant is not sufficient to take a post-nuptial settlement, in which no reference is made to the ante-nuptial agreement, out of the operation of the 27 Eliz. c. 4, and such post-nuptial settlement is, therefore, void against a subsequent purchaser for value. *Tronell v. Shenton* (App.), 47 Law J. Rep. Chanc. 739; Law Rep. 8 Ch. D. 318.

*Limitation to the "right heirs of A. deceased and B."* [See SETTLEMENT, 17.]

*Illegal consideration.* [See SETTLEMENT, 5.]

(b) *As against creditors.*

6.—More than two but less than ten years before his bankruptcy, a trader executed a voluntary settlement of real property that was subject to a mortgage, covenanting with the trustees to pay the interest, and at their request the principal of the mortgage debt. His other assets were then sufficient to pay his debts, exclusive of the mortgage debt, but not including it.—Held, that the property freed from the mortgage, and not merely the equity of redemption, was settled, and that therefore the settlor was not able to pay his debts without the aid of the property comprised in the settlement, and the settlement was void under section 91 of the Bankruptcy Act, 1869. *Ex parte Huatoble; in re Conibeer* (App.), 45 Law J. Rep. Bankr. 59; Law Rep. 2 Ch. D. 54.

7.—The word "purchaser" in the 91st sec-

tion of the Bankruptcy Act, 1869, must be construed in the ordinary commercial sense of the word, that is, a "buyer." Where, therefore, a trader within two years of his bankruptcy made a *bona fide* settlement of leaseholds upon trust for his wife and children, and the trustees entered into the usual covenants to pay the ground rent, and perform the covenants in the lease,—Held, that the trustees were not purchasers for value within the exception contained in the 91st section of the Bankruptcy Act, 1869, and, therefore, that the settlement was void. *In re Pumphrey*; *ex parte Hillman* (App.), 48 Law J. Rep. Bankr. 77; Law Rep. 10 Ch. D. 622.

8.—By a voluntary settlement executed two years before his death, a trader, who was doing business to the amount of 100,000*l.* a year, settled on his wife two policies of assurance for 1,000*l.* each. By another settlement, a year later, he settled on her his furniture, worth about 1,000*l.* It appeared that at the date of the first settlement his debts exceeded his assets by 1,292*l.*, and at the date of the second settlement by 10,726*l.* In a suit by a creditor, whose debt was contracted after the first but before the second settlement, to set aside both deeds, it not being proved that any debt existed which had been contracted at the date of the first settlement,—Held, that both deeds must be declared fraudulent and void. *Taylor v. Coenen*, Law Rep. 1 Ch. D. 636.

9.—Voluntary settlement in 1858, by a man not in trade and owing no debts, of 1,000*l.*, upon trust for himself for life, or until bankruptcy, then for his wife for life for her separate use, then upon trust for the children, and ultimate trust for settlor. In 1873 the settlor became a trader, and in 1875 a bankrupt:—Held, that the settlement was wholly void as against the trustee in bankruptcy. *Ex parte Stephens*; *in re Pearson*, Law Rep. 3 Ch. D. 807.

[And see BANKRUPTCY, F 36–38.]

#### (B) ENFORCEMENT OF.

##### (a) *Covenant on marriage to surrender copyholds.*

10.—A widow on her second marriage covenanted to surrender copyholds upon trust for herself for life, and after her death for the children of her first marriage and their children. No surrender was made:—Held, that the trusts could be enforced at the instance of the children of the first marriage. *Gale v. Gale*, 46 Law J. Rep. Chanc. 809; Law Rep. 6 Ch. D. 144.

##### (b) *Ineffectual assignment effectual as declaration of trust.*

11.—A husband, by a voluntary deed-poll, after reciting that he was possessed of certain leasehold ground-rents, "thereby intended to be settled upon his wife," "settled and assigned" them "unto his wife as though she were a single woman":—Held, that the deed-poll, though ineffectual as an assignment, operated

as a valid declaration of trust; and that, therefore, the wife became absolutely entitled to the leasehold property comprised in the deed-poll. *Baddoley v. Baddoley*, 48 Law J. Rep. Chanc. 86; Law Rep. 9 Ch. D. 113.

12.—A letter expressed to be a binding assignment upon trusts by way of voluntary settlement of certain policies of life assurance (before such policies were at law assignable), and accompanied with delivery of those of the policies which were in the assignor's possession,—Held, to be an effectual equitable assignment, although the writer expressed his intention of subsequently executing a deed to vest the policies in the assignee jointly with another person not yet selected as trustees, and although some of the policies (being in mortgage to the office) were not handed over, and no notice of the assignment was given to the office. It was the duty of the assignee, not of the assignor, to give notice to the office. The letter contained an undertaking by the assignor (which was not performed) to discharge the mortgage:—Held, that the assignment could be given effect to, independently of this undertaking. *In re King's Estate*. *Sewell v. King*, 49 Law J. Rep. Chanc. 73; Law Rep. 14 Ch. D. 179.

##### (c) *Confirmation of settlement by will.*

13.—A voluntary settlement purported to comprise certain mortgage debts and bank shares, but the mortgages and shares were not transferred to the trustees, and some of the mortgage debts were received by the settlor. By her will the settlor confirmed her settlement, but the settlement was not admitted to probate:—Held, that the settlement was imperfect, but was confirmed by the will, and was made complete as regarded the shares, though not as regarded the mortgage debts received by the settlor. Held also, that the settlement, being incorporated with the will, must be read as a testamentary instrument, and the doctrines of lapse and ademption would apply. *Bisbey v. Flight*, 45 Law J. Rep. Chanc. 852; Law Rep. 3 Ch. D. 629.

##### (d) *Trust deed for creditors.*

14.—A debtor by voluntary deed conveyed property to a trustee upon trust to realise the same and pay his debts:—Held, that a creditor, who was no party to the deed, and to whom it had not been communicated, could not maintain an action for carrying out the trusts of the deed. *Johns v. James* (App.), 47 Law J. Rep. Chanc. 853; Law Rep. 8 Ch. D. 744.

15.—By a trust deed executed by a debtor, it was declared that the moneys assured by certain policies on his life should be held by the trustees (who were also creditors), as security for the payment to certain creditors (parties to the deed) of the several debts therein mentioned. S., one of these creditors, never executed the deed, and it was never communicated to him:—Held, that after the death of the debtor, his

executor was at liberty to revoke the trusts of the deed as against S., though a party to it, it never having been communicated to him. *In re Sander's Trusts*, 47 Law J. Rep. Chanc. 667.

*Revocability: law of Lower Canada.* [See COLONIAL LAW, 7.]

## VOLUNTARY WINDING-UP.

[See COMPANY, H 101-108.]

## VOLUNTEER ACT.

By the Volunteer Act, 1863, s. 21. sub-s. 1, the commanding officer of a Volunteer corps may discharge from the corps any volunteer for breach of discipline. By sub-section 2, a volunteer belonging to a corps or administrative regiment who is guilty of misconduct while under arms, or on march or duty, is liable to arrest at the order of the officer then in command of the corps or regiment. The appellant was a member of the W. Corps, which consisted of two companies, of which the defendant was captain, commandant and commanding officer. Whilst the two companies were assembled in camp they formed, together with certain other companies, an administrative battalion, the whole of the companies in camp being under the command of M., the commanding officer of the first administrative battalion. On parade of the appellant's corps, forming part of the administrative battalion in camp, the appellant was dismissed from the corps for breach of discipline by the respondent, who was present superintending the company drill of the corps:—Held, that the respondent was the commanding officer on the occasion when he dismissed the appellant within the meaning of section 21 of the Volunteer Act, 1863, and that the power of the commanding officer of the administrative regiment was limited to arrest for the period during which the regiment was collectively under his control. *Tombs v. Magrath*, 49 Law J. Rep. M.C. 75; Law Rep. 5 Q.B. D. 548.

## VOTING.

[See BANKRUPTCY, K 16, 18; L 8; CHURCH AND CLERGY, 1; COMPANY, D 44-47; PARLIAMENT, 2-30; MUNICIPAL CORPORATION, 9.]

## WAFER BREAD.

[See CHURCH AND CLERGY, 19.]

## WAGER.

[See BROKER, 3; CONTRACT, 9-15; GAMING.]

## WAGES.

[See MASTER AND SERVANT, 1, 4, 18; SHIPPING LAW, W.]

## WAIVER.

*Forfeiture: landlord and tenant: pleading.* [See FORFEITURE, 5.]

*Recovery of paving expenses: preliminaries to notice.* [See PUBLIC HEALTH, 21.]

## WARD OF COURT.

[See INFANT, 23.]

## WAREHOUSEMAN.

*Liability of.* [See SHIPPING LAW, F 7.]

*Lien of vendors, also warehousemen.* [See SALE OF GOODS, 25.]

*Mortgage of warehouses: "rents" for warehousing goods: right of mortgagees in possession.* [See MORTGAGE, 11.]

## WARRANT.

[See JUSTICE OF THE PEACE, 13; EXTRA-DITION, 1; PERJURY, 1.]

## WARRANTY.

*Implied: building contract: plans and specifications.* [See CONTRACT, 38.]

*Implied: on sale of mines.* [See MINES, 16.]

*Implied: on sale of animals.* [See DAMAGES, 23.]

*Implied: on sale of goods.* [See SALE OF GOODS, 6, 7.]

*Seaworthiness, of.* [See MARINE INSURANCE, 28; SHIPPING LAW, D 12, 13.]

*Implied: landlord and tenant: fitness of building for purpose for which it was used.* [See LANDLORD AND TENANT, 9.]

*Sale of horse with warranty: condition that horse not answering warranty shall be returned within specified time.* [See SALE OF GOODS, 9, 10.]

## WARREN.

A grant of a "warren of conies" was held on the context and under the surrounding circumstances to pass the soil. *Robinson v. The Maharajah Duleep Singh*, 48 Law J. Rep. Chanc. 758; Law Rep. 11 Ch. D. 798.

## WASTE.

(A) WHAT ACTS AMOUNT TO.

(a) *Quarries: working.*

(b) *Permissive waste: action for tort.*

(B) RIGHT TO PROCEEDS OF SALE OF TIMBER.

(A) WHAT ACTS AMOUNT TO.

(a) *Quarries: working.*

1.—The opening of a quarry by a mortgagor in possession enures to the benefit of the mort-

gaged of a term, so as to render him punishable for waste if he work the quarry during the term. Where it is proved that a quarry was worked, and that there was a lease which would authorise the workings, it will be presumed after a great lapse of time that the workings took place under the lease, and the burden of proof will lie on a party who seeks to shew that they were unauthorised. Per Lord Selborne.—Sale of the produce is not a necessary criterion of the difference between a mine or quarry which is, and one which is not, to be considered open in a legal sense. *Elias and Others v. The Snowdon Slate Quarries Company (Lim.) and Others* (H.L.), 48 Law J. Rep. Chanc. 811; Law Rep. 4 App. Cas. 454; on appeal from the Court of Appeal, 48 Law J. Rep. Chanc. 208; Law Rep. 8 Ch. D. 521.

Where there is an open mine or quarry, the sinking of a new pit on the same vein, or breaking ground in a fresh place on the same rock, is not necessarily the opening of a new mine or quarry. *Ibid.*

*What acts amount to.* [See LANDLORD AND TENANT, 8.]

(b) *Permissive waste : action for tort.*

2.—Where houses had been devised to A. for life, “she keeping them in repair,” with remainder to the plaintiff in fee, and A. entered into possession but neglected to repair,—Held, that she was during her lifetime liable at common law to an action for waste by the remainder-man; and that consequently after her death A.’s executors were, under 3 & 4 Will. 4. c. 42. s. 2, liable to be sued by the plaintiff for such waste. *Woodhouse v. Walker*, 49 Law J. Rep. Q.B. 609; Law Rep. 5 Q.B. D. 404.

(B) RIGHT TO PROCEEDS OF SALE OF TIMBER.

3.—Where timber on a settled estate had been cut by an equitable tenant for life not empowered to commit waste, and the proceeds having been brought into Court, the decree had declared the timber to have been properly cut, and directed payment of the interest to the tenant-for-life,—Held, that the first subsequent tenant in possession unimpeachable for waste was entitled to the corpus of the fund. *Lowndes v. Norton*, 46 Law J. Rep. Chanc. 613; Law Rep. 6 Ch. D. 139.

4.—A tenant-for-life unimpeachable for waste is absolutely entitled to the proceeds of sale of ornamental timber which has been cut by him, if the cutting was properly done and was essential for the preservation of the rest of the timber. But, semble, the Court would, if applied to in time, restrain the tenant-for-life from himself cutting the timber, and would direct the cutting to be done under its own supervision. *Baker v. Sobright*, 49 Law J. Rep. Chanc. 165; Law Rep. 13 Ch. D. 179.

*Landlord and tenant : user of demised property.*  
[See LANDLORD AND TENANT, 9.]

*Meliorating waste : injunction to restrain : discretion of Court below not interfered with by House of Lords.* [See INJUNCTION, 17.]

WASTE OF MANOR.

[See COMMON, 3, 4, 5; COPYHOLDS, 2; PARLIAMENT, 10.]

WATER AND WATERCOURSE.

*Underground water : right to discharge on to adjoining land.*

1.—Whether water flows on the surface or underground, the right of user is the same; and a man by intercepting such water, whatever the purpose may be to which he applies it, does not thereby appropriate it so as to lose his right to discharge it on to the adjoining land at the same time and place and to the same extent as before such interception; but if the owner of the adjoining land can shew that the result of such user is to increase the burden on his land he will be entitled to an injunction and to damages for the injury caused by such user. *The West Cumberland Iron and Steel Company v. Kenyon* (App.), 48 Law J. Rep. Chanc. 793; Law Rep. 11 Ch. D. 782; on appeal from the Chancery Division, 46 Law J. Rep. Chanc. 860; Law Rep. 6 Ch. D. 773.

*Interception of underground water.* [See MINES, 10.]

*Riparian owners : abstraction of water.*

2.—The appellants, a waterworks company, purchased a mill on the upper part of a stream, and thereby became riparian owners. They collected the water from the stream into a reservoir and applied it for the purpose of supplying a neighbouring town with water. The respondents, riparian owners lower down the stream, finding their flow of water affected, brought a suit for an injunction, and the appellants by their pleadings claimed the right to use the water in the manner complained of:—Held, that such user of the water by the appellants was neither a user in connection with the tenement of the appellants, nor a reasonable user such as an upper riparian owner had a right to make, and that the respondents were entitled to an injunction to restrain such user of the water. *The Swindon Waterworks Company (Lim.) v. The Wilts and Berks Canal Navigation Company* (H.L.), 45 Law J. Rep. Chanc. 638; Law Rep. 7 B. & I. App. 697.

It was alleged on the part of the appellants that the respondents had not in fact sustained such damage as would entitle them to maintain the suit:—Held, that inasmuch as the appellants claimed a right to use the water the respondents were entitled to an injunction. *Ibid.*

The respondents were a canal company, established by Acts of Parliament, which gave them the right of taking water from streams

within the distance of 2,000 yards, for the purpose of making and maintaining their canal. They purchased a mill on the stream in question, and so became riparian owners. They afterwards ceased to use the mill:—Held, that by the purchase of the mill the respondents acquired all the rights incident thereto, in the same way as such rights would have been acquired by a private individual, and not fettered or restricted within the limits of their statutory powers as a canal company. Also, that in their capacity of a canal company the respondents stepped into all the rights which a riparian owner at that point in the stream would have as against the upper owners, with this qualification, that these rights were to be exercised not absolutely or capriciously, but merely and only for the purposes of supplying their canal. *Ibid.*

It appeared that the respondents had sold some of the water:—Held, that though this might be *ultra vires* on their part, it was not any excuse for the abstraction of the water by the appellants. *Ibid.*

#### *Natural or artificial stream.*

3.—The right to water flowing to a man's land through an artificial channel constructed on his neighbour's land rests on a different principle from the right to the water of a river flowing in a natural course. Where the channel is natural each successive riparian proprietor is *prima facie* entitled to the uninterrupted flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident of ownership; but where the channel is artificial the right to the flow of water must rest on some legal origin, such as a grant or arrangement, either proved or presumed, from or with the owners of the land from which the water is artificially conveyed. *Rameshkur Pershad Naram Singh v. Koonj Behari Pattuk and Another* (P.C.) Law Rep. 4 App. Cas. 121.

*Wood v. Waud* (3 Exch. Rep. 748; 18 Law J. Rep. Exch. 306) approved. *Ibid.*

*Riparian proprietor: railway company: right to use water.*

4.—A railway company, as riparian proprietors, are entitled to take water from the stream in reasonable quantities for the purpose of supplying their locomotive engines and for the general purposes of a railway station. *The Earl of Sandwich v. The Great Northern Railway Company*, 49 Law J. Rep. Chanc. 225.

*Diversion of, by railway company.* [See RAILWAY, 8.]

*Definition of term "watercourse:" construction of deed of grant.* [See DEED, 1.]

#### WATER COMPANY.

Persons claiming a monopoly are bound to shew that they have strictly complied with all

the conditions on which it is to be enjoyed. *The Richmond Waterworks Company and The Southwark and Vauxhall Water Company v. The Vestry of Richmond Parish*, 45 Law J. Rep. Chanc. 441; Law Rep. 3 Ch. D. 82.

The Richmond Waterworks Company's Act, 1835, empowered that company to supply the town and district of Richmond with water. The Public Health Act, 1848, provided that the Local Board, before constructing any waterworks in that district, should give notice to every one of the companies there; and forbade the board making any works, "if, and so long as any such company should be able and willing" to lay on the reasonable supply required by the board. In 1862, the Richmond Company endeavoured (but without success) to get an Act enabling them to amalgamate with the Southwark and Vauxhall Water Company. The Richmond Company then sold all their property to the Southwark Company, and ceased to act as a company. The inhabitants of Richmond being dissatisfied with the water supply, the vestry of that parish, in 1873, acting as the Urban Sanitary Board, gave the Richmond Company (as the only one which should supply the town with water) notice under the Act of 1848, of their intention to construct new waterworks. The Public Health Act, 1875, repealed the Act of 1848, and by sections 51 and 52 conferred on the Local Board the power of "supplying water for public and private purposes" in Richmond, subject to conditions similar to those contained in the Act of 1848. In November, 1875, the Richmond Company and the Southwark Company brought an action against the vestry to restrain them from proceeding with their works without giving the notices prescribed by the Public Health Act, 1875:—Held, on an interlocutory motion for an injunction, that the Richmond Company, though in law an "existing" company, was not one "able and willing" to supply Richmond with water; and that as the Southwark Company was not legally qualified to do so, there was no company which could claim the monopoly created by the Acts. The motion was therefore refused with costs. *Ibid.*

#### WATERWORKS.

##### *Waterworks Clauses Act.*

1.—Where in consequence of a neglect to pay the water rate due to a waterworks company, the company, in exercise of the power given them by section 74 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), have cut off the communication pipe between their pipes and the house in respect of which the rate was payable, the owner or occupier of such house is not entitled to receive a supply of water (although he pays or tenders the water rate for the same), nor are the company liable to the penalty imposed by section 48 for neglecting or refusing to furnish such owner or occupier with a supply of water, until the communication pipe has

been restored, and there is nothing in that Act to compel the company to restore the same. Semble, the company have no right to refuse to allow the restoration of the connecting pipe and the supply of water until bygone rates have been paid. *The Company of the Proprietors of the Sheffield Waterworks v. Wilkinson. The Same v. Corbridge*, 48 Law J. Rep. M.C. 145; Law Rep. 4 C.P. D. 410.

2.—Under section 31 of the Waterworks Clauses Act, 1847, it is incumbent upon the undertakers intending to break up a road to communicate beforehand their proposed plan or method of executing the work to the road authority; and this in a sufficient manner to enable the road authority to judge whether what is proposed ought to be done without modification. If the plan is not approved of by the road authority, it rests with the undertakers to apply for the determination of two justices before proceeding to operations. *The Edgware Highway Board v. The Colne Valley Water Company*, 46 Law J. Rep. Chanc. 889.

*Rating of waterworks.* [See *RATES*, 15.]

### WAY.

- (A) WAY OF NECESSITY.
- (B) GRANT OF "WAGGON OR CART ROAD."
- (C) GENERAL WORDS: SALE BY AUCTION.
- (D) EXTENT OF RIGHT.
  - (a) Footway or greater right.
  - (b) Agricultural purposes.
- (E) MODE OF USE: INCREASE OF BURDEN ON SERVIENT TENEMENT.
- (F) EXTINGUISHMENT OF.

#### (A) WAY OF NECESSITY.

1.—A. agreed to sell to the School Board for London two blocks of houses, "with the appurtenances," each house fronting the B. yard. At each end of the yard there was a way, passing over other land of the grantor, and looking into a road. The School Board claimed the right of way at the west end of the yard. A. was willing to grant them the right of way at the east end of the yard:—Held, that the right of way claimed could not pass as appurtenant. Held also, that though the School Board were entitled to a right of way of necessity, yet, as each of the two ways was a convenient way, the right of election was in the grantor; and that, therefore, the School Board were not entitled to the right of way claimed. *Bolton v. Bolton*, 48 Law J. Rep. Chanc. 467; Law Rep. 11 Ch. D. 968.

2.—The way of necessity presumed to be reserved to the grantor of a piece of land entirely surrounded by other land and conveyed by him is not a general right of way, but is merely a right of way necessary for the mode in which the land was used at the time of the grant. Thus where at the time of a grant certain landlocked closes were used for agricultural pur-

poses only,—Held, that the lessee of such closes was not entitled subsequently to any other than a way of necessity for agricultural purposes. *The Mayor of London v. Riggs*, 49 Law J. Rep. Chanc. 297; Law Rep. 13 Ch. D. 798.

#### (B) GRANT OF "WAGGON OR CART ROAD."

3.—Conveyance of surface of lands excepting and reserving to grantors "a waggon or cart road" of the width of 18 feet to be at all times thereafter kept in repair at his own costs and charges: Held, that the grantors could not lay down a railroad or tramway for carriage of coals raised from neighbouring collieries belonging to them. *Bladder v. The North Staffordshire Railway Company*, Law Rep. 4 Q.B. D. 413.

#### (C) GENERAL WORDS: SALE BY AUCTION.

4.—A., by a certain lease of the 23rd of September, 1878, demised to one B. a public-house at Hampstead, "together with all ways, waters, watercourses, drains, cellars, vaults, paths, passages, lights, easements, profits, privileges, commodities, advantages and appurtenances whatsoever to the said premises belonging or in anywise appertaining." Behind the premises was a path across the garden to a doorway in the boundary wall, which opened on to a private road (the property of A.) leading to Hampstead Heath. On the 1st of October, 1878, A. (pursuant to an agreement of November, 1867) granted to the defendant a lease for ninety-nine years of land which comprised the private road leading from the back of the public-house to Hampstead Heath; and on the 9th of October in that year the defendant built up the doorway in the boundary wall. By special agreement between one Haughton, a former tenant of the public-house, whose tenancy had been determined in June, 1878, and his lessor, the defendant, this way had for several years been used by Haughton:—Held, that the way in question not being a way of necessity, did not pass to B. by the general words in the lease of September, 1878; and that the defendant was not estopped from denying the existence of the alleged right of way by having allowed Haughton to use it whilst he was the occupier of the public-house. A. subsequently put up the public-house for sale by auction, under conditions of sale which referred to a draft lease. Neither in the conditions of sale nor in the draft lease was the existence of any right of way from the garden of the public-house to Hampstead Heath referred to; but, at the time of sale, the auctioneer *bona fide*, though without any authority from B., and acting entirely upon his own inference drawn from the appearance of the premises, and believing that there was a right of way through the same and over the private road and so to Hampstead Heath, stated publicly that there was such a way, and spoke of it as enhancing the value of the premises:—Held, that the evidence of what passed at the



time of the sale was admissible as against the vendor; but that no action could, after the completion of the purchase, be maintained against him to recover compensation for this innocent misrepresentation by the auctioneer. *Brett v. Clowser*, Law Rep. 5 C.P. D. 376.

(D) EXTENT OF RIGHT.

(a) Footway or greater right.

5.—Under an agreement for a lease, the tenant had power to erect a workshop on a portion of the premises, for the purposes of his business, but was not to obstruct the entrance to the premises, except by using it for the purposes of egress and ingress. The only entrance was through an entrance or gateway with a paved road under the landlord's house:—Held, that the tenant had a right of way through the gateway for horses and carts, as well as for foot passengers; and that he was entitled to an injunction to restrain the landlord from obstructing the gateway by loading and unloading carts there. *Cannon v. Villars*, 47 Law J. Rep. Chanc. 597; Law Rep. 8 Ch. D. 415.

(b) Agricultural purposes.

6.—Strips of land having been allotted by an award under an Inclosure Act to different persons, there was awarded to the owners for the time being of the allotments "a way, right and liberty of passage for themselves and their respective tenants and farmers of the said lands and grounds, as well on foot as on horseback, as with their carts and carriages, and to lead and drive their horses, oxen and other cattle" as often as occasion should require, from a highway adjoining the outside strip over the east end of the allotments to their respective allotments, "doing as little damage to the soil, or the corn, grass or herbage" as might be, with a provision that if any owners should street out the way through their respective allotments, the same should be made and for ever remain at least eleven yards wide:—Held, that there was no implied restriction of the right of way to agricultural purposes. Held also, that a person entitled to a right of way is entitled to make an efficient way for any purposes for which he is entitled to use it, and desires to use it; and held, therefore, that the owners of any allotment, on converting the same into building land, might form a metalled road to the highway over the east end of the intervening plots. *Nevoomen v. Coulson* (App.), 46 Law J. Rep. Chanc. 459; Law Rep. 5 Ch. D. 133.

[And see No. 2 supra.]

(E) MODE OF USER: INCREASE OF BURDEN ON SERVIENT TENEMENT.

7.—The owner of a right of way by immemorial user, for the purpose of access to his land, is only entitled to use such right of way for the purpose of the enjoyment of his land in the state in which it has always been, and not

for all purposes, and he cannot, by altering the character of his land, as by building houses upon agricultural land, &c., acquire a right to use the way for the new purposes for which he requires it; the rule being that no such change can be made in the character of a dominant tenement as will increase the burden on the servient tenement. *The Wimbledon and Putney Commons Conservators v. Dixon* (App.), 45 Law J. Rep. Chanc. 353; Law Rep. 1 Ch. D. 362.

*Williams v. James* (36 Law J. Rep. C.P. 256; Law J. Rep. 2 C.P. 577) followed. *Cowling v. Higginson* (4 Mee. & W. 245; 7 Law J. Rep. Exch. 265) observed upon. *Ibid.*

8.—An express grant of a private right of way to a particular place to the unrestricted use of which the grantee of the right of way is entitled, is not to be restricted to access to the land for purposes for which access would be required at the time of the grant. *Finch v. The Great Western Railway Company*, Law Rep. 5 Ex. D. 254.

An inclosure award set out a road as a carriage road and drift way from a highway to certain of the inclosed lands. The defendants, a railway company, having acquired some of these lands, built a cattle pen thereon adjoining their railway, and used the road for the passage to and from the highway of cattle that were to be or had been conveyed on their railway, such user being much greater than the user at the time of the grant, which was exclusively for agricultural purposes:—Held, that this was a lawful user on their part, and that they were not restricted to the user which existed at the time of the grant. *Ibid.*

9.—The user of a way to a field for twenty years for agricultural purposes does not give a right to use it for mineral purposes. *Bradburn v. Morris*. *Morris v. Bradburn*, Law Rep. 3 Ch. D. 312.

Where the owner of a field, which had never been used for mining, with a right of way to it through an occupation road, agreed to sell the surface of the field (excepting the minerals), the vendor not appearing to have any present intention of working the mines,—Held, that he could not prevent the purchaser from altering the road so as to make it unfit for the use of the vendor in working the minerals; and that, even if he had a right, the Court would not interfere in the absence of any present intention by him to work the minerals. *Ibid.*

(F) EXTINGUISHMENT OF.

*Public right: implied extinction by statute.*  
[See PIERS AND HARBOURS, 2.]

*Railway company, by.* [See RAILWAY, 7.]  
*Under Inclosure Act.* [See INCLOSURE, 3.]

*Contract to dedicate to public: purchaser for value without notice.* [See VENDOR AND PURCHASER, 31.]

*Grant of right of, by railway company: grant ultra vires.* [See RAILWAY, 3.]

*Obstruction: mandatory injunction: erection of buildings after action brought.* [See INJUNCTION, 22.]

#### WAYLEAVE.

[See MINE, 13.]

#### WEIGHTS AND MEASURES.

[Consolidation of the law relating to weights and measures. 41 & 42 Vict. c. 49.]

#### WELL.

*Public, repair of.* [See SCOTCH LAW, 19.]

#### WESLEYAN MINISTER.

*Tombstone.* [See CHURCH AND CLERGY, 11.]

#### WHARF.

*Obstruction of access to.* [See RIVER, 3.]

#### WHARFINGER.

*Lien of.* [See TRADE MARK, 27.]

*Policies of insurance.* [See INSURANCE, 14.]

#### WIDOW.

*Pension: East India Company.* [See PENSION.]

#### WIFE.

[See HUSBAND AND WIFE.]

#### WILD FOWL.

[Enactments relating to the preservation of wild fowl. 39 & 40 Vict. c. 29.]

[Amendment of the laws relating to the protection of wild birds. 43 & 44 Vict. c. 35.]

The Wild Birds Protection Act, 1872, which allows the excuse of the wild bird having been bought or received from abroad to be an answer to a summons for killing, wounding or taking any wild bird, or exposing or offering for sale any wild bird recently killed or taken between the 15th of March and the 1st of August, is impliedly repealed by the Wild Fowls Protection Act, 1876, which omits the excuse, and in other ways extends the former statute. *Whitehead v. Smithers*, 46 Law J. Rep. M.C. 234; Law Rep. 2 C.P.D. 553.

By the Wild Fowls Protection Act, 1876 (39 & 40 Vict. c. 29. s. 2), "any person who shall kill, wound or take . . . any wild fowl . . . or shall have in his control or possession any wild fowl recently killed, wounded or taken . . . between the 15th of February and the

10th of July in any year, shall on conviction forfeit and pay," &c.:—Held, that it was no defence to a summons preferred under the above section to shew that the bird had been imported from abroad. *Ibid.*

#### WILFUL DEFAULT.

[See ADMINISTRATION, 36; EXECUTOR, 20; MORTGAGE, 9, 11; PRACTICE, W 28; SOLICITOR, 23; TRUSTEE, 10.]

#### WILL.

##### (1) CONSTRUCTION OF WILL.

- (A) PAROL EVIDENCE OF INTENTION.
- (B) CONTINGENT OR CONDITIONAL WILL.
- (C) WILL IN EXECUTION OF POWER.
- (D) DESCRIPTIONS OF PROPERTY.
  - (a) Lands "at or within" manor.
  - (b) Enumeration of closes.
  - (c) Gift of lands "as devised."
  - (d) Leasehold: subsequent purchase of fee.
  - (e) "Leaseholds at C:" after acquired leaseholds.
  - (f) "Real estate:" leaseholds.
  - (g) Real estate of which I may die "seised."
  - (h) "Bequeathed."
  - (i) Personal property of which I am now "seised."
  - (k) Interim rents.
  - (l) Furniture.
  - (m) Foreign bonds.
  - (n) Bequest of calls: the time being.
  - (o) "Monies" that may be left after my decease.
  - (p) Falsa demonstratio.
  - (q) Words ejusdem generis.
- (E) RESIDUARY AND GENERAL DEVISES AND BEQUESTS.
  - (a) What they comprise.
    - (1) Real estate whether passing.
    - (2) Proceeds of sale of real estate.
    - (3) Leaseholds: residuary devise.
    - (4) Trust and mortgage estates.
    - (5) Share of residue directed to fall into residue.
  - (b) What words carry residue.
    - (1) "Effects."
    - (2) Imperfect enumeration.
    - (3) "Etcetera."
  - (c) Particular or general residuo.
  - (d) Gift of residue after satisfying annuities.
- (F) SPECIFIC DEVISES AND BEQUESTS.
  - (a) Gift of "two houses in K. street:" right of election.
  - (b) Gift whether specific or general.
- (G) AMBIGUITY AND UNCERTAINTY.
  - (a) Omission in will supplied.
  - (b) Misdescription of legatee.
  - (c) Misdescription of property.
  - (d) Release of debt.
  - (e) Admissibility of parol evidence.
  - (f) Gift over on death before execution of trusts.

## (H) WHO TAKE.

- (a) "Elders son."
- (b) Gift to a class.
  - (1) What is.
  - (2) Lapse.
  - (3) Time of ascertaining class.
- (c) Gift to children as a class: child tenant-for-life predeceasing testator.
- (d) Child "en ventre sa mère."
- (e) Illegitimate children, whether entitled.
- (f) Gift to A. for life and afterwards to his lawful issue.
- (g) "Family."
- (h) "Descendants."
- (i) "Issue."
- (k) Next-of-kin.
  - (1) Exclusion of specified persons.
  - (2) Gift to: class when to be ascertained.
  - (3) Gift to heirs or next-of-kin of A.
  - (4) "Legal or next-of-kin."
- (l) Heirs.
  - (1) Gift of real estate in remainder.
  - (2) Gift of personality.
  - (3) Gift of blended realty and personality.
- (m) Second cousins.
- (n) Executors, whether taking beneficially.

## (I) WHAT ESTATE OR INTEREST PASSES.

- (a) Estate of trustees.
  - (1) Trustees whether taking legal estate.
  - (2) Equitable interest co-extensive with legal interest.
- (b) Devise before Wills Act without words of limitation.
- (c) Rule in Shelley's Case.
- (d) Estate for life or absolute interest.
  - (1) Absolute gift whether cut down.
  - (2) Gift of farming implements and stock.
- (e) Estate tail.
  - (1) Rule in Wild's case.
  - (2) Implied estate tail in remainder.
- (f) Gift by implication.
- (g) Implied revocation of will.

## (K) PRECATORY TRUSTS.

## (L) VESTING: GIFT OVER.

- (a) Failure of life estate: acceleration of remainder.
- (b) Direction as to vesting of shares.
- (c) Gift to person or class at given age.
  - (1) Whether vested or contingent.
    - (i) Contingent remainder or vested estate.
    - (ii) Gift of interest for maintenance.
  - (2) Period of vesting.
- (d) Gift on marriage with consent of parents.
- (e) Gift in remainder after life interests in moieties.
- (f) Gift over on second marriage.
- (g) Gift over on death of legatee before receiving legacy.
- (h) Gift over on death without issue.
- (i) Accruer clause: absence of gift over on death of all without issue.

(k) Shifting clause: "become eldest son."

## (M) HOTCHPOT CLAUSE.

## (N) SUBSTITUTION AND SURVIVORSHIP.

- (a) Gift whether original or substitutional.
- (b) Gift to children or their issue: child dead at date of will.
- (c) Gift to issue of persons who shall have died leaving issue.
- (d) Period of survivorship.
- (e) "Survivor" when to be read "other."

## (O) CONDITIONAL AND CONTINGENT GIFTS.

- (a) Compliance with condition.
  - (1) Name and arms clause.
  - (2) "Provided she remains in my service till my death."
- (b) Impossible condition.
- (c) Legacy not to be paid until given event.
- (d) Condition in restraint of alienation.
  - (1) Limitation over in event of intestacy.
  - (2) Proviso against alienation of annuity.
- (e) Condition in restraint of marriage.
- (f) Contingent remainder.
- (g) Contingent or vested interest.
- (h) Devise subject to contingency: effect of, on subsequent gifts.

## (P) EXECUTORY DEVISE: VALIDITY OF.

## (Q) TRUSTS BY REFERENCE.

## (R) REMOTENESS.

## (2) VALIDITY OF WILL AND REQUISITE FORMALITIES.

## (A) COMPETENCY OF TESTATOR.

- (a) Mental capacity.
- (b) Undue influence.

## (B) WHAT PAPERS ARE TESTAMENTARY.

## (C) WHAT DOCUMENTS FORM PART OF WILL.

## (D) DUPLICATES: ADMISSION OF EVIDENCE.

## (E) EXECUTION.

- (a) Place of signature.
- (b) Interlineations.

## (F) ATTESTATION.

- (a) Imperfect attestation clause: attesting witnesses not to be found.
- (b) Form of subscription.
- (c) Subscription to codicil on back of will.
- (d) Attestation by beneficiary.

## (G) REVOCATION OF WILL.

- (a) Alterations and obliterations.
- (b) Destruction of codicil reviving will.
- (c) Re-execution of will without referring to codicil.
- (d) Revocation of codicil by subsequent codicil.
- (e) Inconsistent wills.

## (H) REPUBLICATION AND REVIVAL OF WILL.

- (a) Revocation by marriage: conditional revival.
- (b) Codicil referring by date only to a revoked will.
- (c) Second codicil republication of will, but not of first codicil.

## (A) PAROL EVIDENCE OF INTENTION.

*Admissibility of, to explain ambiguity or uncertainty.* [See EVIDENCE, 2; MORTGAGE, 35; D 1, G 3, 5 *infra*.]

*Presumption against double portions, to rebut.* [See PORTIONS, 4.]

## (B) CONTINGENT OR CONDITIONAL WILL.

1.—A. made a will in 1864. In 1874 he and his wife, previous to starting on a journey by railway, made a joint will in these terms:—"This is the last will and testament of us, A. & B., &c., in case we shall be called out of this world at one and the same time, and by one and the same accident. We direct, &c., &c. We revoke all former wills, and declare this to be our last will and testament." They met with no accident on their journey, and A. died in December, 1876, leaving B., his wife, surviving him:—Held, that the intention to revoke all previous wills was, in common with the other provisions of the will, subject to the condition on which the instrument had been made dependent, and that the condition not having been fulfilled, the instrument did not operate as a revocation of the will of 1864, which was accordingly admitted to probate. *In re The Goods of Hugo*, 46 Law J. Rep. P. D. & A. 21; Law Rep. 2 P. D. 73.

## (C) WILL IN EXECUTION OF POWER.

[See POWER, 8-14.]

## (D) DESCRIPTIONS OF PROPERTY.

(a) *Lands "at or within" manor.*

1.—A testator devised his manor of D., in the county of W., with the appurtenances and all his lands and hereditaments situate "at or within D. aforesaid, and at S. G. in the parish of F., and then in the several occupations of G. and S.," to certain uses. The boundaries of the parish of D. and of the manor of D. were conterminous. The testator had two farms situated almost wholly, and a third wholly, within the parish of D. One farm comprised sixteen closes of land; fifteen of these closes were in the parish of D., and the remaining close was in the adjoining parish of I., but was adjacent to the other closes, and only separated therefrom by a fence. The other farm comprised eleven closes of land; eight of these closes were in the parish of D., and the remaining three closes were in the adjoining parish of K., but were adjacent to the other eight closes, and only separated therefrom by the high road, which was the boundary between the parishes of D. and K. Both farms were in the occupation of G. The testator also had a close of land at S. G., in the parish of F., but it was not in the occupation of S.:—Held (on appeal from Fry, J., 46 Law J. Rep. Chanc. 617, *sub nom. Horner v. Horner*), that the closes of land in the respective parishes of I. and K.

passed under the devise of all the testator's lands "at or within D. aforesaid," but that the close of land at S. G., not being in the occupation of S., did not pass under either of the above devises. *Horner v. Horner* (App.), 47 Law J. Rep. Chanc. 635; Law Rep. 8 Ch. D. 758.

(b) *Enumeration of closes.*

2.—A testator devised the R. estate purchased by him, consisting of six closes (named therein) to his son B. for life, with remainder to the use of B.'s children as B. should appoint. B. appointed the R. estate purchased by his said father, consisting of, &c., specifying four only of the six closes:—Held, that the enumeration of the four closes was "falsa demonstratio," and that the six closes passed by the appointment. *Travers v. Blandell* (App.), Law Rep. 6 Ch. D. 436.

*Misdescription of acreage.* [See G 8 *infra*.]

(c) *Gift of lands "as devised."*

3.—A lady was entitled under a will to a share of an estate which after the testator's death was varied by allotments and exchanges under an Inclosure Act. She afterwards devised her share of the estate "as devised" to her "by the testator's will":—Held, that this passed the lady's share in the estate in its actual condition. *Cock v. Walden*, 46 Law J. Rep. Chanc. 639.

*Gift of surface and minerals separately: rent set aside under lease of minerals passing with surface: Settled Estates Act.* [See SETTLED ESTATES ACT, 8.]

(d) *Leasehold: subsequent purchase of fee.*

4.—A testator by his will, dated in 1876, gave, devised and bequeathed to his wife "all my term and interest in the leasehold dwelling-house and premises known as, &c., in which I now reside, for her own absolute use and benefit, subject to the payment of the ground rent and the performance of the covenants affecting the same." Subsequently to the date of the will the testator purchased the freehold of the house, and died in 1879, without having altered, revoked or confirmed his will:—Held, that the freehold interest in the house passed to the widow of the testator. *Saxton v. Saxton*, 49 Law J. Rep. Chanc. 128; Law Rep. 13 Ch. D. 559.

(e) *"Leaseholds at C.:" after acquired leaseholds.*

5.—A testator having two leasehold properties at C., one mortgaged and the other subject to an annuity of 9*l.*, bequeathed to his son all his leaseholds at C. charged with all mortgage debts due and also "with the payment of the annuity of 9*l.* now charged thereon." The testator subsequently acquired another leasehold property at C.:—Held, that the after acquired leaseholds passed by the bequest. *In re Ord. Dickinson v. Dickinson* (App.), Law Rep. 12 Ch. D. 22.

## (f) "Real estate:" leaseholds.

6.—Where a testator being possessed of freeholds and long leaseholds at A. and of long leaseholds only at B., devised his "real estate" at A. and B. upon certain trusts,—Held, that all the leaseholds passed. The circumstance that the will contained a direction to convert all the personal estate "except leaseholds" was held not to shew a contrary intention. *Moase v. White*, Law Rep. 3 Ch. D. 763.

[And see E 5 infra.]

## (g) Real estate of which I may die "seised."

7.—A. R., by will made in 1870, devised to the plaintiff "all real estate, if any, of which I may die seised." On her father's death, in 1864, certain freehold houses had vested in A. R. as his heiress at law, but she never had actual possession, which on her father's death had been wrongfully taken by his widow, who remained in possession till her death, and purported to devise the houses to the defendants, who entered and had retained possession ever since. The plaintiff brought an action to recover possession, and the defendants demurred:—Held (affirming the decision of the Master of the Rolls, 46 Law J. Rep. Chanc. 499; Law Rep. 6 Ch. D. 496), that A. R. was not technically seised of the houses at the time of her death, and that they did not therefore pass under her will. *Leach v. Jay* (App.), 47 Law J. Rep. Chanc. 876; Law Rep. 9 Ch. D. 42.

## (h) "Bequeathed."

8.—The word "bequeathed" (though not in itself a technical word) is primarily applicable only to property passing under a testamentary disposition. The testatrix, a married woman, had under her marriage settlement an absolute power of appointment over certain funds. By her will in 1867, she specifically appointed such funds, and then proceeded as follows: "I constitute and appoint E. M. my residuary legatee to any property which has been bequeathed to me and which is not mentioned in this will." The father of the testatrix, by his will in 1873, bequeathed to her a certain sum of stock, but he subsequently determined to give it to her in his life-time, and accordingly transferred it to the trustees of her marriage settlement:—Held, that this sum of stock did not pass to E. M. under the residuary gift contained in the will of the testatrix. *In re Armstrong. Marescaux v. Armstrong*, 49 Law J. Rep. Chanc. 63.

## (i) Personal property of which I am now "seised."

9.—A testator by his will disposed of his property as follows:—"I give and bequeath unto my wife (here followed various sorts of personal property, specifically enumerated), and all other my personal estate, property, chattels and effects whatsoever and wheresoever of which I am now seised, possessed or entitled to,

or may hereafter acquire, or can hereby dispose of, to hold the same unto my said wife, her executors, administrators and assigns, for her and their own use and benefit absolutely." The testator then disposed of the real estate, vested in him by way of mortgage and in trust, by "devise" to his wife and brother, "their heirs and assigns," the money secured on such mortgages to be "considered as part of my personal estate:"—Held, that the testator's freehold estates did not pass under the will. *Jones v. Robinson*, 47 Law J. Rep. C.P. 673; Law Rep. 3 C.P. D. 344.

## (k) Interim rents.

10.—A testator devised estates to trustees upon trust to apply rents and profits in payment of certain annuities, and in repairs, and to accumulate the surplus for twenty-one years. At the end of the twenty-one years, or if the annuitants were all dead, whichever event should first happen, the trustees were to stand possessed of the estates upon trust (subject to certain limitations which did not take effect) for the second and every younger son of the testator's nephew, W., in tail, and in default of such issue, for the first and every other son of his nephew, H., in tail, with an ultimate limitation for sale, for the benefit of the next-of-kin. At the expiration of twenty-one years from the death of the testator some of the annuitants were still living. W. and H. were also living. W. had a son but no second son. H. had a son. H.'s son now claimed that he was entitled to the estates as tenant in tail in possession, or at all events that he was entitled subject to defeasance on the birth of a second son of W. On the other hand, the heir-at-law and next-of-kin claimed that there was an intestacy from the expiration of the twenty-one years from the death of the testator, until it should be ascertained whether W. would have a second son, and that in the meantime they were entitled to the rents and profits:—Held, that there was an intestacy, and that the heir-at-law and next-of-kin were entitled to the rents and profits during the suspense period. His Lordship considered that the decisions in *Hodgson v. Beattie* (1 Hem. & M. 376; 10 H.L. Cas. 656; 32 Law J. Rep. Chanc. 489, 33 ibid. 601), and *Sidney v. Wilmer* (25 Beav. 260; 4 De Gex, J. & S. 84), conflicted, and followed the former case. *Wada-Gery v. Handley*, 45 Law J. Rep. Chanc. 457; Law Rep. 1 Ch. D. 653; affirmed on appeal, 45 Law J. Rep. Chanc. 712; Law Rep. 3 Ch. D. 374.

[And see I 4 infra.]

## (l) Furniture.

11.—Bequest of furniture which should be in the testator's capital messuage at the time of his death to be enjoyed as heirlooms along with such messuage:—Held, to include furniture stored in farm buildings belonging to the testator, which had been removed from another house in order to be placed in the capital mes-

suage, but which the tenant in occupation of such message had refused to receive. *Rawlinson v. Rawlinson*, Law Rep. 3 Ch. D. 302.

12.—A testator bequeathed all his household furniture to his widow, and his residuary estate (which included a leasehold house in which the furniture was) to trustees:—Held, that such articles of furniture as were tenant's fixtures did not pass to the widow.—*Paton v. Sheppard* (10 Sim. 186) not followed. *Finney v. Grice*, 48 Law J. Rep. Chanc. 247; Law Rep. 10 Ch. D. 13.

[And see TRUST, A 5.]

(m) *Foreign bonds.*

13.—A testatrix bequeathed "the foreign bonds, amounting to about 8,000l.," purchased by her:—Held, that colonial bonds not forming part of the 8,000l. did not pass. *Hull v. Hill*, Law Rep. 4 Ch. D. 97.

(n) *Bequest of calls: "the time being."*

14.—A testator bequeathed residuary personalty to trustees upon trust, either to continue existing investments or sell any part of the estate, and invest in certain stocks, shares and bonds. He directed calls, if any, which, at or after his death, might be or become due in respect of shares for the time being constituting part of his residuary personal estate, to be paid out of income:—Held, that the direction applied to calls on railway shares held by the testator at his death, but not to such shares acquired by the trustees. *Bevan v. Waterhouse*, 46 Law J. Rep. Chanc. 331; Law Rep. 3 Ch. D. 752.

(o) "*Moneys*" that may be left after my decease.

15.—Where a will contained a residuary bequest of all the testator's personal estate, a subsequent gift by codicil of all the moneys that might be left after his decease was held to be a specific legacy, and confined to money properly so called—Decision of Hall, V.C., reversed. *Williams v. Williams* (App.), 47 Law J. Rep. Chanc. 857; Law Rep. 8 Ch. D. 789.

(p) *Falsa demonstratio.*

[See LEGACY, 5 and D 1, D 2 supra; G, 7, 8 infra.]

(q) *Words "ejusdem generis."*

[See LEGACY, 12; E 2, 12, 15 infra.]

(E) RESIDUARY AND GENERAL DEVISES AND BEQUESTS.

(a) *What they comprise.*

(1) *Real estate whether passing.*

1.—A testator commenced his will as follows:—"As to my estate which God has been pleased in His good providence to bestow upon me, I do make and ordain this my last will and testament as follows:" and after giving certain freehold lands, shares, and pecuniary legacies, concluded,

"And I make M., R. and O. my residuary legatees:"—Held (reversing the decision of one of the Vice-Chancellors), that real estate not specifically mentioned in the will passed to the residuary legatees. *Hughes v. Pritchard* (App.), 46 Law J. Rep. Chanc. 840; Law Rep. 6 Ch. D. 24.

2.—A testator, by his will, disposed of his property as follows: "First, I give and bequeath to my wife all my household furniture, linen, glass, china, plate, farming stock and all my personal estate and effects, whatsoever and wheresoever, and of what nature or kind soever or whatever I may be possessed of at my decease, to and for her own sole use and benefit:"—Held, that the real estate of the testator of which he was possessed at the time of his decease, passed to his wife under this bequest. *Evans v. Jones*, 46 Law J. Rep. Exch. 280.

*In re The Groenwich Hospital Improvement Act* (20 Beav. 458), and *Wiloe v. Wiloe* (7 Bing. 664; 9 Law J. Rep. C.P. 197) followed. *Cook v. Jaggard* (35 Law J. Rep. Exch. 76) distinguished. *Ibid.*

3.—After bequeathing two legacies a testator gave his sheep and all the rest residue moneys, chattels, and all other his effects to be equally divided among his four brothers, whom he appointed his executors:—Held, that freehold estates of the testator passed under the gift. *Smyth v. Smyth*, Law Rep. 8 Ch. D. 561.

(2) *Proceeds of sale of real estate.*

4.—A testator, after giving legacies, gave his real estate and the residue of his personal estate to trustees, upon trust for sale and conversion, and to dispose of the "net moneys" to arise from such real and residuary personal estate, after payment of his debts, and funeral and testamentary expenses, and legacies, according to the trusts thereafter declared, with power for his trustees to postpone the sale of his real estate, and to let, insure and repair his unsold real estate, and declared that the same should be subject to the trusts thereafter declared, concerning the "net moneys," and the rents thereof deemed annual income for the purposes of the trusts, and that his real estate should be considered as converted in equity. He then directed his trustees to stand possessed of the "net moneys" to arise, as aforesaid, upon trust to pay an annuity, and subject thereto, and to the payment of his debts, legacies and funeral and testamentary expenses, he directed his trustees to stand possessed of "his residuary personal estate," in trust as to one moiety for his son and as to the other moiety for his daughter and her children; but he made no express disposition of the proceeds of sale of his real estate:—Held, as the result of the whole will, that the proceeds of sale of the real estate were included in the ultimate trust of the residuary personal estate. *Court v. Buckland*, 45 Law J. Rep. Chanc. 214; Law Rep. 1 Ch. D. 605.

(3) *Leaseholds: residuary devise.*

5.—A residuary devise of manors, messuages, lands, farms, tithes, tenements, hereditaments and real estate, as well copyhold as freehold, was held not to include long leaseholds which had been occupied in one farm with freeholds. *Holmes v. Milward*, 47 Law J. Rep. Chanc. 522.

The dealing with land originally of leasehold tenure for a long period by persons in possession of it was held to afford a presumption, as between those claiming under such persons, that the reversion had been got in. *Ibid.*

(4) *Trust and mortgage estates.*

6.—A charge of debts or legacies shews that there is no intention to deal with trust estates, and prevents the Court from holding that such estates pass under a general devise. *In re Bellis's Trusts*, 46 Law J. Rep. Chanc. 353; Law Rep. 5 Ch. D. 504.

A testator, who was trustee for sale of real estate, after giving pecuniary legacies, gave all the rest and residue of his estate, real and personal, to his widow. There was no express devise of trust estates:—Held, that the legal estate in the trust property did not pass under the will. *Ibid.*

7.—Devise and bequest of residuary real and personal estate unto and to the use of the testator's wife, her heirs, executors, administrators and assigns, in trust, either to leave the same in existing state of investment, or to sell and convert, and out of the proceeds pay debts, funeral and testamentary expenses and legacies, and invest the residue, and retain the income for her life, and subject as aforesaid in trust for A. There was no express devise of trust or mortgage estates:—Held, that the legal estate in property of which the testator was mortgagee in trust did not pass. Quare, whether so, if the testator had been beneficially entitled to the mortgage money. *In re Smith's Estate*, Law Rep. 4 Ch. D. 70.

8.—The mortgagee in possession of a freehold being entitled to one moiety of the mortgage debt beneficially, and to the other moiety in trust, with a remotely contingent beneficial interest, devised all his property real and personal to his widow and N. upon trust, first, to pay his debts and funeral and testamentary expenses; secondly, to pay to his wife during her widowhood the whole net return of the residue, or, should she marry again, one-half of the said net return for her life; thirdly, in case of such re-marriage, to apply the other half to the maintenance and education of his children during their minority, and as each died or attained twenty-one, to pay over to him or her his or her share of the said half; and, fourthly, after the decease of his wife, so soon as the last of his children should attain twenty-one, to distribute among them the residue of his real and personal estate:—Held, that the legal estate in the freehold did not pass by the devise. *In re Pack-*

*man and Moss*, 45 Law J. Rep. Chanc. 54; Law Rep. 1 Ch. D. 214.

9.—Where a vendor under a valid contract has contracted to sell an estate, it will pass under a general devise of trust estates. *Purser v. Darby* (4 Kay & J. 41), and *Wall v. Bright* (1 J. & W. 494), discussed. *Lyaght v. Edwards*, 45 Law J. Rep. Chanc. 554; Law Rep. 2 Ch. D. 490.

The validity of the contract and its consequent effect does not depend on the power of the purchaser to pay. *Ibid.*

Under the Wills Act, section 24, it makes no difference whether the will is made before or after the contract for sale. *Ibid.*

*Specific devise of mortgaged estate: direction for payment of debts: exoneration.* [See ADMINISTRATION, 15.]

(5) *Share of residue directed to fall into residue.*

10.—A testator by his will, made in 1853, gave to his trustees and executors his residuary real and personal estate in trust for sale, and to divide the proceeds among all his children in equal shares on their respectively attaining twenty-one, but to stand possessed of the share of his married daughter A., upon trust for her during her life, and after her death for her children, and in default of children for such persons as she should appoint, and in default of appointment the testator directed that such share should fall into and become part of his residuary personal estate, and be paid and applied accordingly. By a codicil the testator varied the ultimate gift by directing that his daughter's power of appointment should be limited to a moiety of her share of the residue, and that the other moiety should fall into and become part of his residuary personal estate, and be paid and applied according to the trusts of his will. The testator left him surviving seven children, including his daughter A., all of whom attained twenty-one. The daughter died without issue, having appointed the first moiety of her one-seventh share of her residuary estate to her husband:—Held, that the second or unappointable moiety of A.'s one-seventh share was not undisposed of, and was divisible among the other six children as residuary legatees. *Humble v. Shore* (7 Hare 247; 1 Hem. & M. 550), and *Lightfoot v. Burtall* (1 Hem. & M. 546; 33 Law J. Rep. Chanc. 788) considered. *Crawshaw v. Crawshaw*, 49 Law J. Rep. Chanc. 662; Law Rep. 14 Ch. D. 817.

11.—The testatrix, by her will, gave real and personal estate to a trustee to sell and convert, and out of the moneys to pay debts, and to divide the residue between five persons named equally. By a codicil the testatrix bequeathed to the issue of S., one of such five persons, all the effects which by the will she had bequeathed to S., who was stated to be dead, but if there should be no issue living at the decease of the testatrix, or being such, if such effects should not be claimed by such issue within twelve

months after her decease, then such effects should fall into and be considered as part of the residue of the personal estate. S. never had any issue:—Held, that S.'s share of residue under the will was undisposed of. *Humble v. Shore* (7 Hare, 247) and *Lightfoot v. Burstall* (1 Hem. & M. 546) followed. *Cramshaw v. Cramshaw* (see last case) distinguished. *In re Barker's Estate*. *Hetherington v. Longrigg*, Law Rep. 15 Ch. D. 635.

*Appointment of executors void for uncertainty.*  
[See EXECUTOR, 3.]

(b) *What words carry residue.*

(1) "Effects."

12.—A testatrix after disposing of her real estate, gave as follows: "All my furniture, plate, linen and other effects, that may be in my possession at the time of my death," to a sister for life, with remainder over. There was no other gift of general personal estate:—Held, that the general personal estate passed under the word "effects." *Hodgson v. Jew*, 45 Law J. Rep. Chanc. 388; Law Rep. 3 Ch. D. 122.

13.—A testatrix bequeathed "all her household goods, furniture, plate, linen, glass and all other effects wheresoever and whatsoever" to A., her sister. There was no other gift of general personal estate. It was the first bequest mentioned in the will, and was followed by pecuniary legacies and specific bequests:—Held, that the residuary personal estate passed under the words "other effects," and grant of administration (with will annexed) made to A. as residuary legatee. *In the goods of Sarah Shephard*, 48 Law J. Rep. P. D. & A. 62.

(2) *Imperfect enumeration.*

14.—Bequest by a widow of "all I have power over, namely, plate, linen, china, pictures, jewellery, lace," the testatrix being entitled to real and personal estate other than that enumerated, of considerable value,—Held, an unlimited residuary gift. *In re George's Estate*. *King v. George* (App.), 46 Law J. Rep. Chanc. 670; Law Rep. 5 Ch. D. 627.

(3) "Etcetera."

15.—A testator directed that his freehold estate should be sold, and his debts paid by his widow and sole executrix, to whom he bequeathed "all my money, cattle, farming implements, &c., she paying my brother, J. C., the sum of :—"—Held, that the widow was entitled to the general residue. *Chapman v. Chapman*, 46 Law J. Rep. Chanc. 104; Law Rep. 4 Ch. D. 800.

*Residuary bequest followed by gift of codicil of "all moneys that may be left after my decease."*  
[See D 15 supra.]

(c) *Particular or general residue.*

16.—Where a testator directed his debts to be paid out of a specified fund, and "the re-

mainder to be equally divided to my surviving children."—Held, a gift of the residue of the specified fund, and not of the general residue. *Jull v. Jacobs*, Law Rep. 3 Ch. D. 703.

17.—A testatrix, after giving certain legacies, bequeathed "all her moneys, securities for money, moneys secured on mortgage, railway stocks and shares, moneys to be produced from sale of any property at S. or P. to which she was entitled, all moneys to which she was entitled under the will of her late grandfather, and also all her moneys secured upon any securities, or in any way or manner howsoever" to trustees, upon trust, after payment of her legacies and debts, to invest and pay the income to A. for life, and after her decease to pay thereout a certain charitable legacy, and as to the residue thereof, upon certain trusts, in favour of the defendants. The will contained a general residuary bequest in favour of A. The charitable legacy was partially invalid under the Statute of Mortmain:—Held, that the portion of such legacy which failed passed to the defendants under the particular gift of residue, and not to A. under the general residuary gift. *Champney v. Davy*, 48 Law J. Rep. Chanc. 268; Law Rep. 11 Ch. D. 949.

(d) *Gift of residue after satisfying annuities.*

18.—A testatrix, after giving certain legacies and annuities, and directing sufficient funds to be set apart to answer the annuities, gave the residue of her estate, including the fund set apart to answer the said annuities, when and so soon as such annuities should respectively cease, to A. Her estate only yielded 25 per cent. of the value of the annuities:—Held, on the death of an annuitant, that A. could take nothing until all the legatees and annuitants had been paid in full. *In re Tootal's Estate*. *Hankin v. Kilburn* (App.), Law Rep. 2 Ch. D. 628.

(F) SPECIFIC DEVICES AND BEQUESTS.

(a) *Gift of "two houses in K. street:" right of election.*

1.—Where a testator, having three houses in K. street, gave his "two houses in K. street" to A. for life, and after his death to form part of the residue,—Held, that A. was entitled to elect which two houses he would take. *Tapley v. Eagleton*, Law Rep. 12 Ch. D. 683.

(b) *Gift whether specific or general.*

[See E 16, 17 supra.]

(G) AMBIGUITY AND UNCERTAINTY.

(a) *Omission in will supplied.*

1.—A testator directed his trustees to stand possessed of five equal seventh parts of the moneys arising from the sale and conversion of his real and personal estate upon trust to invest, and during the respective lives of his five daughters, Elizabeth, Sarah, Eliza, Mary and Hannah, to pay the interest to his said daugh-



ters respectively for their separate use. He then directed his trustees, from and after the death of Elizabeth, to stand possessed of one-fifth of the trust securities upon trust for the children of Elizabeth; and from and after the death of Sarah as to another fifth upon trust for the children of Sarah; and from and after the death of Eliza as to another fifth upon trust for the children of Mary (thus omitting to provide for Eliza's children, and failing to dispose of Mary's fifth after her death); and from and after the death of Hannah as to another fifth upon trust for the children of Hannah. The will also contained a power to the trustees until "the part or share of the said trust moneys of the issue of any of my said daughters" should become payable, to apply the same in the maintenance of such issue:—Held, that a clause, similar in terms to the clauses giving interests to the children of Elizabeth, Sarah, Mary and Hannah respectively, but giving an interest in one-fifth of the trust securities to the children of Eliza, and disposing of Mary's fifth after her death, must have been accidentally omitted, and that the will ought to be read and construed as if such a clause were contained in it. *In re Redfern. Redfern v. Bryning*, 47 Law J. Rep. Chanc. 17; Law Rep. 6 Ch. D. 133.

2.—A testator directed his trustees to sell and convert his property, and "to pay the moneys and the investment for the time being representing the same, to my said wife during her life, upon trust for all my children" at twenty-one or marriage. He also provided that, "after the death of my said wife, or previously thereto, if she shall so direct in writing," the trustees should have powers of advancement and maintenance, and that if he had no child who attained twenty-one or married, "then from and after the death of my said wife, and such default or failure of children," he gave the money over. The Master of the Rolls decided on the literal construction of the words in the first clause that the wife took no beneficial interest, and was only a trustee for the children:—Held (reversing the decision of the Master of the Rolls), that the widow took a beneficial interest in the fund for her life. *Greenwood v. Greenwood* (App.), 47 Law J. Rep. Chanc. 298; Law Rep. 5 Ch. D. 954.

(b) *Misdescription of legatee.*

3.—A testator by his will gave his property to his wife for her life, and after her death to his "daughters" in equal shares. Two years before he made his will he had married a woman by whom he had previously had three illegitimate daughters. He never had any other children. Evidence was adduced to shew that the testator had always treated these daughters as his children, and that, on giving instructions for his will, he had said that he had a wife and three daughters. On bill filed by daughters against the next-of-kin, it was held that the evidence was admissible, and that the daughters

were entitled to the property. *Laker v. Hordern*, 45 Law J. Rep. Chanc. 315; Law Rep. 1 Ch. D. 644.

4.—Land was devised on trust for A. for life, with remainder to "W., the eldest son of A.," for life. At the date of the will A. had two sons living, both children—J., the elder, the third born, and W., the younger:—Held, that W. was the person designated. *In re Garland. Garland v. Beverley*, 47 Law J. Rep. Chanc. 711; Law Rep. 9 Ch. D. 213.

5.—A testator gave a legacy to the children of his daughter by any husband other than "Mr. Thomas Fisher, of Bridge Street, Bath." At the date of the will there lived in Bridge Street, Thomas Fisher, a married man, with a grown-up son, Henry Tom Fisher, who, when at Bath, lived at his father's house:—Held, that there being two persons substantially answering the same description, parol evidence was admissible to shew which of the two was intended, and that, on the evidence, the son was clearly the person intended. *In re The Woolverton Mortgaged Estates*, 47 Law J. Rep. Chanc. 127; Law Rep. 7 Ch. D. 197.

6.—Bequest unto "my niece, Mary Elizabeth G., now residing with me." The only niece of the testator was named Elizabeth W. Mary Elizabeth G. was a stranger in blood to the testator, being the wife of an illegitimate son of the testator's wife. Neither Elizabeth W. nor Mary Elizabeth G. actually resided with the testator, but both of them visited at his house, and were in attendance upon him during his last illness, in the course of which his will was made:—Held, that Mary Elizabeth G. was the person designated. *Garland v. Beverley* (47 Law J. Rep. Chanc. 711) followed. *In re Lyon's Trusts*, 48 Law J. Rep. Chanc. 245.

7.—The rule that a gift to a class misdescribed in number is a gift to all the members of that class, does not apply where from admissible evidence it is possible to say which of the class were meant. *Newman v. Piercy*, 46 Law J. Rep. Chanc. 36; Law Rep. 4 Ch. D. 41.

A testatrix by will, in 1873, gave to Mrs. W., "widow of the late W. W., 100l., and to each of her three children a like sum of 100l." At the date of the will Mrs. W. was the wife of a second husband P., whom she had married in 1857, and there were living two children of the W. family and six of the P. family. In 1867 there were living three children of the W. family, but one died in 1870. The testatrix was shewn to have been acquainted with the state of Mrs. W.'s family up to 1867, and ignorant of it after that date:—Held, that the two children of the W. family were alone entitled to legacies of 100l. *Ibid.*

*Appointment of executors void for uncertainty.*  
[See EXECUTOR, 3.]

(c) *Misdescription of property.*

8.—Under a power in a settlement, H. by will devised certain lands called Claggetts and

Sievelands, in the parish of Buxted, to J. W. There were lands described in the settlement as Claggetts and Sievelands in the parish of Buxted, and there were also other lands in the parish of Buxted described in the settlement by other names. Evidence was adduced to shew that all these lands were, at the time of the will and before and since, held by one tenant, and that the whole were known as Claggetts Farm:—Held, that all the lands known as Claggetts Farm passed by the devise. *Whitfield v. Langdale*, 45 Law J. Rep. Chanc. 177; Law Rep. 1 Ch. D. 61.

H. devised a messuage, barns, buildings, woods, wood-grounds, commonly called Tickeridge, in the parish of East Grinstead, in the occupation of W. W., to W. W. Evidence was adduced to shew that Tickeridge Farm, in the occupation of W. W., consisted of eighty-five acres in the parish of East Grinstead and one hundred and sixteen acres in the parish of Westhoathly, and that the farmhouse and buildings were partly in one and partly in the other:—Held, that the whole of Tickeridge Farm, in the occupation of W. W., passed by the devise. *Ibid*.

Some of the woodlands adjoined and formed part of Tickeridge Farm, but had been expressly excluded in the demise of this farm to W. W., and were retained by H. in her own occupation:—Held, that the woodlands did not pass by the devise. *Ibid*.

H. devised a messuage, buildings, farm and land called Hookland, in the parish of Lindfield, by estimation eighty acres, more or less, in the occupation of C., to C. in fee. As to this the description in the will was almost the same as that in the settlement. Evidence was adduced to shew that H. had a farm called Hookland, which at the date of her will was in the occupation of C., but that it consisted of one hundred and seventy-three acres, of which eighty-eight acres were freehold in the parish of Lindfield, sixty-six acres were copyhold in the same parish, and the remaining eighteen acres were copyhold in an adjoining parish:—Held, that the whole farm called Hookland, as well copyholds as freeholds, passed by the devise. *Ibid*.

9.—A testator devised his freehold property at M. M. was in the parish of and adjoining the town of R. The testator had no property at M., but had freehold property at R.:—Held, that the property at R. did not pass under the devise, but descended to the heir-at-law. *Barber v. Wood*, 46 Law J. Rep. Chanc. 728; Law Rep. 4 Ch. D. 885.

*Lands "at or within" manor.* [See D 1 supra.]

(d) Release of debt : parol evidence.

10.—A testator distributed his property nearly equally between his wife, son and two daughters; and bequeathed 2,600*l.*, part of the sum owing to him by K. & J., to his daughter Charlotte, the wife of J. E. B.; 1,000*l.*, other part of

the money owing to him by K. & J., to his wife for life, with remainder to the children equally; and gave all debts owing to him by J. E. B. to J. E. B. for his own use and benefit, and directed that the trustees of his will should execute, when required by J. E. B., an effectual release for all such debts. At the date of the will and of the testator's death, J. E. B. owed the testator a separate debt of 50*l.*; 2,800*l.* upon joint and several promissory notes given by himself and his partner; and 800*l.* upon a joint promissory note of himself and his partner. The sum owing by K. & J. was 1,000*l.* and no more. After the death of the testator in February, 1873, J. E. B. and his partner continued to pay interest on 2,600*l.*, and were negotiating with the executors as to giving security for that sum as a debt, when they went into liquidation in March, 1875:—Held, by the Chief Judge (reversing the decision of the Judge of the Leeds County Court), that the whole amount owing by J. E. B. and his partner was effectually released by the will; that no parol evidence could be admitted to take that debt out of the gift to J. E. B., and substitute it in the gift to Charlotte; and that the conduct of J. E. B. after the testator's death did not revive the debt. *Ex parte Close*; *in re Bennett*, 46 Law J. Rep. Bankr. 8.

But held on appeal (reversing the decision of the Chief Judge, and restoring that of the County Court Judge), that the separate debt only was comprised in the bequest. *In re Bennett and Glaze*; *ex parte Kirk* (App.), 46 Law J. Rep. Bankr. 101; Law Rep. 5 Ch. D. 800.

(e) Admissibility of parol evidence.

11.—A testatrix executed two wills. In the first she appointed executors, and disposed of the residue; the second contained no appointment of executors, or words of revocation; in both the principal legatees were the same, and the residue was not specifically disposed of:—Held, that there was that amount of ambiguity on the face of the papers as to warrant the admission of parol evidence to ascertain whether the testatrix intended the last paper in substitution for the first, or that both together should constitute her will. *Jenner v. Finch*, 49 Law J. Rep. P. D. & A. 25; Law Rep. 5 P. D. 106.

(f) Gift over on death before execution of trusts.

12.—Bequest of proceeds of real and personal estate (directed to be converted with power of postponement) on trust for testator's three sons and daughter equally, the daughter's share to be retained for her separate use for life, and after her decease for her children; with a direction in the event of any child of the testator dying before the testator, or before the execution of all or any of the trusts of the will, leaving issue, to pay to the issue of such deceased child the share which their parent would have taken if living. The three sons, having survived the testator, were held to be absolutely entitled, the gift over on death before execution of the

trusts being void for uncertainty. *Johnson v. Crook* (48 Law J. Rep. Chanc. 777; Law Rep. 12 Ch. D. 689) disapproved. *Roberts v. Youle*, 49 Law J. Rep. Chanc. 744.

*Charitable bequest.* [See CHARITY, 15, 16.]

#### (H) WHO TAKE.

##### (a) "Eldest son."

1.—Devise to the use of A. for life, remainder to the use of the "eldest son" of A. for life, remainder to the use of the eldest son of his body, and his heirs for ever, but in case of the death of the eldest son of A. without issue male, to the use of the second, third and other sons of A. successively in tail male; with a proviso that the "first, second, third" and other sons of A. should, before receiving the rents, assume the testator's name and arms. The first born son of A. was alive at the date of the will, but died in infancy. B., the second born son of A., was the eldest living son of A. at the time of the testator's death:—Held, that the word "eldest" must be construed as "first born," and that B. was tenant in tail under the will; and Held also, that the eldest son of A. took an implied estate tail male in remainder after the estate tail to his eldest son. *Meredith v. Treffry*, 48 Law J. Rep. Chanc. 337; Law Rep. 12 Ch. D. 170.

[And see L 20 infra.]

##### (b) Gift to a class.

###### (1) What is.

2.—Bequest to the five daughters of A. and wife, for their own use,—Held, a gift to *persons designata*, and not to a class. *In re Smith's Trusts*, Law Rep. 9 Ch. D. 117.

3.—A testator specifically devised and bequeathed real and personal estate to be enjoyed by his wife for her life, and at her death to be sold, and the proceeds divided between his "nine children." He then bequeathed his residue to trustees, to convert and pay the proceeds between "all his children," except that one son should, for reasons stated, receive 30% less than each of his other children. One child died in the testator's lifetime, leaving children:—Held, that the gift of residue was a gift to the children, as designated persons, and that, therefore, the representative of the deceased child was entitled to one-ninth share. *In re Stansfield. Stansfield v. Stansfield*, 49 Law J. Rep. Chanc. 750; Law Rep. 15 Ch. D. 84.

###### (2) Lapse.

4.—Where a gift is to a class, either as joint tenants or as tenants in common, the shares of members becoming incapable of taking, for any reason, before the period of distribution, do not lapse, but are divisible among the rest of the class. *In re Coleman*, 46 Law J. Rep. Chanc. 33; Law Rep. 4 Ch. D. 165.

A testator devised real estate to the use of all and every the children of his late brother, who should be living at his death, or should have

died in his lifetime, leaving issue living at his death. Two of such children died before the testator, one of whom left issue living at his death:—Held, that such issue did not take their parent's share. Held also, that the gift was to a class, and consequently that there was no lapse, but the children who survived the testator took the whole estate. *Ibid.*

[And see No. 7 infra.]

##### (3) Time of ascertaining class.

5.—A testatrix bequeathed "the sum of 100*l.* to each of the children of my niece M. who shall live to attain the age of twenty-one years." M. was living and married at the death of testatrix, but had then no children:—Held (applying the rule that under the gift of a specific sum to each of a class, the class is fixed at the testator's death), that no child M. might have could take under the gift. *Rogers v. Mutch*, 48 Law J. Rep. Chanc. 133; Law Rep. 10 Ch. D. 25.

6.—Where a will contained a direction to divide residuary estate into as many shares as the testator should have children living at his widow's death or second marriage, but such direction was manifestly inconsistent with the intention as shewn by the whole will,—Held, that the will must be read as if the testator's own death had been fixed as the period of distribution. *Smith v. Crabtree*, Law Rep. 6 Ch. D. 591.

*Gift to children to be paid at twenty-one after life interest.* [See REMOTENESS, 9.]

[And see H 9, 22, 26 infra.]

##### (c) Gift to children as a class: child tenant for life predeceasing testator.

7.—A testator devised and bequeathed his real and personal estate to trustees in trust for all his children, who being a son or sons had attained or should attain twenty-one, or being a daughter or daughters had attained that age or been married, or should attain that age or be married, in equal shares, the shares of each of his sons to be for his own absolute use and benefit; and he directed that the share of each of his daughters should be held by his trustees in trust to pay her the income thereof during her life for her separate use, and after her decease in trust for her children; and he declared that if any of his sons should die in his lifetime leaving children, such children should take their parent's shares. One of the daughters died after the date of the will, in the lifetime of testator, leaving children:—Held, that the daughters were tenants-for-life of their shares with remainder to their children, and that the children of the deceased daughter were entitled to their mother's share. *Stewart v. Jones* (3 De Gex & J. 532) questioned. *In re Speakman. Unsworth v. Speakman*, 46 Law J. Rep. Chanc. 608; Law Rep. 4 Ch. D. 620.

(d) *Child en ventre sa mère.*

8.—Bequest of 1,000*l.* "to each of the three children of my niece." At the date of the will the niece had three children, and a fourth child was *en ventre sa mère*:—Held, that such fourth child was not entitled. *In re Emery's Estate*. *Jones v. Emery*, Law Rep. 3 Ch. D. 300.

9.—To a gift equally between father, mother, brothers and sisters of the testatrix was added a direction that the shares of brothers should not vest till they attained twenty-one, nor of sisters till they attained that age or married:—Held, that brothers and sisters constituted only one class, and a child *en ventre sa mère* not born at the time of ascertaining the class did not participate. *Garratt v. Weeks*, 45 Law J. Rep. Chanc. 193.

10.—A gift to "children" (meaning illegitimate children) held to include a child *en ventre sa mère* at the date of the gift. *Crook v. Hill*, 46 Law J. Rep. Chanc. 119; Law Rep. 3 Ch. D. 773.

[And see H 15 *infra*.]

(e) *Illegitimate children, whether entitled.*

11.—Illegitimate children are not included in the word "children" in a will, unless, when the facts are ascertained and applied, some repugnancy or inconsistency, and not merely some violation of a moral obligation or of a probable intention, would result from their exclusion. For the word "children" means *prima facie* legitimate children, as much as if the very word legitimate had been introduced before it. *Dorin v. Dorin* (H.L.), 45 Law J. Rep. Chanc. 652; Law Rep. 7 E. & I. App. 668.

The order being made on an appeal from a decree of one of the Vice-Chancellors given in favour of the illegitimate children, the costs of all parties to the appeal were directed to be paid out of the estate. *Ibid*.

12.—A testator by his will gave a legacy to his daughter A., "the wife of J. H.," for her life, and after her death, to "all the children of my said daughter A." equally. At the date of the will the testator's daughter was living with J. H. as his wife, and they were not married until after testator's death. They had four children, three illegitimate, who acquired the reputation of being their children, and one legitimate. One of the three illegitimate children was living at the date of the will and testator's death, the other two being born after testator's death:—Held, that the legitimate child was entitled to the whole legacy. *In re Ayles' Trusts*, 45 Law J. Rep. Chanc. 223; Law Rep. 1 Ch. D. 202.

Remarks upon *Oocleston v. Fullalove* (43 Law J. Rep. Chanc. 207; Law Rep. 9 Chanc. 147). *Ibid*.

13.—Under a bequest to children where the circumstances are such as to shew that there are or may be legitimate children illegitimate children cannot take. *Ellis v. Houston*, Law Rep. 10 Ch. D. 236.

*Laker v. Hordern* (Law Rep. 1 Ch. D. 644) commented upon. *Ibid*.

Inadmissibility of extrinsic evidence in such cases. *Ibid*.

14.—Bequest to "my grandson J. (the son of my daughter A. J., and who is now residing with me) of the sum of 500*l.*, to be paid to him if and when he should attain twenty-one, with power to apply the income in the meantime for his maintenance; but if he died under twenty-one the 500*l.* and the unapplied income to go in augmentation of the legacy of 2,000*l.* herein-after bequeathed in favour of the children and issue of my said daughter A. J." The testator gave to trustees 2,000*l.*, to be accumulated till the expiration of twenty-one years, or the death of A. J., whichever might first happen, and then directed the fund and its accumulations to be divided amongst all the children of A. J. who should be then living, and the issue of such of them as should be then dead *per stirpes*. He also gave two sums of 2,500*l.* upon trust for the children and issue of his two other daughters respectively, corresponding with the trusts of the 2,000*l.* The grandson, who was illegitimate, attained twenty-one, and survived his mother:—Held (by the Master of the Rolls and by the Court of Appeal), that the grandson J. was not entitled to share in the 2,000*l.* *Megson v. Hindle* (App.), Law Rep. 15 Ch. D. 198.

(f) *Gift to A. for life and afterwards to his lawful issue.*

15.—A testator bequeathed a moiety of his residuary personalty in trust for his son W. for life, and "afterwards to his lawful issue." W. died leaving four children. One of those children was then married and had a child. Another of them, who was then a spinster, married ten days after W.'s death, and had a child born about six months after that:—Held, first, that W. took a life interest only in the property, with remainder to his lawful issue living at his death, or born within due time after; second, that all W.'s descendants, however remote, born in his lifetime or within due time after, took vested interests as joint tenants in the property at their birth; but that those only who survived W. were entitled; and third, that the child *en ventre* of the daughter who was not married at W.'s death could not share in the bequest. *In re Corliss's Trusts*, 45 Law J. Rep. Chanc. 118; Law Rep. 1 Ch. D. 460.

## (g) "Family."

16.—A testamentary gift by a married man to his "family" is a gift to his children to the exclusion of his wife. *In re Hutchinson and Tenant*, Law Rep. 8 Ch. D. 540.

17.—The primary legal meaning of the word "family" in a will is the children (if any) of the person whose family is spoken of, and there must be a special context to give the word a different meaning. *Pigg v. Clark*, 45 Law J. Rep. Chanc. 849; Law Rep. 3 Ch. D. 672.

A testator, by will in 1851, gave all his property (chiefly freehold estate) to trustees on trust for his wife for life, and on her death to be equally divided amongst his family then living. The testator had grandchildren living at the date of the will. On the wife's death there were living children, grandchildren and great-grandchildren of the testator:—Held, that the children then living were exclusively entitled. *Ibid*.

18.—Devise and bequest to testator's widow for the term of her natural life, "and to be distributed to the testator's family at her decease, as she might think proper:"—Held, that the power of distribution was not testamentary only, but was exercisable by deed, and that, under the word "family," an illegitimate child, whom the testator had treated and recognised as a child, was included as an object of the power. *Freeland v. Pearson* (36 Law J. Rep. Chanc. 374; Law Rep. 3 Eq. 658) disapproved of. *Humble v. Bowman*, 47 Law J. Rep. Chanc. 62.

(h) "Descendants."

[See I 15, *infra*.]

(i) "Issue."

19.—Bequest of a fund subject to life interests in trust "for the lawful issue of H. surviving him, equally to be divided between them, if more than one, share and share alike, and if but one, then for such only child," with a gift over "in default of issue of H. becoming entitled" to the fund:—Held, that "issue" must be read "children." *In re Hopkins' Trusts*, 47 Law J. Rep. Chanc. 672; Law Rep. 9 Ch. D. 131.

20.—Bequest to A. for life, and after his decease to B. or his issue. B. having died in the lifetime of A.,—Held, that all his issue living at the death of A. took. *Hobgen v. Neale* (40 Law J. Rep. Chanc. 36) distinguished. *In re Jones's Estate*. *Hume v. Lloyd*, 47 Law J. Rep. Chanc. 775.

(k) Next-of-kin.

(1) Exclusion of specified persons.

21.—Where a testator directed that certain specified persons should not partake of any share in the distribution of his estate, except what was given to them by his will, and died intestate as to his residuary estate, —Held, that the next-of-kin other than the specified persons were entitled to the residue. *Bund v. Green*, Law Rep. 12 Ch. D. 819.

(2) Gift to: class, when to be ascertained.

22.—A testator gave 3,000*l.* Consols upon trust for his daughter S. for life, with remainder to her children living at her decease, and in default of issue surviving her, he gave life interests in the same to such of his other daughters as should then be living and to the survivor and survivors, with remainder to the children

of the last survivor, or in default of such children, "to such person or persons as will then be entitled to receive the same as my next-of-kin under the Statute for the Distribution of Intestates' Estates." The last surviving daughter died without issue:—Held (following *Bullock v. Downes*, 9 H.L. Cas. 1), that the representatives of those who were the testator's next-of-kin at the time of his death were entitled to the fund. *Mortimore v. Mortimore* (H.L.), 48 Law J. Rep. Chanc. 470; Law Rep. 4 App. Cas. 449.

Decision of the Court of Appeal (47 Law J. Rep. Chanc. 134; Law Rep. 7 Ch. D. 322, *nom.* *Mortimore v. Slater*) affirmed. *Ibid*.

(3) Gift to heirs or next-of-kin of A.

23.—A testatrix bequeathed her real and personal estate to trustees upon trust to convert and pay one-third part to the heirs or next-of-kin of J. L. deceased. At her death she had only personal estate:—Held, that the description was intended to apply to one and the same class, and the gift was not an alternative gift, and that the description was sufficiently answered by the statutory next-of-kin of J. L. *In re Thompson's Trusts*, 48 Law J. Rep. Chanc. 135; Law Rep. 9 Ch. D. 607.

(4) "Legal or next-of-kin."

24.—A testator made the following bequest: "The property I bequeath to my wife to be vested in the Funds, and the principal at her decease to be equally divided among my surviving sons and daughters; the property or share I leave to my daughters to be vested in the bank in their own name, and the interest for life to be received by them, to remain as jointure for their use in case of their marriage, untouchable by their husbands, but to descend to their legal or next-of-kin." One of the testator's surviving daughters married K., outlived her husband, and died without issue and intestate. She left a brother and sister, and a nephew and niece:—Held, that the testator's daughter was not entitled to the bequest absolutely, and that on her death it passed to her brother and sister only as nearest of kin. *Harris v. Newton*, 46 Law J. Rep. Chanc. 268.

(l) Heirs.

(1) Gift of real estate in remainder.

25.—A testator died possessed of gavelkind land at S. and no other real estate. He devised his land at S. and all other his real estate on trust, with an ultimate remainder to his own right heirs:—Held, that the common law heir was designated. *In re Garland*. *Garland v. Beverley*, 47 Law J. Rep. Chanc. 711; Law Rep. 9 Ch. D. 213.

26.—A testator devised his real estate to trustees in trust to permit A. to receive the rents during his life; and, upon his decease, to permit the eldest son of A. to receive the rents

during his life; and, "upon the decease of such eldest son," in trust to convey the estate "to the right heir male of A. and his heirs." A. survived the testator, and died in the year 1857, leaving B. his eldest son him surviving. The trustees refusing to convey the legal estate, B. presented a petition asking for a vesting order:—Held, that the general rule—that the heir of a person named in a will must be ascertained as soon as possible—applied; that B. was ascertained to be "the right heir male of A." upon A.'s death in 1857; and that he was therefore entitled to a vesting order. *In re Grayson*, 48 Law J. Rep. Chanc. 354.

(2) *Gift of personality.*

27.—Where there is a gift of personality to tenants for life, with remainder to their lawful heir or heirs, the word "heir" must be read in its ordinary legal sense, unless the context shews that it was intended to have some other meaning. *Smith v. Butcher*, 48 Law J. Rep. Chanc. 136; Law Rep. 10 Ch. D. 113.

(3) *Gift of blended realty and personality.*

28.—Gift of freeholds and leaseholds together to daughter of S. for life, remainder to trustees to preserve, remainder to her first and other sons successively in tail, remainder to her daughters as tenants in common in tail, and "in case of default of issue" of S. to "the right heirs" of S. "for ever." S. died a widow, without having had a child:—Held, that she took an absolute interest in the leaseholds disposable by her will. *Comfort v. Brown*, 48 Law J. Rep. Chanc. 318; Law Rep. 10 Ch. D. 146.

29.—A testator died possessed of real and personal estate. By his will he gave the income derivable from his "estate and effects" to A. for life, and continued: "The whole after her decease goes to my legal heirs and theirs for ever."—Held, that, on the true construction of the words "my legal heirs and theirs for ever," the heir-at-law took as residuary legatee of the personality as well as realty, and was therefore entitled in that character to a grant of administration with the will annexed. *In the goods of Dixon*, 47 Law J. Rep. P. D. & A. 57.

30.—A testatrix, by her will dated in 1836, gave all her personal property and also her real property to trustees on trust for payment of her debts and legacies, and subject thereto she gave "all her personal and real property as aforesaid" between her five sisters *nominatim*, and the survivors of them, in equal shares during their lives and spinsterhood, and upon the death or marriage of all her said sisters, she directed that her "said property should be divided into equal proportions or shares between her brothers and sisters then living, or their heirs." The testatrix had twelve brothers and sisters, of whom one brother died before the testatrix was born, one sister died before the date of the will, two brothers and one sister died in the lifetime

of the testatrix after the date of the will, and the rest survived her. The last survivor was one of the five sisters named in the will, who died a spinster:—Held, first, that (notwithstanding the will was before the date of the Wills Act), the word "or" in the gift in remainder could not be read "and," and that there was no intestacy; secondly, that the word "heirs" must be construed distributively, so as to mean heirs-at-law as to the real estate and statutory next-of-kin (including widows) as to the personal estate; thirdly, that such heirs-at-law and next-of-kin were to be respectively ascertained, as regarded brothers and sisters who predeceased the testatrix at the death of the testatrix, and as regarded those who survived her at their respective deaths; fourthly, that the heir-at-law and next-of-kin of the brother who died before the testatrix was born were not entitled to share; and, fifthly, that the heir-at-law and next-of-kin of the sister who died before the date of the will, as well as the heirs-at-law and next-of-kin of the two brothers and the sister who died in the lifetime of the testatrix and after the date of the will, were so entitled. *Wingfield v. Wingfield*, 47 Law J. Rep. Chanc. 768; Law Rep. 9 Ch. D. 658.

(m) *Second cousins.*

31.—A gift by will to second cousins of the testator applies only to persons having the same great-grandfather or great-grandmother as himself, unless the nature of the gift or the wording of the will shews that other persons were meant to be included. *Mayott v. Mayott* (2 Bro. C.C. 125) explained. *In re Parker. Bentham v. Wilson*, 49 Law J. Rep. Chanc. 587; Law Rep. 15 Ch. D. 528; affirmed on appeal, 50 Law J. Rep. Chanc. 639.

(n) *Executors, whether taking beneficially.*

32.—A testatrix bequeathed "to the executors or executrices of A." 100l. A. left an executor and two executrices, who all died in the lifetime of the testatrix:—Held, a bequest to the legal personal representatives of A. to hold on the trusts affecting A.'s estate. *Trotter v. Helyar*, 46 Law J. Rep. Chanc. 125; Law Rep. 4 Ch. D. 53.

33.—The statute of 11 Geo. 4. and 1 Will. 4. c. 40, has not introduced any new rule for the construction of wills. Its effect simply is, that an executor shall no longer take the residue by implication of law, and it has therefore no application where there is an express gift of the residue to an executor. *Williams v. Arkle* (H.L.), 45 Law J. Rep. Chanc. 590; Law Rep. 7 E. & I. App. 606.

The question whether the executor or trustee under a will is to take in that capacity only, or is to take the beneficial interest, is a question of intention to be collected from the whole of the will. *Ibid.*

A testator by his will appointed G. A. his executor and trustee, but in case G. A. should die

in his (testator's) lifetime, then he appointed B. A. his executor. He gave certain legacies, including legacies of 1,000*l.* each, to G. A. and B. A., 2,000*l.* to a great-nephew, 100*l.* to his wife, 100*l.* each to his two illegitimate children, and after the gift of the legacies gave annuities of 52*l.* each to his wife and two children, and 200*l.* to his sister, and subject thereto he gave the whole of his real estate and the residue of his personal estate "unto the said G. A. for all my estate and interest therein respectively, if he shall be alive at my decease, but if he shall die in my lifetime, then" to the said B. A. The will contained powers to the trustee to continue and change investments without being liable for any loss, and to employ accountants and receivers, and appointed him guardian of the testator's children; and it contained a general direction that the trustee should have all the powers given by 23 & 24 Vict. c. 145. The testator died leaving no legitimate issue, and his sister was his sole heiress-at-law and next-of-kin:—Held (by Lord Cairns, L.C., and Lord Hatherley, Lord Chelmsford dissenting), that the special powers and directions applicable to trustees could not be held to qualify the express devise and bequest to G. A., and that G. A. was beneficially entitled to the realty and residuary personalty. *Ibid.*

#### (I) WHAT ESTATE OR INTEREST PASSES.

##### (a) *Estate of trustees.*

##### (1) *Trustees whether taking legal estate.*

1.—A testator devised all his real estate to trustees, their heirs and assigns, to hold the same unto his said trustees, their heirs and assigns for ever, "but nevertheless to the several uses, upon the several trusts, and subject to the several powers" thereafter declared, namely, to the use of his nephew and his assigns during his life, and from and after the determination of that estate to the use of such child or children of his said nephew as should attain the age of twenty-one years as tenants in common in fee, with limitations over. The tenant-for-life was directed to repair and insure certain messuages forming part of the devised estates, and in case of his default the testator "authorised and empowered" his trustees or trustee to receive the rents, and thereout effect such repairs and insurance. The testator also "empowered" his trustees or trustee to apply all or any part of the yearly income to which, under any of the devises or bequests thereinbefore contained, each or any infant devisee or legatee should be presumptively or otherwise entitled, towards the maintenance or education, or otherwise for the benefit, of such devisee or legatee during his or her minority. By a codicil of even date with the will, the testator devised certain land which he had contracted to sell to a railway company "unto and to the use of" his trustees, their heirs and assigns, upon trust to complete such contract. The tenant-for-life died, leaving issue four children, one of whom, the plaintiff,

had not attained the age of twenty-one at the time of his father's death:—Held, that, having regard to the provision for maintenance, the limitation in favour of the children of the testator's nephew was equitable, and that the contingent devise to the plaintiff therefore took effect. *In re Berry's Estate. Berry v. Berry*, 47 Law J. Rep. Chanc. 182; Law Rep. 7 Ch. D. 657.

##### (2) *Equitable interest co-extensive with legal interest.*

2.—A testator devised to trustees three freehold houses in trust for the joint benefit of his two daughters; . . . but in case either of his daughters married and had a child or children, then such child or children should have the mother's share. Both daughters married and died without having had a child:—Held (affirming the decision of Malins, V.C.), that the daughters took a joint and equitable estate in fee simple. *Yarrow v. Knightley* (App.), 47 Law J. Rep. Chanc. 874; Law Rep. 8 Ch. D. 736.

[And see I 14 *infra*.]

##### (b) *Devise before Wills Act without words of limitation.*

3.—A testator by will, dated 1811, devised certain real estate to A. and his heirs, but if A. left no issue, then on A.'s death to B. and her heirs; the will then contained a further devise of the same estate, if B. should leave no issue, to the children "then living of C., to be equally divided among them, share and share alike." A. was also made residuary legatee. A. took the estate, and died without issue; B. then took the estate, and died without issue. At the time of B.'s death one only of the children of C. was living, but she had died before action brought. One plaintiff, as devisee of A., and others as heirs and devisees of the children of C., brought ejectment to recover the estate devised by the testator:—Held, that they had no title. That on the death of A., B. took an estate in fee, subject only to the life interest of the children of C. to arise on the death of B. without issue, and the survival of some of them. That on B.'s death, the survivor of C.'s children took an estate for life only, and, on the latter's death, the life estate created by the executory devise having determined, the interest of the heirs of B. became absolute. And further, that the estate of B. and her heirs never having been divested during the continuance of the life interest, but having only been liable to be cut down *pro tanto*, there was nothing undisposed of on the death of the survivor of C.'s children which could fall into residuary estate, and so pass to the devisees of A. *Gatenby v. Morgan*, 45 Law J. Rep. Q.B. 597; Law Rep. 1 Q.B. D. 686.

4.—A testator, by will dated in 1832, devised hereditaments to T. for life, and after his decease to his eldest son if he should have attained the age of twenty-one years, or so soon as he should arrive at that age, and in default

of his having a son, he gave the same to the eldest son of H. T. died, leaving an infant son. One of the Vice-Chancellors held that the infant son was entitled to an estate for life, contingently on his attaining the age of twenty-one, and that in the meantime the rents and profits, from the death of T., were undisposed of. But upon appeal it was held that he took a vested estate in fee, with an executory devise to T. in tail, if his son should die under twenty-one. *Andrew v. Andrew* (App.), 45 Law J. Rep. Chanc. 232; Law Rep. 1 Ch. D. 410.

(c) *Rule in Shelley's Case.*

5.—A testatrix devised real estate (of which the legal estate was outstanding) to trustees during the life of A., upon trust to pay her the rents; with an ultimate remainder, if B. should die in the lifetime of A., to the heirs of A. A. and B. were both living:—Held, that, as A.'s life estate and the remainder to her heirs were both equitable, the two estates united according to the rule in Shelley's case; and A. took an equitable contingent remainder in fee. *Crofts v. Middleton* (2 Kay & J. 135) dissented from. *In re White*, 47 Law J. Rep. Chanc. 85; Law Rep. 7 Ch. D. 201, *nom. in re White and Hindley*.

(d) *Estate for life or absolute interest.*

(1) *Absolute gift, whether out down.*

6.—A testator bequeathed certain specified goods and all other his personal estate to his wife, and after devising his real estate to his wife for life, with divers limitations over, he bequeathed the residue of his personal estate in trust for his children or their issue, and in default for his brothers and sisters and their issue as therein mentioned:—Held, having regard also to the general scope of the will (affirming the decision of Hall, V.C.), that the wife took only a life interest in the personal estate. *In re Bagshaw's Trusts* (App.), 46 Law J. Rep. Chanc. 567.

7.—A testator gave and devised to his brother all his real and personal estate and effects whatsoever and wheresoever, with full power to dispose thereof by deed or will, and then provided that if his brother should not dispose thereof the real estate should go to H. for life, with numerous limitations over. He then bequeathed his furniture, &c., to executors, as heirlooms, and gave all the residue of his estate and effects to the executors upon trust, after the decease of the survivor of his brother and himself, to sell and dispose thereof, and invest in other real estates to be settled to the same uses as he had declared concerning the real estates devised by his will, with powers of investment in the meantime. The testator's brother died before the testator. On the death of the testator in 1803 H. entered into possession, and held the estates till his death in 1869. On the death of H. the persons entitled under his will took possession of the property, which was then claimed by the persons entitled under the limitations

in the will of the original testator:—Held (reversing the decision of the Master of the Rolls), that though the first clause in the will amounted to an absolute gift, the whole will shewed a clear intention to give the testator's brother an estate for life only with a power of appointment, and that as that power of appointment had not been exercised, the limitations over took effect. *In re Stringer. Shaw v. Ford* (App.), 46 Law J. Rep. Chanc. 633; Law Rep. 6 Ch. D. 1.

Semble, that if no such intention had appeared on the will, the limitations over would have taken effect, as the brother died in the lifetime of the testator. *Ibid.*

*Hughes v. Ellis* (20 Beav. 193; 24 Law J. Rep. Chanc. 351) and *Greated v. Greated* (26 Beav. 621; 28 Law J. Rep. Chanc. 756) doubted. *Ibid.*

8.—Gift of all the testator's property to his wife "absolutely with full power to dispose of the same as she may think fit for the benefit of my family, having full confidence that she will do so,"—Held, an absolute gift. *In re Hutchinson and Tenant*, Law Rep. 8 Ch. D. 540.

*Lambe v. Eames* (40 Law J. Rep. Chanc. 447; Law Rep. 6 Chanc. 597) followed. *Ibid.*

9.—Where a testatrix by will gave realty and personality to A. absolutely, and by a codicil gave all her property which might be remaining at A.'s death to B.,—Held, that the codicil cut down A.'s interest to a life estate. *Bibbens v. Potter*, Law Rep. 10 Ch. D. 733.

10.—A testator devised and bequeathed all his real and personal estate to his widow "for the term of her natural life, to be disposed of as she might think proper for her own use and benefit, according to the nature and quality thereof," and "in the event of her decease, should there be anything remaining of the said property or any part thereof," he devised and bequeathed "the said part or parts thereof" to certain named persons:—Held (affirming the decision of Hall, V.C., 49 Law J. Rep. Chanc. 16; Law Rep. 13 Ch. D. 144), that the widow had no power of disposition by will; and that on her death the property went to the persons named. The Court expressed a strong opinion that the widow took only a life estate in the property, with the power of enjoying the property in specie. *In re Thomson's Estate. Herring v. Barrow* (App.), 49 Law J. Rep. Chanc. 622; Law Rep. 14 Ch. D. 263.

(2) *Gift of farming implements and stock.*

11.—A testator gave all his estate, "including all my farming implements and stock, live and dead," to his wife for life, and after her decease to his children. And he declared that his wife should "not be liable to account for any diminution" in the farming implements and stock:—Held, that the wife took the farming implements and stock absolutely. *Breton v. Mockett*, 47 Law J. Rep. Chanc. 754; Law Rep. 9 Ch. D. 95.



(e) *Estate tail.*(1) *Rule in Wild's Case.*

12.—The rule in *Wild's Case*, if only a rule of construction, is an established rule which cannot be departed from, and although the primary sense of the word "children" is issue of the first generation, yet that sense is displaced. The rule in *Wild's Case* is applicable when the word becomes a word of limitation. *Clifford v. Koe* (H.L. Ir.), Law Rep. 5 App. Cas. 447.

Therefore under a gift to testator's "son A. and to his children lawfully begotten," A. was held to take an estate tail, notwithstanding that the will contained a discretionary power to A. "arriving at the possession of this landed property" to dispose of it by his will amongst his children, and that the word "children" was used in another part of the will as referring only to sons and daughters. *Ibid.*

(2) *Implied estate tail in remainder.*

[See H 1, *supra*.]

*Cypres: remoteness: gift to A. for life with remainder to her unborn children and children's children.* [See REMOTENESS, 6.]

(f) *Gift by implication.*

13.—A testator bequeathed 16,000*l.* to trustees upon trust to pay the income of 8,000*l.*, part thereof, to his daughter A. for life, for her separate use, with remainder to her children equally on attaining twenty-one, and to pay the income of the other 8,000*l.* to his daughter S. for life, "in the same manner in every respect as before directed as to his daughter A., it being his intention that his said daughters' fortunes should not be subject in any manner to the control of their husbands." And after bequeathing 6,000*l.* in trust for one of his sons for life, with remainder to his children, the testator charged part of his real estate with the said sums of 16,000*l.* and 6,000*l.*, and empowered his trustees to apply the income of "the said sums of 16,000*l.* and 8,000*l.* for the maintenance and education of his said daughters' or sons' children." The testator's daughter S. died leaving four children who attained twenty-one:—Held, that those children took the secondly-mentioned 8,000*l.* by implication. *Sweeting v. Prideaux*, 45 Law J. Rep. Chanc. 378; Law Rep. 2 Ch. D. 413.

14.—A testator, without expressly devising his real estate, empowered his trustees and executors to manage and to sell and invest the proceeds. He directed them, under the management of his wife, to carry on his farm for the maintenance of his family, and subject to that trust directed his real and personal estate to be held on trust for his children equally, some of whom were to bring into hotchpot property of their own:—Held, that the trustees had the legal estate in the realty, and on the death of the wife, though the

children were all of age, could sell and convey. *Cooke v. Simpson*, 46 Law J. Rep. Chanc. 463.

15.—A testator, who died in 1837, devised and bequeathed all his real and personal property to his executors upon trust for sale and payment of his debts and legacies, and directed that after the death of his wife and after the payment of all debts and legacies, the whole residue of all his remaining property should be divided into twelve portions, three of which should be given "to the children of my late aunt, Mrs. M., equally among them, the descendants (if any) of those who may have died, being entitled to the benefit which their deceased parent would have received, had he or she been then alive." The remaining shares were given "to the children and descendants" of other aunts. "And if there should be no children or lawful descendants of his aunts above-named remaining at the time those bequests should become payable," the testator directed that the portions destined for such of them should be placed in his residuary fund. The testator declared that it should not be incumbent on his executors to pay the legacies sooner than two years after his death, nor should the division of his residuary property among his relatives be made until two years after the death of his wife. He then directed that the surplus moneys arising from the sale of his real estate should be invested to provide for the annuity of 700*l.* to which his wife was entitled under her marriage settlement. The wife died in 1876. Certain of the children of the aunts were the testator's co-heirs, and certain children of the aunts his next-of-kin. The children of the aunts were all dead, but many of them had left children or grandchildren:—Held (affirming the decision of Hall, V.C., 46 Law J. Rep. Chanc. 530; Law Rep. 5 Ch. D. 984), that the testator's widow did not take a life estate by implication, as a gift to the testator's heir-at-law or next-of-kin jointly with others after the death of A. does not imply the gift of a life estate to A. Held (reversing the decision of Hall, V.C.), that the gift to the descendants of children of the aunts was not confined to the children of those children. *Ross v. Ross* (20 Beav. 645) followed. The rule of *Sibley v. Perry* (7 Ves. 522) discussed. *Ralph v. Carrick* (App.), 48 Law J. Rep. Chanc. 801; Law Rep. 11 Ch. D. 873.

Notice given by one of the respondents to the appeal, under Order LVIII. rule 6, of his intention "to contend that the decision of the Court below should be varied," the appellant having no interest in the point, held a proper notice. *Ibid.*

*Implication of cross remainders.* [See N 8 *infra*.]

(g) *Implied revocation of will.*

16.—Will devising freeholds in a certain county upon certain trusts and bequeathing 8,000*l.* to trustees to purchase lands in that county to be held upon the same trusts. Codicil

revoking the devise of freeholds and declaring other trusts without referring to the 3,000l.—Held, no implied revocation of the bequest of the 3,000l. *Bridges v. Strachan*, Law Rep. 8 Ch. D. 558.

#### (K) PRECATORY TRUSTS.

[See TRUST, A 10-12.]

#### (L) VESTING: GIFT OVER.

##### (a) *Failure of life estate: acceleration of remainder.*

1.—Gift of real and personal estate to testator's daughter A. for life, and after her decease the property to be equally divided among her children on their becoming of age. A. was an attesting witness:—Held, that the gift to her children being a remainder was accelerated and took effect at the testator's death. *Jull v. Jacobs*, Law Rep. 3 Ch. D. 703.

[And see I 7 supra; WILL FORMALITIES, 21.]

##### (b) *Direction as to vesting of shares.*

2.—A testator bequeathed a sum of money to trustees upon trust for investment, and payment of the dividends in moieties to his two daughters respectively for life, and after their respective deceases leaving issue, or other lineal descendants her or them surviving, to pay, assign and transfer the principal unto her child or children, or other lineal descendants *per stirpes*, as they should respectively attain the age of twenty-one years; but the shares of the children to be absolute vested interests immediately on the decease of their parent, and transmissible to their executors or administrators respectively, with a gift over in case of the death of either daughter without issue or lineal descendants her surviving. Three of A. W.'s children died in her lifetime without issue:—Held (reversing the decision of one of the Vice-Chancellors), that their representatives were not entitled to share in the trust fund. *Selby v. Whittaker* (App.), 47 Law J. Rep. Chanc. 121; Law Rep. Rep. 6 Ch. D. 239.

##### (c) *Gift to person or class at given age.*

###### (1) *Whether vested or contingent.*

###### (i) *Contingent remainder or vested estate.*

3.—Devise of real estate to A. for life, and in the event of leaving a son born or to be born in due time after his decease, who should attain twenty-one, then to such son and his heirs, if he should attain that age; but in case A. should die without leaving a son who should live to attain twenty-one, then over. A. died leaving a son seven years old:—Held, that the devise to the son of A. was not contingent, but vested, subject to be divested on his dying under twenty-one. *Mushett v. Eaton*, 45 Law J. Rep. Chanc. 22; Law Rep. 1 Ch. D. 435.

###### (ii) *Gift of interest for maintenance.*

4.—A gift to a class or an individual on attaining a given age, which standing alone is contingent, is vested, if accompanied by a gift of the whole income, for the benefit of the class or individual during the interval. *In re Holt's Estate*. *Bolding v. Strugnell*, 45 Law J. Rep. Chanc. 208.

A testatrix directed the trustees of her will, after the death of a tenant-for-life, to transfer a fund to the children of A. in equal shares, upon their respectively attaining twenty-one, the interest of the fund to be applied for their maintenance until they should respectively attain that age:—Held, that the gift of the interest created a vested interest in the capital. *Ibid.*

5.—Bequest of a fund to trustees in trust for A. and his wife during their joint lives and the life of the survivor, and after the decease of the survivor, upon trust to pay and apply the interest thereof, or so much thereof as the trustees should think proper, in the maintenance, education and bringing up of their child and children during their respective minorities, and upon their attainment to the age of twenty-one years, to pay and divide the same principal sum, and the accumulations thereof, unto and equally among such child or children, and if there should be no such child, to A. absolutely. A. and his wife had four children, of whom two attained twenty-one and the remainder died in infancy:—Held, that (inasmuch as the trust for maintenance did not apply to the income of the whole fund) the gift to the children of A. was contingent upon their respectively attaining twenty-one, and that the two who died under that age were therefore excluded from participation. *Fox v. Fox* (Law Rep. 19 Eq. 285) considered and distinguished. *In re Grimshaw's Trusts*, 48 Law J. Rep. Chanc. 399; Law Rep. 11 Ch. D. 406.

6.—A testator gave the proceeds of sale of his real and residuary personal estate upon trust for "all his children, or any his child, who, being sons or a son, should attain twenty-five, or, being daughters or a daughter, should attain twenty-one or marry, and if more than one, in equal shares, and to be divided and paid on the youngest of his said children attaining twenty-one." The testator empowered his trustees to apply "the whole, or such part as they should think fit, of the annual income to which any child should be entitled in expectancy towards the maintenance or education of such child." The testator had two children only—a son, now aged twenty-three, and a daughter, now aged twenty-one:—Held, that the interest of the son was not vested, but contingent on his attaining twenty-five. *Fox v. Fox* (Law Rep. 19 Eq. 286) distinguished and commented on. *Donar v. Brooke*, 49 Law J. Rep. Chanc. 374; Law Rep. 14 Ch. D. 529.

###### (2) *Period of vesting.*

7.—Gift by will to nieces on their attaining twenty-one, or marrying with the consent of

their parents, held to vest on the eldest niece marrying under twenty-one with the consent of her only surviving parent. Decision of the Master of the Rolls (45 Law J. Rep. Chanc. 217) reversed. *Danson v. Oliver-Massey* (App.), 45 Law J. Rep. Chanc. 519; Law Rep. 2 Ch. D. 753.

8.—A testator gave the income of his real and residuary personal estate in trust for his wife for life, and on her death to apply the income for the maintenance, &c., of his children then living, and of the issue of any child then deceased, *per stirpes*, until his youngest surviving child should have attained the age of twenty-one years, and when his youngest surviving child should have attained the age of twenty-one years to sell his real estate and stand possessed of the money arising therefrom, and the personal estate, in trust for his child or children then living, and the issue then living of any child or children dying before that period, as tenants in common, *per stirpes*. The testator's youngest child attained twenty-one years in the lifetime of the widow:—Held (affirming the decision of the Master of the Rolls), that the period of vesting was postponed till the death of the widow. *In re Deighton's Settled Estate* (App.), 45 Law J. Rep. Chanc. 825; Law Rep. 2 Ch. D. 783.

(d) *Gift on marriage with consent of parents.*

[See No. 7 supra.]

(e) *Gift in remainder after life interests in moieties.*

9.—A testatrix bequeathed the income of one moiety of residue to her daughter A. for life, and of the other to her daughter B. for life, with a direction to her trustees to stand possessed of one moiety from and after A.'s death, and the other moiety from and after B.'s death, in trust to divide among all the children of A. living at her death, and the issue then living of any children of hers who should have died in her lifetime, and all the children of B. living at her death, and the issue, &c. (as before):—Held, that, notwithstanding the inconvenience of keeping the fund in suspense from the death of one daughter to that of the other, the whole fund must be divided *per capita* among the children of both daughters. *Snabey v. Goldie* (App.), Law Rep. 1 Ch. D. 380.

10.—A testator gave to Mrs. R. and M. P. "each a moiety of the interest" of certain invested moneys, and also gave to the said Mrs. R. and M. P. "each a moiety of the rents" of his freehold estate, "and at the death of the last survivor" of them, directed the said investments and property to be sold, and the proceeds to be equally divided between his surviving nephews and nieces:—Held, that on the death of M. P. there was an intestacy as to one moiety of the interest and rents during the life of Mrs. R. *Rovind v. Pickett*, 47 Law J. Rep. Chanc. 631.

(f) *Gift over on second marriage.*

11.—A gift over, though in terms contingent on the marriage of the donee of the preceding estate, will take effect on the determination of that estate by death, notwithstanding that the donee of the preceding estate takes an interest under the gift over. *Pile v. Slater* (5 Sim. 411) disapproved. *Underhill v. Roden*, 45 Law J. Rep. Chanc. 266; Law Rep. 2 Ch. D. 474.

(g) *Gift over on death of legatee before receiving legacy.*

12.—By will the proceeds of sale of residuary estate were given, subject to the payment of certain legacies and annuities to K. and G., equally as tenants in common, with a proviso that if K. should die before he should "have actually received" the whole of his share of the residue, and without leaving issue, then and in such case, and whether the same should have become due and payable or not, his share, or so much thereof as he should not have actually received, should go over to G. K. died without issue, before receiving any part of his share, but having survived the testatrix:—Held, that the gift over in favour of G. was valid and took effect on K.'s death. *Johnson v. Crook*, 48 Law J. Rep. Chanc. 777; Law Rep. 12 Ch. D. 638.

*Martin v. Martin* (35 Law J. Rep. Chanc. 679; Law Rep. 2 Eq. 404) dissented from. *Ibid.*

13.—A testator directed the proceeds of real and personal estate to be divided among nephews and nieces, and directed that if any niece should die in his lifetime or before the division of his estate, her share should go to the other legatees. A niece died within a year of the testator, before any of the estate had been divided:—Held, that her share went to the other legatees. *In re Collison. Collison v. Barber*, 48 Law J. Rep. Chanc. 720; Law Rep. 12 Ch. D. 834.

14.—A testator bequeathed the residue of his estate to trustees upon trust for all his children who should attain twenty-one as tenants in common, but directed that children attaining vested interests should not be entitled to receive their shares until the youngest child attained the age of twenty-one, unless the trustees thought fit to pay all or any part of such shares earlier; and he directed that in case any child should die before the youngest child attained twenty-one, and "without having actually received" his share, then his share should go over. The testator died in 1879. His youngest child was then of the age of six years:—Held, that each child, on attaining twenty-one, acquired an absolute vested interest. *Bubb v. Padwick*, 49 Law J. Rep. Chanc. 178; Law Rep. 13 Ch. D. 519.

(h) *Gift over on death without issue.*

15.—Gift of a fund upon trust to pay half the income to each of the testator's two daughters for life, and after the death of either of them her share to be in trust for the child or

children she might leave at her decease, on attaining twenty-one; or if she should die without issue, then for such persons as she should by will appoint. One daughter appointed half the fund by will, and died leaving several grandchildren, and having had only one child, who predeceased her:—Held, that the power was well exercised, as the words "die without issue" meant such issue as previously mentioned. *In re Mercer's Trusts*. *Davies v. Mercer*, Law Rep. 4 Ch. D. 182.

16.—Devise to successive tenants for life, with remainder to a class, followed by gift over of shares of members of the class "dying without issue":—Held, that the gift over must be restricted to death without issue at the death of the surviving tenant-for-life. *Besant v. Cox*, Law Rep. 6 Ch. D. 604.

17.—Devise to A. absolutely, and "after her decease without leaving any issue," over. A. married and had a child:—Held, that upon the birth of such child A.'s interest became indefeasible. *White v. Hight*, Law Rep. 12 Ch. D. 751.

18.—By a marriage settlement freeholds and personalty were granted and assigned to trustees on trust to apply the rents and interest in the maintenance of the two children of M. until the youngest should attain twenty-one, and then to pay the same between the two children, their heirs, executors, administrators and assigns respectively, with a limitation over in case either of them should die "without leaving lawful issue" of his or her share:—Held, that the limitation over on death without leaving issue did not cut down the prior grant in fee to an estate tail, but that the children took estates in fee simple, subject to be divested on death without issue under twenty-one. *Olinant v. Wright*, 47 Law J. Rep. Chanc. 664; Law Rep. 9 Ch. D. 646.

[And see L 2 supra.]

(i) *Accruer clause: absence of gift over on death of all without issue.*

19.—After a bequest to testator's children for life, with remainder to their respective children, a clause of accruer of the shares of any of the testator's children dying without leaving issue in favour of his surviving children was held to carry an accruing share to the then living children of the testator and children of those then dead, although the will contained no gift over on the death and failure of issue of all the testator's children. *In re Walker's Estate*. *Chursh v. Tyacke*, 48 Law J. Rep. Chanc. 598; Law Rep. 12 Ch. D. 205.

(k) *Shifting clause: "become eldest son."*

20.—A testator devised real estate to R., the second son of Sir T. S., of H., for life, with remainder to his first and other sons successively in tail male, with remainder to J., the third son of Sir T. S. for life, with remainder to his first and other sons in tail male, with remainder to

C., the fourth son of Sir T. S. for life, with remainder to his first and other sons in tail male, with remainder to the testator's right heirs. The will contained a name and arms clause, and provided that in case R., J. or C. should become the eldest son of Sir T. S., then and in such case, and so often as the same should happen, the estate thereinbefore devised to him becoming the eldest son of Sir T. S., and the remainder to his first and other sons, should cease, determine and become void, as if he were actually dead, without issue male of his body, and then and thenceforth the estates thereby devised should go and remain to the use of such person or persons as by virtue of the devises thereinbefore contained, would then be entitled as the person or persons next in remainder to the same estates, in case such person so becoming the eldest son of Sir T. S., was then dead without issue male. The eldest son of Sir T. S. survived his father, and died without issue in 1863. R., who succeeded to the baronetcy, died without issue in 1875, whereupon J. succeeded to the baronetcy:—Held (affirming the decision of the Court of Appeal, 46 Law J. Rep. Chanc. 748; Law Rep. 2 App. Cas. 698, who had reversed the decision of the Master of the Rolls), that R. did not become the eldest son of Sir T. S. within the meaning of the shifting clause. *Craven v. Errington*; and *Bathurst v. Errington* (H.L.), 46 Law J. Rep. Chanc. 748; Law Rep. 2 App. Cas. 698.

*Clause of forfeiture "if legatee should be declared bankrupt."* [See FORFEITURE, 2.]

*Compliance with name and arms clause.* [See O 1 infra.]

*Contingent remainder: equitable limitation: remoteness.* [See CONTINGENT REMAINDER, 2.]

*Direction to accumulate: suspension of vesting: income of real and personal estate during suspension period.* [See D 10 supra.]

*Legal estate in mortgagee: remainder preserved.* [See CONTINGENT REMAINDER, 1.]

#### (M) HOTCHPOT CLAUSE.

1.—A life interest determinable on bankruptcy or alienation is capable of being brought into hotchpot under the usual hotchpot clause. *Eales v. Drake*, 45 Law J. Rep. Chanc. 51; Law Rep. 1 Ch. D. 217.

2.—A testator gave his residuary estate to his trustees and executors in trust for sale, and to stand possessed of the proceeds for his six children, whom he named, amongst them being A. and B. equally. The testator then recited that he had advanced £,000. to A. and 500. to B., and he then declared that neither of his said sons nor any of his children should be entitled to any part of his residuary estate without bringing the above sums, and all other sums given to any of his said children, with interest thereon at five per cent. per annum from the respective times of advancement, into hotchpot. By a codicil the testator revoked the provision

made by his will in favour of B., causing a lapse of his share of the residue. The testator left a widow and his six children his next-of-kin:—Held, that the codicil must be treated as declaring a trust in the executors of B.'s share of the residue for the testator's wife and children, according to the Statute of Distributions, and that reading the will and codicil as one, the hotchpot clause applied to the shares taken by the children in the lapsed share, but that it did not apply so as to increase the widow's share therein:—Held also, that the above sums of 4,000*l.* and 500*l.* advanced to A. and B., with interest at five per cent. up to the testator's death, and at four per cent. on the aggregate amount in each case from the testator's death, must be brought into hotchpot to ascertain their shares of residue. *Stewart v. Stewart*, 49 Law J. Rep. Chanc. 763; Law Rep. 15 Ch. D. 539.

Where there is no direction to the contrary, advancements to children for the purpose of the hotchpot clause bear no interest up to the testator's death, but from his death bear interest at the rate of four per cent. per annum. *Ibid.*

#### (N) SUBSTITUTION AND SURVIVORSHIP.

##### (a) *Gift whether original or substitutional.*

1.—A testator directed that after the decease of his wife his trustees should divide his residuary estate equally amongst such of the children of his late sisters M. and N. as should survive his wife and attain the age of twenty-one or marry; but in case any of such children should be dead at his decease leaving lawful issue, then he directed that such issue should take as tenants in common the share of their deceased parent:—Held, that the gift to the issue of deceased children was substitutional, not original; and therefore that the issue of W., who was a daughter of M., and was dead at the date of the will, were not entitled to a share. *West v. Orr* (App.), 47 Law J. Rep. Chanc. 294; Law Rep. 8 Ch. D. 60.

2.—Gift by will in trust for A. for life, and after her death for the children of A. who should be living at her death equally, with a proviso that if any child of A. should die in the lifetime of A., leaving issue who should be living at A.'s death, the issue of such child should take the share which his, her or their parent would have taken if living at the death of A., and with a gift over if there should be no such child or children, or issue of a child or children of A. so living at her death. One child of A. died before the date of the will, leaving issue who survived A.:—Held, that the gift to issue was original, not substitutional, and that, therefore, the issue of the deceased child of A. were entitled to take. *In re Woolrich*; *Harris v. Harris*, 48 Law J. Rep. Chanc. 321; Law Rep. 11 Ch. D. 663.

##### (b) *Gift to children or their issue: child dead at date of will.*

3.—A testator devised real estate to trustees, upon trust for A. during her life, and after her

decease to sell the same, and hold the proceeds upon trust for all and every the children of his deceased uncle, or their issue, in equal shares *per capita*:—Held, that the issue of the children of the uncle who were dead at the date of the will were entitled to participate. *In re Sibley's Trusts*, 46 Law J. Rep. Chanc. 387; Law Rep. 5 Ch. D. 494.

*Gift in remainder to a class then living or their heirs.* [See H 30 *supra*.]

##### (c) *Gift to issue of persons who shall have died leaving issue.*

4.—Where there is a gift by will to such of a class of persons as shall be living at the happening of a particular event, and to the issue of such of the class as shall be then dead leaving issue, the gift to issue is not to be restricted to issue who survive their parents, but all the issue of any member of the class who has predeceased the particular event leaving issue are entitled to share, whether they have or have not survived their parent. The contrary dictum of Kindersley, V.C., in *Lanphier v. Buck* (2 Dr. & Sm. 499; 34 Law J. Rep. Chanc. 650), disapproved. *In re Haskett Smith's Trusts*, 47 Law J. Rep. Chanc. 265; Law Rep. 7 Ch. D. 663.

##### (d) *Period of survivorship.*

5.—Bequest of stock to trustees, the interest to be paid to A. for life, and after his decease the capital to be divided amongst the children of testator's late daughter B., or their descendants, but "should there be none of them surviving," then the capital to be equally divided amongst such other grandchildren as testator might then have living, or in default to his legal personal representative. B. had seven children, of whom three died without children in testator's lifetime, three died before A., one only of such three leaving issue, and the other survived A.:—Held, that the period of survivorship referred to was the testator's death, and that the children of B., who survived the testator, took vested interests. *In re Davies' Trusts*, Law Rep. 4 Ch. D. 210.

6.—A testator directed his trustees to pay and divide the residuary moneys arising from the sale and conversion of his real and personal estate among all such of his five daughters as should be living at his death in equal shares, and he directed his trustees to invest every share given to a daughter of his living at his death, and during the life of each such daughter to pay the income of her share to her for her separate use, and after her death to hold the same in trust for her children as therein mentioned, and declared that if there should be no child of such his daughter, who should attain a vested interest, then, subject to a power of appointment given to her over a portion of her share, as well the original share of such daughter, as any share or shares which might accrue to her under that provision, or otherwise, should accrue to his other daugh-

ters or other daughter surviving in equal shares, if more than one, each accruing share to be held upon the same trusts as the original. The will contained no gift over in the event of all the daughters dying without issue. All the five daughters survived the testator. Then one of them died leaving a child, then another died without issue:—Held, that the words "other daughter or other surviving daughters" referred to survivorship at the death of the daughter whose share was to be distributed, and that the child of the daughter who died first took no interest in the share of the daughter who died next. Decision of Hall, V.C., reversed. *Beckwith v. Beckwith* (App.), 46 Law J. Rep. Chanc. 97.

(c) "Survivor" when to be read "other."

7.—A testator gave the income of his residuary estate to his three children equally during their respective lives, and after the decease of each of his children, in trust for his or her issue; and in case, and so often as any of his said three children should die without leaving issue, the share to which such child should become entitled during his or her life, to go in trust for the survivors of testator's children during their, his or her respective life or lives, and after the decease of each such survivor, the surviving or accruing share to which such survivor, for the time being, should become entitled for life, to go to his or her issue. And in case all the testator's said children should die without leaving issue, then in trust for the heirs, executors, administrators and assigns of the survivor. Only one of the testator's children left issue. The surviving child left none:—Held (affirming the decision of Hall, V.C.), that, upon the decease without issue of the surviving child, her share went to the issue of the one who had left issue, and that there was no intestacy. *Wake v. Varah* (App.), 45 Law J. Rep. Chanc. 533; Law Rep. 2 Ch. D. 348.

8.—A testator by will in 1826, gave real and personal estate to trustees in fee, in trust for his four nieces, M., B., S. and J., for their respective lives, as tenants in common, and on the death of any of them, then in trust as to the share of her so dying, to stand possessed of and interested in such share for the child or children of such of them as should have died, and if any of them should die without issue, then he directed the share or shares of her or them so dying to go to the survivor or survivors of them and their heirs, and be conveyed to them and their heirs accordingly. B. and J. died leaving children. M. died a spinster. S. was a spinster and over sixty:—Held, first, that the equitable fee was given to the children of the nieces; secondly, that seeing that S. was past the age of child-bearing, she was entitled to her own one-fourth share in fee, under the gift over to the survivor of the nieces. *Maden v. Taylor*, 45 Law J. Rep. Chanc. 569.

By codicil of same date, the testator devised freehold estate on trust for M., B., S. and J.,

for their respective lives, as tenants in common, and on the death of all or any of them, then as to the part of her or them so dying, in trust for all and every the child and children of them respectively, and the heirs of their bodies; and if any of them should die without leaving issue living at her death, then in trust for the survivors and survivor of them and the heirs of her and their bodies, and if all except one should die without leaving lawful issue, then in trust for such only or surviving niece and the heirs of her body, and in case of a total failure of issue of them, then in trust for his heirs. B. died, having had four children, three of whom died infants and unmarried. J. died, having had three children, one of whom died an infant and unmarried. Then M. died, a spinster. S. was a spinster, and over sixty:—Held, first, that cross-remainders in tail were to be implied between the children of the tenants-for-life; second, that "survivor" was not to be read "other," but that S. took M.'s share; third, that S. being past the age of child-bearing, was entitled to her own one-fourth share in tail under the gift over to the survivors and survivor of them. *Ibid*.

9.—A testatrix, having two daughters, A. and B., and three sons, C., D. and E., bequeathed a fund upon trust for A. for life, and after her death for her children, with a gift over in default of children "to the others or other of them, the said B., C., D. and E., equally to be divided between or amongst them, if more than one." The will contained a like bequest in favour of B. and her children, with a like gift over "to the others or other of my children, that is to say, the said A., C., D. and E., equally to be divided," &c. A. died a spinster. C. and D. predeceased her:—Held, that the words, "others or other," could not be read as equivalent to "survivors or survivor at the death of A.," and that upon her death the fund bequeathed upon trust for her for life became divisible in fourths. *In re Hagen's Trusts*, 46 Law J. Rep. Chanc. 665.

10.—A testator gave his residuary estate to his six children in equal shares, and directed the shares of his sons who conducted themselves with propriety to be paid to them at twenty-five, and the shares of his sons who did not so conduct themselves to remain vested in his trustees upon trust for such sons for life, and afterwards for their children. The testator also directed the shares of his daughters to remain vested in his trustees upon trust for his daughters for life, and afterwards for their issue; and in case of the death of his daughters or his sons without having received their shares and without lawful issue, then the testator directed such shares to be divided equally between his "surviving children" in the same manner as the original shares. All the six children of the testator survived him. His three sons attained twenty-five, and their shares were all paid to them. His three daughters all married; one died in 1876 without leaving issue. At that time one son only was living. Two daughters

had died leaving issue; one son had died leaving issue, and one without leaving issue. The question before the Court was the distribution of the share of the daughter who died without leaving issue:—Held (by the Master of the Rolls), that "surviving children" meant children surviving in person, or, as to the settled shares, meant surviving stock, and that the share in question must be divided into thirds between the surviving brother and the issue of the two sisters whose shares were settled. But held on appeal (reversing the decision of the Master of the Rolls), that "surviving children" must be construed "other children," and that the share must be divided into fifths amongst the representatives of all the brothers and sisters. *Lucena v. Lucena* (App.), 47 Law J. Rep. Chanc. 203; Law Rep. 7 Ch. D. 255.

### (O) CONDITIONAL AND CONTINGENT GIFTS.

#### (a) *Compliance with condition.*

##### (1) *Name and arms clause.*

1.—The G. estates were settled by will, containing a proviso that every person who should become entitled to possession or receipt of the rents and profits, and who should not be called by the surname of G., should, within the space of one year after so becoming entitled, take and use the surname of G. A person having become entitled to the possession of the settled estates, who was not called by the surname of G.,—Held, that it was imperative on him to take and use the surname of G. either alone or in addition to and after his own surname; and that the taking and using of the surname of G. in addition to, but before his own surname, was not a compliance with the condition. *D'Eyncourt v. Gregory*, 45 Law J. Rep. Chanc. 205; Law Rep. 3 Ch. D. 635.

##### (2) *"Provided she remains in my service till my death."*

2.—Bequest of a legacy to the servant of the testatrix, in consideration of her long and faithful services, to be paid within twelve months after the decease of the testatrix, provided "she remains in my service till my death." The servant was in the service of the testatrix for twenty-one years, when one of the next-of-kin of testatrix caused the testatrix to be removed to a lunatic asylum, and upon her own authority dismissed the servant, who was desirous to continue in the service of her mistress. Subsequently an order in lunacy was obtained by the next-of-kin, by which it was declared that the testatrix had been ascertained to be of unsound mind, and her furniture and effects were directed to be sold:—Held, that the order in lunacy operated as a dismissal of the servant, and that the conditional legacy to her therefore failed. *In re Hartley's Trusts*, 47 Law J. Rep. Chanc. 610.

Semble, the mere circumstance of the testatrix becoming of unsound mind did not *per se* operate as a dismissal of the servant. *Ibid.*

#### (b) *Impossible condition.*

3.—An original gift complete in itself, but followed by a condition making it void if the donee should neglect or refuse to do something which the testator has rendered impossible to be done, is not to be divested by such condition, unless the thing directed to be done is of the essence of the original gift. *Yates v. The University College, London* (H.L.), 45 Law J. Rep. Chanc. 137; Law Rep. 7 E. & L. App. 438.

A testator bequeathed certain shares and stocks "to University College, London, for the purpose of founding in it a new Professorship of Archaeology, for the regulation of which professorship I purpose preparing a code of rules which I intend to authenticate under my hand." The rules and the fact of the gift were to be communicated to the college as soon as convenient after his decease, and if the college should neglect or refuse within twelve months to signify by writing to the executors of the testator's will their acceptance of the said rules, the gift to the University College was to be null and void, and the shares and stocks were to sink into his residue. The testator died seven years after the date of his will without having made any rules:—Held, first, that the gift to the college was complete in itself, the words referring to the intended rules not being of the essence of the gift, since they were only a statement of what the testator intended to do, and were not a restriction on or description of that gift; secondly, that as the rules were never prepared by the testator, there could be no refusal on the part of the college to accept "the said rules," and therefore all the directions with reference to the rules might be struck out, leaving the gift complete and free from any liability to be made void. *Ibid.*

*Condition precedent: gift on marriage with consent of parents.* [See L 7 supra.]

#### (c) *Legacy not to be paid until given event.*

4.—A testator gave legacies charged on the A. estate, not to be paid until his eldest son came into actual possession of the M. estate, which he was entitled to for life after previous life estates, with remainder to his first and other sons in tail male. The eldest son survived his father, but died in the lifetime of a previous tenant-for-life of the M. estate:—Held, that the legacies never became payable. *Taylor v. Lambert*, 45 Law J. Rep. Chanc. 418; Law Rep. 2 Ch. D. 177.

#### (d) *Condition in restraint of alienation.*

##### (1) *Limitation over in event of intestacy.*

5.—A fund was settled in trust for W., the illegitimate daughter of the settlor, for life, and in case she should not marry, or in case there should be no issue of her marriage, then, in the event which happened of her not at her death being under coverture, for her absolutely; with a proviso that if any estate, interest or

benefit would but for the trusts, powers and provisions of the settlement be undisposed of, or in the events which should happen, would, but for that proviso, be held upon trust for the Crown, then the said estate, interest and benefit should be held in trust for the settlor for life, and after his death for the petitioner. W. survived the settlor and died intestate, whereupon the petitioner claimed the fund:—Held, that as W. was absolutely entitled at her death, the limitation over was void for repugnancy, and consequently, that the Crown was entitled to the fund. *In re Wilcock's Settlement*, 45 Law J. Rep. Chanc. 163; Law Rep. 1 Ch. D. 229.

(2) *Proviso against alienation of annuity.*

[See ANNUITY 3-6.]

(c) *Condition in restraint of marriage.*

6.—A condition in restraint of the second marriage of a man is equally valid with a like condition in restraint of the second marriage of a woman. Decision of Hall, V.C. (44 Law J. Rep. Chanc. 836), reversed. *Allen v. Jackson* (App.), 45 Law J. Rep. Chanc. 310; Law Rep. 1 Ch. D. 399.

Whether a gift in a will, for life, with a proviso cutting down the life interest in the event of marriage, operated, having regard to the terms of the will, by way of limitation or condition, *quære*. *Ibid*.

7.—A testator devised certain landed property and his personal estate to three persons jointly for their lives, and when any or some of them should die, then her or their share was to be possessed and enjoyed by testator's sister and her daughter M. during their lifetime, "provided the said M. shall remain in her present state of single woman; otherwise if she shall alter her present state of single woman and bind herself in wedlock, she is liable to lose her share of the said property immediately, and her share to be possessed and enjoyed by the other mentioned parties, share and share alike." M. assigned her estate and interest in the property to the defendant, and afterwards married. The defendant distrained on the plaintiff's cattle for half a year's rent accrued due since the marriage of M., and the plaintiff replevied. On appeal from the decision of the County Court Judge in the action of replevin in favour of the defendant who justified as assignee of M.,—Held, that as the title to the real estate only was brought into question in this action, it was immaterial whether the proviso in the devise was to be construed as a conditional limitation or a condition subsequent; that there was no necessary intention to be inferred from the words of the proviso on the part of the testator to restrain marriage, that the condition was consequently not void as against public policy, and that, therefore, the interest of the defendant in the land was determined by the marriage of M. *Jones v. Jones*, 45 Law J. Rep. Q.B. 166; Law Rep. 1 Q.B. D. 279.

(f) *Contingent remainder.*

8.—A will is to be construed according to the plain meaning and intention of the testator, notwithstanding that the result of so construing it may be to defeat the object which he had in view. *Cunliffe v. Brancher* (App.), 46 Law J. Rep. Chanc. 128; Law Rep. 3 Ch. D. 393.

A testator, by his will, devised real estate to R. P. and T. A., their heirs and assigns, to the use of R. P. and T. A., their executors, &c., for 120 years, if S. C. should so long live, upon the trusts therein mentioned, with remainder to the use of J. C. for life, with remainder to the use of R. P. and T. A., and their heirs, during his life, upon trust to preserve contingent remainders, with remainder to the use of the children of S. C. living at her decease. J. C. died in the lifetime of S. C.:—Held (affirming the decision of the Master of the Rolls), that the Court could not, in order to preserve the contingent remainder to the children of S. C. from destruction, hold that R. P. and T. A. took a legal estate in fee, the testator having clearly expressed his intention that they should be mere conduit pipes to feed the uses. *Ibid*.

9.—Devise to A. for life, and after her death to her children who either before or after her death should attain twenty-one,—Held, a contingent remainder, and that children attaining twenty-one after A.'s death could not take. *Brackenbury v. Gibbons*, Law Rep. 2 Ch. D. 417.

[And see CONTINGENT REMAINDER.]

(g) *Contingent or vested interest.*

10.—A testator devised certain hereditaments to his three granddaughters in tail, and in the event of their all dying without issue, leaving W. M. and A. M., or either of them, surviving, then to W. M. and A. M. for life, with ulterior limitations. W. M. and A. M. died in the lifetime of the tenants in tail:—Held, that the estate for life given to W. M. and A. M. was a vested and not a contingent interest, so that the ulterior limitations took effect, notwithstanding their death in the lifetime of the tenants in tail. *Leadbeater v. Cross*, 46 Law J. Rep. Q.B. 81; Law Rep. 2 Q.B. D. 19.

(h) *Devise subject to contingency: effect of, on subsequent gifts.*

11.—An annuity was bequeathed in reversion to A., and if she should die after having commenced to receive it, to her then surviving children, and in the event of there being then or at any future time no surviving children of A., to the children of B.:—Held, that A. having died before receiving any part of the annuity, without having been married, the children of B. took. *Blight v. Hartnoll*, 49 Law J. Rep. Chanc. 255; Law Rep. 13 Ch. D. 858.

(P) EXECUTORY DEVISE: VALIDITY OF.

12.—Testator devised houses to his four sons, share and share alike, with a proviso against division or alienation without their respective



consent, and in case of no such distribution being made certain executory gifts over were made:—Held that the executory devise was void. *Sham v. Ford*, 47 Law J. Rep. Chanc. 531; Law Rep. 7 Ch. D. 669.

An executory devise, which would defeat or abridge an estate in fee, and alter the course of devolution, and can only take effect at the moment of devolution, is void. *Ibid*.

An executory devise, which would defeat an estate, and would take effect on the exercise of a right incident to that estate, is void. *Ibid*.

#### (Q) TRUSTS BY REFERENCE.

13.—Testator by his will devised his freehold estates to certain uses. The will contained a name and arms clause and powers of leasing and sale and exchange. He then devised his copyhold and leasehold estates upon trusts to correspond with the uses declared of the freeholds. By a codicil to his will he varied the uses declared concerning the freeholds, but made no mention of the copyholds and leaseholds. He directed that the codicil should be taken as a part of and added to his will. All the circumstances of the case rendered it exceedingly inconvenient that the copyholds and leaseholds should devolve in a different way from the freeholds:—Held (affirming the decision of Wickens, V.C.), that the trusts of the copyholds and leaseholds declared by the will were not revoked by the codicil, and that the copyholds and leaseholds passed according to the trusts declared by the will, and the freeholds according to the uses declared by the codicil. *Martineau v. Briggs* (H.L.), 45 Law J. Rep. Chanc. 674.

#### (R) REMOTENESS.

[See REMOTENESS.]

### (2) VALIDITY OF WILL AND REQUISITE FORMALITIES.

#### (A) COMPETENCY OF TESTATOR.

##### (a) Mental capacity.

1.—W. S. was subject to insane delusions on one particular subject. Apart from them he appeared to be perfectly rational, managed his affairs with ordinary prudence, and exhibited in various ways considerable mental capacity. His last will was contested by his next-of-kin on the ground that when he executed it he was not of sound mind. The President, in directing the jury, followed the ruling in *Banks v. Goodfellow* (39 Law J. Rep. Q.B. 237; Law Rep. 5 Q.B. 549), in which it was laid down that the mere fact that a testator is subject to insane delusions is no sufficient reason why he should be held to have lost his right to make a will, if the jury are satisfied that the delusions have not affected the general faculties of his mind and cannot have influenced him in any particular disposition of his property. *Smeo v. Smeo*, 49 Law J. Rep. P. D. & A. 8; Law Rep. 5 P.D. 84.

DIGEST, 1875-1880.

*Undue influence: right of party pleading, to begin.* [See PROBATE, 32.]

*Will of married woman.* [See HUSBAND AND WIFE, 40.]

#### (B) WHAT PAPERS ARE TESTAMENTARY.

2.—On the day before his death the deceased, intending to make "an ordering of his affairs," duly executed a paper which purported to be a deed of gift. Its language was ambiguous, but it was clear that, as to some portion at least of his property, the deceased did not intend that the paper should operate until after his death:—Held, that the paper was testamentary and entitled to probate. *Fielding v. Walsham* (*In the goods of John Walsham, deceased*), 48 Law J. Rep. P. D. & A. 27.

3.—The deceased, a Frenchman by birth, but naturalised in England, executed at Paris a will and codicil in the English form relating to his property in England only, and a holograph will (valid according to the law of France) disposing of his property in France, but referring directly to the English will. He died at Paris. It appearing from the affidavit of a French advocate that the will and codicil in the English form were made in a form permitted by the law of France in the case of British subjects resident in France,—Held, that the papers could be admitted to probate under 24 & 25 Vict. c. 114. s. 1, as valid according to the law of the place where made. *In the goods of Lacroix*, 46 Law J. Rep. P. D. & A. 40; Law Rep. 2 P.D. 94.

[And see 22 *infra*.]

#### (C) WHAT DOCUMENTS FORM PART OF WILL.

4.—A voluntary settlement purported to comprise certain mortgage debts and bank shares, but the mortgages and shares were not transferred to the trustees, and some of the mortgage debts were received by the settlor. By her will the settlor confirmed her settlement, but the settlement was not admitted to probate:—Held, that the settlement was imperfect, but was confirmed by the will, and was made complete as regarded the shares, though not as regarded the mortgage debts received by the settlor. Held also, that the settlement being incorporated with the will, must be read as a testamentary instrument, and the doctrines of lapse and ademption would apply. *Bissey v. Flight*, 45 Law J. Rep. Chanc. 852; Law Rep. 3 Ch. D. 629.

5.—The instructions for a will were reduced to writing, and the testator duly executed the paper pending the preparation of the more formal instrument. In this paper the residue was disposed of. On the following day the testator executed a second and more formal will. It did not dispose of the general residue, and it expressly revoked all former wills. In both papers the same executors were appointed. All parties consenting, and the papers not being entirely inconsistent with one another, the Court granted probate of both documents as together consti-

tuting the will of the deceased. *Robinson v. Clark*, 47 Law J. Rep. P. D. & A. 17; Law Rep. 2 P. D. 269.

6.—A will was written on three sides of a sheet of paper, the signature and attestation being at the bottom of the third side. On the fourth side was a schedule in the handwriting of, and signed by, the testator, and bearing the same date as the will. The attesting witnesses had not seen the schedule. The will contained these words: "Whereas I am possessed of landed and chattel property as stated in the annexed schedule, &c.:"—Held, that, as the schedule was not proved to have been written at the time of the execution of the will, it could not be incorporated into the will. The *onus* in such a case lies on the persons seeking to incorporate the document into the will. *Singleton v. Tomlinson* (H.L. Ir.), Law Rep. 3 App. Cas. 404.

7.—A testatrix made a testamentary disposition on the first three pages of a sheet of letter paper, which was signed by herself, but unattested. She some time afterwards duly executed a testamentary disposition (but which contained no reference to the former disposition) on the fourth page of the same sheet. At the time of the execution the testatrix told the witnesses that it was her will; but the paper was so folded that they could not see the writing above her signature, and they did not know that there was any writing on the other pages:—Held, that the disposition on the first three pages of the sheet was not incorporated in the document executed on the fourth page, and was therefore inoperative. *In the goods of Tovey*, 47 Law J. Rep. P. D. & A. 63.

*Incorporation of general American will.* [See PROBATE, 18.]

*Words in margin "all free of duty."* [See SCOTCH LAW, 27.]

[And see 15, 25 *infra*.]

#### (D) DUPLICATES: ADMISSION OF EVIDENCE.

8.—Where a testator executed two codicils which were similar in all respects except that they were executed at different dates and attested by different witnesses, the Court held that evidence was admissible to shew that they were intended to be duplicates, though it would not have been admissible on a question of construction. *Hubbard v. Alexander*, 45 Law J. Rep. Chanc. 740; Law Rep. 3 Ch. D. 738.

#### (E) EXECUTION.

##### (a) Place of signature.

9.—A testator, a farmer, wrote his will on a sheet of paper. The attestation clause was on the third page. At the foot of the page there were the words "turn over," and on the fourth page there was a clause bearing date the day on which the will was executed and with the signature of the testator. The will was signed by the testator and subscribed by the witnesses

on the third page, but before its execution the witness saw some writing on the fourth page. The will gave legacies and annuities of considerable amount, but the debts of the testator exhausted the personalty, and the only allusion to his real estate was contained in the writing on the fourth page:—Held, on the evidence, that the signature to the will which the witnesses attested, was the signature on the third page, and therefore that the writing on the fourth page could not be included in the probate. *In the goods of Dearle*, 47 Law J. Rep. P. D. & A. 45.

10.—A testator left a holograph will with a full attestation clause. His signature was embodied in the attestation clause, and was written apparently at the time he wrote out the will. He filled in the date in the testimonium clause in the presence of the attesting witnesses, and then, putting his hand on the paper, said, "In the name of God, I declare this to be my last will and testament, and I wish you to witness it." The witnesses then subscribed the will, but they did not see the signature of the testator in the attestation clause. The Court being satisfied, from the circumstances of the case and the appearance of the document, that the testator intended his signature in the attestation clause to be his signature to the will, and that it was there when he asked the witnesses to attest the instrument,—Held, that there had been a sufficient acknowledgment of the signature by testator, and decreed probate of the will. *In the goods of Pearn*, 45 Law J. Rep. P. D. & A. 31; Law Rep. 1 P. D. 70.

11.—The will contained as an attestation clause the words, "signed in the presence of us." Then followed the signatures of the attesting witnesses, and beneath their signatures that of the testator. The witnesses deposed that all three were present when they signed the instrument, but they could not say in what order they signed. The Court held that the circumstances warranted it in coming to the conclusion that the will had been duly executed, and decreed probate of it. *In the goods of S. P. Jones*, 46 Law J. Rep. P. D. & A. 80.

##### (b) Interlineations.

12.—Two interlineations were introduced into the will after execution and attestation, but the testatrix signed with her initials in the margin opposite them, and the witnesses subscribed their initials in attestation of the signature of the testatrix:—Held, that the interlineations were duly executed, and were entitled to probate as part of the will. *In the goods of Blenitt*, 49 Law J. Rep. P. D. & A. 31; Law Rep. 5 P. D. 116.

#### (F) ATTESTATION.

##### (a) Improper attestation clause: attesting witnesses not to be found.

13.—A testator left a will which concluded, "In the presence of the undersigned as wit-

nesses on this the fifth day of June, 1871, I set my hand and signature." The testator's family had no personal knowledge of the persons who subscribed the will as attesting witnesses, and they had endeavoured, but in vain, to obtain intelligence of them. In these circumstances the Court dispensed with the affidavit as to the due execution of the will, and decreed probate of it, the executrix, the only person who would be benefited by an intestacy, consenting to the grant. *In the goods of Huw*, 46 Law J. Rep. P. D. & A. 39.

(b) *Form of subscription.*

14.—A testator cut from the will the portion of the document on which the name and address of the second attesting witness were written. The excised part was also mutilated, but the name and address of the witness remained legible upon it, and it was found with the will in the testator's writing-desk. The Court being satisfied that the name had not been removed *animo revocandi*, decreed probate of the instrument. *In the goods of John Wheeler*, 49 Law J. Rep. P. D. & A. 29.

Semble, that the names of the attesting witnesses are an essential part of the will, and that their removal from the will *animo revocandi* will render it inoperative. *Ibid.*

(c) *Subscription to codicil on back of will.*

15.—A testatrix requested two friends to witness the execution by her of a codicil to her will. Both papers were fastened together by means of a pin, and the witnesses, instead of subscribing the codicil itself, signed their names on the back of the will. There was evidence which satisfied the Court that the will and codicil were pinned together at the time of the execution of the codicil, and that the witnesses intended, by their subscription on the back of the will, to attest the signature of the testatrix at the foot of the codicil:—Held, that the codicil was entitled to probate. *In the goods of Braddock*, 45 Law J. Rep. P. D. & A. 76; Law Rep. 1 P.D. 433.

(d) *Attestation by beneficiary.*

[See TRUST, A 5.]

(G) REVOCATION OF WILL.

(a) *Alterations and obliterations.*

16.—The testator made his will on a lithographed form, which he adapted to his purposes by filling up the blank spaces therein and by making certain obliterations and interlineations which appeared in the body of the will. The surviving attesting witness could give no information as to whether or not the obliterations and interlineations were on the will when he attested it; but it appeared that the testator had made certain declarations as to his intentions before the date of the execution of the will, and that to give effect to those

intentions it was necessary that the alterations in question should be so made in it. In these circumstances the Court came to the conclusion that the alterations were made before the execution of the instrument and decreed probate of it in its altered form. *Dench v. Dench*, 46 Law J. Rep. P. D. & A. 13; Law Rep. 2 P.D. 60.

17.—The words of the Wills Act, 1837, section 21, "otherwise destroying," must be construed as intending some mode of destruction *ejusdem generis* with the preceding words, not an act which is not a destroying in the primary sense of the word. *In re Harris, deceased. Cheese v. Lovejoy*, 46 Law J. Rep. P. D. & A. 66; Law Rep. 2 P.D. 161.

Striking through words with a pen, unless initialed as required by section 21 of the Wills Act, 1837, is not valid, and the will stands as though the alterations had not been made. *Ibid.*

The testator, John Harris, of Clifton, in the county of Gloucester, made a will bearing date the 3rd of July, 1852, and added a first codicil thereto on the same date, a second codicil on the 21st of September, 1852, and a third codicil on the 21st of September, 1852, and appointed Thomas Sambrooke Hepinstall, who predeceased the testator, his executor, and the plaintiff, under certain contingencies which have happened, a beneficial legatee. Previously to his death the plaintiff made divers alterations and obliterations in his will which were not formally attested by the witnesses to the will, and left the same about, treating it as waste paper, but did not destroy it:—Held, that the plaintiff was entitled to probate of the same in solemn form, excluding all the alterations and interlineations. *Ibid.*

18.—The testator, who died in 1836, by a duly-executed will devised realty to "Elizabeth Eley her heirs and assigns for ever." He afterwards obliterated the words "Eley her heirs and assigns for ever," and re-wrote the word "Eley":—Held, affirming the decision of the Court of Appeal (45 Law J. Rep. Exch. 427; Law Rep. 1 Ex. D. 110, which reversed the judgment of the Exchequer Division), that the obliteration was a revocation of a "clause" within the meaning of the 6th section of the Statute of Frauds, and that the devisee took a life estate only. *Swinton v. Bailey* (H.L.), 48 Law J. Rep. Exch. 57; Law Rep. 4 App. Cas. 70.

Per Earl Cairns.—In a gift to A.B., his heirs and assigns, the words "his heirs and assigns" do not merely qualify the gift to A. B., but import an actual gift to the persons so described. *Ibid.*

Per Lord Penzance.—Revocation in the Statute of Frauds means revocation of words, and may operate to enlarge as well as to rescind a gift. *Ibid.*

(b) *Destruction of codicil reviving will.*

19.—A testator made his will in 1871. He married in 1872, and on the day of the marriage, but after the ceremony, he executed a

codicil by which he made provision for his wife and revived his will. His wife predeceased him, and on the testator's death the will only was found among his papers. The Court being satisfied that in destroying the codicil the deceased had no intention of thereby revoking the will, decreed probate of both papers. *James v. Skrimpton*, 45 Law J. Rep. P. D. & A. 85; Law Rep. 1 P.D. 431.

(c) *Re-execution of will without referring to codicil.*

20.—A testator having duly executed his will, revoking all other wills, executed a codicil to it, and subsequently re-executed the will without referring to the codicil. There was nothing to shew that he intended to revoke the codicil, and the wording of the second attestation clause warranted the inference that the object of the re-execution of the will was to give effect to certain alterations in it:—Held, that the codicil was not revoked. *In the goods of John Ramlins (deceased)*, 48 Law J. Rep. P. D. & A. 64.

(d) *Revocation of codicil by subsequent codicil.*

21.—A testatrix bequeathed 1,000*l.* on trust for E. for life, with remainder to the children of E. She directed her residuary estate to be converted and divided into sixteen parts, two of which she directed to be paid to S. and two to be held on the same trusts as the legacy of 1,000*l.* By a codicil she revoked all gifts to or in favour of E. and S. respectively. By a second codicil, after reciting that she had purchased certain realty since the date of her will, which in fact was bought before the date of the first codicil, she devised the same upon the trusts declared in her said will in respect of her residue:—Held, that the first codicil was not revoked, and the property devised by the second codicil was subject to the trusts of the residue as declared by the will and first codicil taken together. *Burton v. Newbery* (45 Law J. Rep. Chanc. 201; Law Rep. 1 Ch. D. 234; No. 27 *infra*), distinguished. Held also, that the gift to the children of E. was accelerated, but that until she should have a child the income of the 1,000*l.* fell into residue, and the income of two-tenths of the residue as to personalty belonged to the next-of-kin, and as to realty to the heir of the testatrix. *In re Love. Green v. Tribe*, 47 Law J. Rep. Chanc. 783; Law Rep. 9 Ch. D. 231.

(e) *Inconsistent wills.*

22.—If it can be collected from the language of the will, taken in connection with the facts with which it was used, that it was the intention of the testator to dispose of his property in a different manner to that in which he disposed of it by an earlier will, the earlier will will be revoked, and this although in some particulars the later will does not completely cover the whole subject-matter of the earlier will. *Dempsey v. Lamson*, 46 Law J. Rep. P. D. & A. 28; Law Rep. 2 P.D. 98.

(f) *Evidence.*

23.—A testatrix executed two wills. In the first she appointed executors and disposed of the residue; the second contained no appointment of executors, or words of revocation; in both the principal legatees were the same, and the residue was not specifically disposed of:—Held, that there was such an amount of ambiguity on the face of the papers as to warrant the admission of parol evidence to ascertain whether the testatrix intended the last paper in substitution for the first, or that both together should constitute her will. *Jenner v. Finch*, 49 Law J. Rep. P. D. & A. 59; Law Rep. 5 P.D. 106.

24.—Oral and written declarations of a testator, whether made before or after the date of execution of a will, are admissible in evidence for the purpose of shewing what were the constituent parts of the will at the time of execution. M. R. made and duly executed her last will on the 1st of August, 1872. On her death in 1879, the will was found in an envelope in her writing-desk. It was contained in two sheets of note-paper stitched together book-wise. The will was all in the handwriting of the testatrix (with the exception of the attestation clause, which was filled in by one of the attesting witnesses), and, commencing with the first page of the outer sheet, it ran: "I appoint my nephews, R. J. G. and R. G. L., to be my joint executors to carry my will into effect. I appoint my nephew, R. J. G., to be my executor and sole residuary legatee.—M. R. And placed with my will the 1st day of August, 1872." The following page was a blank, and the will was continued on the inner sheet, which was pagged 1, 2, 3, 4: "The last will and testament of me," &c., and concluded with the attestation clause on the 4th page. The next, the 3rd page of the outer sheet, was a blank, and the last contained the indorsement, "The will of M. R., August 1, 1872." The attesting witnesses were unable to say what were the contents of the will, or whether it was contained in one or two sheets of paper:—Held, that declarations of intention by the testatrix before the execution of the will, and declarations by her subsequent to the execution, shewing the belief that she had effected her intention, were admissible in evidence, with the view of shewing what were the constituent parts of the will at the time of its execution. *Gould v. Lakes*, 49 Law J. Rep. P. D. & A. 59.

[And see *supra*, WILL CONSTRUCTION, B.]

(H) REPUBLICATION AND REVIVAL OF WILL.

(a) *Revocation by marriage: conditional revival.*

25.—A testator executed a will, and afterwards married. He subsequently executed a second will, and by it he revived and brought into force again the first will in the event of there being no child of the marriage living at the time of the death of his wife. The same executors were appointed in both wills. Tes-

tator died, leaving surviving him his widow and one child. The Court allowed the first will to be included in the probate of the second will. *In the goods of Baugham*, 45 Law J. Rep. P. D. & A. 80; Law Rep. 1 P.D. 429.

(b) *Codicil referring by date only to a revoked will.*

26.—A codicil referring by date only to a revoked will does not revive the will. The testatrix made a will on the 26th of January, 1876, and added a codicil thereto on the 21st of February following. On the 18th of January, 1877, she executed a new will, by which she revoked all previous wills, and on the same day executed also a codicil to the will. The documents were prepared in a hurry, and an erroneous reference to the will was given in the codicil, which purported to be a codicil to "her last will, dated the 26th of January, 1876." The Court being satisfied that the testatrix had no intention of reviving the will of January, 1876, and that the reference to it was a mistake, decreed probate of the will and codicil of February, 1877. *In the goods of Ince*, 46 Law J. Rep. P. D. & A. 30; Law Rep. 2 P.D. 111.

(c) *Second codicil republication of will, but not of first codicil.*

27.—A testator, by will dated the 7th of December, 1837, gave certain interests in his residuary real estate to A. and B. and ten others. By a codicil dated the 12th of October, 1838, he directed an after acquired real estate to be held on the same trusts as his residuary estate. A. and B. were two of the witnesses to this codicil. The testator duly executed a second codicil, dated the 7th of April, 1839, described as "a codicil to my last will dated the 7th of December, 1837," which did not mention or refer to the first codicil:—Held, that the second codicil was a republication of the will, the document to which it referred, only, and not of the first codicil, and that the shares of A. and B., given by the latter, fell into the residue, and were divisible among all the parties entitled under the will. *Gordon v. Lord Reay* (5 Sim. 274) disapproved. *Burton v. Newbery*, 45 Law J. Rep. Chanc. 202; Law Rep. 1 Ch. D. 234.

Quere—What would have been the effect if the second codicil had referred to the will generally without a date? *Ibid*.

#### WINDING-UP.

[See COMPANY, H.]

#### WINDOW.

*Alteration of.* [See LIGHT AND AIR, 2, 4.]

#### WINE MERCHANT.

*Meaning of term.* [See ALEHOUSE, 8.]

#### WINTER ASSIZES.

[Extension of the provisions of the Winter Assizes Act, 1876. 40 & 41 Vict. c. 46.]

#### WITNESS.

A mere witness, summoned for examination under the Bankruptcy Act, 1869, section 96, is not entitled to the costs of employing solicitor or counsel. *Ex parte Waddell*; *in re Lutscher*, Law Rep. 6 Ch. D. 328.

[See EVIDENCE; PRACTICE, K.]

*Attesting will: gift to.* [See TRUST, A 7; WILL CONSTRUCTION, L 1; FORMALITIES, 27.]

*Costs of.* [See COSTS, 101, 102.]

*Examination upon accounts.* [See PRACTICE, A 4, 5.]

*Subpoena for attendance of, before arbitrator.* [See BANKRUPTCY, M 46.]

*Summoning, in winding up.* [See COMPANY, H 90.]

#### WOMAN PAST CHILD-BEARING.

[See PRESUMPTION, 4; WILL CONSTRUCTION, N 8.]

#### WORDS.

"*About.*" [See SALE OF GOODS, 3; SHIPPING LAW, D 1.]

"*Absolutely entitled.*" [See LANDS CLAUSES ACT, 29.]

"*Abutting.*" [See PUBLIC HEALTH ACT, 24.]

"*Act of God.*" [See HARBOURS CLAUSES ACT, 3.]

"*Action founded on contract or on tort.*" [See COSTS, 15.]

"*Actually received.*" [See WILL CONSTRUCTION, L 12, 14.]

"*Adjacent lands.*" [See MINES, 4.]

"*After the passing of this Act.*" [See BASTARDY, 3.]

"*Aggravated assault.*" [See ASSAULT, 2.]

"*Aggrieved.*" [See COPYRIGHT, 13.]

"*Agreeable to my wishes.*" [See TRUST, A 11.]

"*Agreement for payment of rent in full.*" [See LANDLORD AND TENANT, 4.]

"*All moneys that may be left after my decease.*" [See WILL CONSTRUCTION, D 15.]

"*All my personal property.*" [See TRUST, A 5.]

"*All rents and profits.*" [See VENDOR AND PURCHASER, 11.]

"*Annual emolument.*" [See TELEGRAPH, 2.]

"*Answerable in damages.*" [See SHIPPING AW, E 21.]

- "*Any claim for wages.*" [See SHIPPING LAW, W 3.]
- "*Any defence.*" [See MARINE INSURANCE, 28, 47.]
- "*Any new tenant.*" [See ALEHOUSE, 6.]
- "*Any person.*" [See PUBLIC HEALTH ACT, 5.]
- "*Any person making sewer.*" [See METROPOLIS, 16.]
- "*Application made at the trial.*" [See COSTS, 8.]
- "*Appurtenances.*" [See WAY, 1.]
- "*As devised.*" [See WILL CONSTRUCTION, D 3.]
- "*As near thereto as ship can safely get.*" [See SHIPPING LAW, F 3, 5; G 5; K 2.]
- "*As soon as possible.*" [See CONTRACT, 36.]
- "*At any time.*" [See RAILWAY, 2.]
- "*At or within.*" [See WILL CONSTRUCTION, D 1.]
- "*Authority.*" [See LIBEL, 21.]
- "*Available for adjudication.*" [See BANKRUPTCY, B 25.]
- "*Bare trustee.*" [See TRUST, D 13, 14.]
- "*Become eldest son.*" [See WILL CONSTRUCTION, L 20.]
- "*Beershop.*" [See COVENANT, 6.]
- "*Before the division of my estate.*" [See WILL CONSTRUCTION, 2, 13.]
- "*Beneficial interest.*" [See RAILWAY, 21.]
- "*Beneficial power.*" [See POWER, 14.]
- "*Bequeathed.*" [See WILL CONSTRUCTION, D 3.]
- "*Building.*" [See GASWORKS CLAUSES ACTS, 2.]
- "*Bona fide.*" [See CHARITY, 26.]
- "*Bona fide mistake.*" [See COMPANY, E 3; COSTS, 26.]
- "*Business.*" [See COVENANT, 7.]
- "*Cargo.*" [See SALE OF GOODS, 4.]
- "*Cargo to be discharged with all despatch, according to the custom of the port.*" [See SHIPPING LAW, F 2.]
- "*Carriage.*" [See TURNPIKE, 3.]
- "*Carrying on business.*" [See LORD MAYOR'S COURT, 2.]
- "*Cart.*" [See HIGHWAY, 25.]
- "*Cash under the control of the Court.*" [See LANDS CLAUSES ACT, 19; TRUST, B 6.]
- "*Cause of appeal.*" [See PUBLIC HEALTH ACT, 36.]
- "*Cheap train.*" [See RAILWAY, 31.]
- "*Children.*" [See TRUST, A 7; WILL CONSTRUCTION, H 10, 11.]
- "*Children or their issue.*" [See WILL CONSTRUCTION, N 3.]
- "*Children on attaining twenty-one.*" [See WILL CONSTRUCTION, L 6.]
- "*Children who shall attain twenty-one.*" [See WILL CONSTRUCTION, H 5, L 4.]
- "*Clause.*" [See WILL FORMALITIES, 18.]
- "*Clerk.*" [See BILL OF SALE, 28.]
- "*Collateral security.*" [See MORTGAGE, 19.]
- "*Colourable.*" [See CHARITY, 26.]
- "*Comfortable maintenance.*" [See HUSBAND AND WIFE, 26.]
- "*Consent or agreement.*" [See LIGHT AND AIR, 1.]
- "*Contract by way of wagering.*" [See CONTRACT, 10, 12, 13.]
- "*Contract or tort.*" [See COSTS, 15.]
- "*Contrary intention.*" [See ADMINISTRATION, 15.]
- "*Costs following event.*" [See COSTS, 1-5.]
- "*Costs of and incident to a proceeding in the High Court.*" [See PRACTICE, B 14.]
- "*County.*" [See POOR LAW, 1.]
- "*Court of summary jurisdiction.*" [See ALEHOUSE, 24.]
- "*Crimes against bankruptcy law.*" [See EX-TRADITION, 1.]
- "*Criminal cause or matter.*" [See ELEMENTARY EDUCATION ACTS, 9.]
- "*Cruelly illtreat and torture.*" [See ANIMALS, 1.]
- "*Daughters.*" [See WILL CONSTRUCTION, G 3.]
- "*Dead weight.*" [See SHIPPING LAW, D 6.]
- "*Dealing.*" [See BANKRUPTCY, E 2; F 27.]
- "*Debentures.*" [See LEGACY, 22.]
- "*Debt owing or accruing.*" [See ATTACHMENT, 2, 3.]
- "*Debts proved and admitted in the bankruptcy.*" [See BANKRUPTCY, C 12.]
- "*Decision of the Court.*" [See PUBLIC HEALTH ACT, 36.]
- "*Descendants.*" [See WILL CONSTRUCTION, I 15.]
- "*Desertion.*" [See POOR LAW, 16.]
- "*Die seized.*" [See WILL CONSTRUCTION, D 7.]
- "*Die without having been married.*" [See SETTLEMENT, 12, 13, 14.]
- "*Die without issue.*" [See WILL CONSTRUCTION, L 2, 15, 16.]
- "*Die without leaving issue.*" [See WILL CONSTRUCTION, L 17, 18.]
- "*Distinct properties.*" [See INHABITED HOUSE DUTY, 1.]
- "*Distinctive device, mark or heading.*" [See TRADE MARK, 1.]

- "Dividends."* [See APPORTIONMENT, 3.]  
*"Dividends or periodical payments."* [See APPORTIONMENT, 4.]  
*"Due."* [See COMPANY, D 94.]  
*"Due, owing or accruing."* [See ATTACHMENT, 3.]  
*"Dwelling house."* [See INHABITED HOUSE DUTY, 4, 5.]  
*"Dwelling place or shop."* [See MARKET, 1.]  
*"Dyes or causes to be dyed" seeds.* [See ADULTERATION OF SEEDS.]  
*"Earnings."* [See HUSBAND AND WIFE, 44, 45.]  
*"Effects."* [See WILL CONSTRUCTION, E 12, 13.]  
*"Eldest son."* [See GAVELKIND; WILL CONSTRUCTION, G 4; H 1; L 20.]  
*"Entitled."* [See SUCCESSION DUTY, 1.]  
*"Estate, costs out of."* [See COPYHOLDS, 4; COSTS, 4.]  
*"Et cetera."* [See WILL CONSTRUCTION, E 15.]  
*"Excessive weight."* [See LOCOMOTIVE, 4.]  
*"Executorship expenses."* [See EXECUTOR, 12.]  
*"Existing."* [See WATER COMPANY.]  
*"Expressly excluded."* [See LANDS CLAUSES ACT, 16.]  
*"Expressly varied."* [See STATUTE, 12.]  
*"Extraordinary traffic."* [See LOCOMOTIVE, 4.]  
*"Family."* [See WILL CONSTRUCTION, H 16-18.]  
*"Family Sale."* [See TRADE MARK, 8.]  
*"Felon."* [See LIBEL, 2.]  
*"Fiduciary capacity."* [See DEBTORS ACT, 4.]  
*"Fines payable to Her Majesty."* [See MUNICIPAL CORPORATION, 18.]  
*"First and true inventor."* [See PATENT 3, 4.]  
*"Following event."* [See COSTS, 1.]  
*"Foreign bonds."* [See WILL CONSTRUCTION, D 13.]  
*"Forming such street."* [See METROPOLIS, 7.]  
*"Forthwith."* [See ACTION, 8.]  
*"Found committing offence."* [See ACTION, 8.]  
*"Freight."* [See SHIPPING LAW, K 4; MARINE INSURANCE, 14.]  
*"Fronting."* [See PUBLIC HEALTH ACT, 24.]  
*"Full age."* [See PARLIAMENT, 7.]  
*"Full and complete cargo."* [See SHIPPING LAW, D 1.]  
*"Full confidence."* [See WILL CONSTRUCTION, H 16; I 8.]  
*"Further evidence."* [See PRACTICE, K 21.]  
*"Gentleman."* [See BILL OF SALE, 26.]  
*"Gold."* [See EXCISE.]  
*"Goodwill."* [See PARTNERSHIP, 9.]  
*"Hard bargain."* [See CONTRACT, 4.]  
*"Heir."* [See WILL CONSTRUCTION, H 25-30.]  
*"Heirs or next-of-kin."* [See WILL CONSTRUCTION, H 23.]  
*"Holder in his own right."* [See COMPANY, D 10.]  
*"Holding shares."* [See COMPANY, D 45.]  
*"Hotel keeper."* [See BANKRUPTCY, B 28.]  
*"House."* [See INHABITED HOUSE DUTY, 1.]  
*"House, building or manufactory."* [See LANDS CLAUSES ACT, 2.]  
*"Household furniture."* [See WILL CONSTRUCTION, D 12.]  
*"Illness."* [See EVIDENCE, 34.]  
*"Immediate apprehension."* [See ACTION, 8.]  
*"Immediately."* [See ALIHOUSE, 3.]  
*"Immediately apprehended."* [See ACTION, 8.]  
*"Importing for sale."* [See COPYRIGHT, 6.]  
*"Impound or confine, or cause to be impounded or confined."* [See ANIMALS, 2.]  
*"Incapable of being fairly estimated."* [See BANKRUPTCY, D 5.]  
*"In his own right."* [See CHARGING ORDER.]  
*"Inevitable accident."* [See LANDLORD AND TENANT, 8.]  
*"Inhabitant."* [See CUSTOM, 1.]  
*"Inhabited dwelling-house."* [See INHABITED HOUSE DUTY, 5.]  
*"Injurious affected."* [See FERRY.]  
*"Insolvent."* [See TRAMWAYS, 2.]  
*"Intent to defeat and delay creditors."* [See BANKRUPTCY, M 37.]  
*"Interest which should fall into possession."* [See COVENANT, 1.]  
*"Interested."* [See ARTISANS' DWELLINGS.]  
*"Into, through and over."* [See PUBLIC HEALTH, 30.]  
*"Investing members."* [See FRIENDLY SOCIETY, 1.]  
*"Issue."* [See SETTLEMENT, 7; WILL CONSTRUCTION, I 19, 20.]  
*"Issued."* [See STAMP, 7.]  
*"It shall be lawful."* [See CHURCH AND CLERGY, 25.]  
*"Just allowances."* [See MORTGAGE, 58, 59.]  
*"Just and convenient."* [See LAND DRAINAGE; PROHIBITION, 1; RECEIVER, 3.]  
*"Just and reasonable."* [See RAILWAY, 24.]  
*"Lands of a like quality."* [See RATES, 13.]  
*"Lawful cause."* [See CHURCH AND CLERGY, 23.]

- "*Lamful heirs.*" [See WILL CONSTRUCTION, H 27.]
- "*Lamful issue.*" [See WILL CONSTRUCTION, H 15.]
- "*Leasehold interest.*" [See BANKRUPTCY, F 42.]
- "*Leaving issue.*" [See WILL CONSTRUCTION, N 4.]
- "*Legal heirs.*" [See WILL CONSTRUCTION, H 29.]
- "*Legal or next-of-kin.*" [See WILL CONSTRUCTION, H 24.]
- "*Liabie.*" [See PARLIAMENT, 17.]
- "*Licensed premises.*" [See ALEHOUSE, 23.]
- "*Linoleum.*" [See TRADE MARK, 19.]
- "*Loading excepted.*" [See SHIPPING LAW, D 7.]
- "*Lodger.*" [See LODGERS' GOODS PROTECTION ACT.]
- "*London right.*" [See COPYRIGHT, 9.]
- "*Maintain and work.*" [See RAILWAY, 11.]
- "*Maintenance and support.*" [See INFANT, 3; TRUST, D 9.]
- "*Maintenance of prisoner.*" [See REFORMATORY.]
- "*Manufactory.*" [See LANDS CLAUSES ACT, 2.]
- "*Materially altered.*" [See CHARITY, 27.]
- "*Materials.*" [See GAS WORKS CLAUSES ACTS, 2.]
- "*Matters in question.*" [See PRODUCTION OF DOCUMENT, 25.]
- "*Missing ship.*" [See MARINE INSURANCE, 2.]
- "*Money, cattle, farming implements, &c.*" [See WILL CONSTRUCTION, E 15.]
- "*Money received.*" [See PRINCIPAL AND AGENT, 21.]
- "*Moneys left after my decease.*" [See WILL CONSTRUCTION, D 15.]
- "*More or less.*" [See SALE OF GOODS, 3.]
- "*Navigating.*" [See SHIPPING LAW, B 4.]
- "*Necessary.*" [See INHABITED HOUSE DUTY, 1.]
- "*Net moneys.*" [See WILL CONSTRUCTION, E 4.]
- "*New street.*" [See METROPOLIS, 8, 10.]
- "*Next-of-kin.*" [See WILL CONSTRUCTION, H 22, 23, 24.]
- "*Niece.*" [See MARRIAGE, 2.]
- "*Nineteen running days.*" [See SHIPPING LAW, G 4.]
- "*Not accountable for depreciation.*" [See WILL CONSTRUCTION, I 11.]
- "*Not accountable for rust, leakage or breakage.*" [See SHIPPING LAW, B 1.]
- "*Not negotiable.*" [See BILL OF EXCHANGE, 4.]
- "*Notice of any act of bankruptcy available for adjudication.*" [See BANKRUPTCY, I 30.]
- "*Noxious thing.*" [See ABORTION.]
- "*Occupied for purposes of trade.*" [See INHABITED HOUSE DUTY, 4.]
- "*Omission.*" [See STATUTE, 5.]
- "*One calendar month.*" [See FALSE IMPRISONMENT, 1.]
- "*Open place.*" [See MARKET, 2.]
- "*Or.*" [See WILL CONSTRUCTION, H 30.]
- "*Or otherwise.*" [See JUSTICE OF THE PEACE, 9.]
- "*Ordinary way of trade.*" [See DEBTORS ACT, 17.]
- "*Other daughter, or other surviving daughters.*" [See WILL CONSTRUCTION, N 5.]
- "*Other effects.*" [See WILL CONSTRUCTION, E 12.]
- "*Other surviving.*" [See WILL CONSTRUCTION, N 6.]
- "*Others or other.*" [See WILL CONSTRUCTION, N 9.]
- "*Otherwise destroying.*" [See WILL FORMALITIES, 17.]
- "*Out of the business.*" [See PARTNERSHIP, 23.]
- "*Outgoing.*" [See VENDOR AND PURCHASER, 10; LANDLORD AND TENANT, 5.]
- "*Overtaking ship.*" [See SHIPPING LAW, E 8.]
- "*Own dwelling place or shop.*" [See MARKET.]
- "*Owner.*" [See HARBOURS, &c. CLAUSES ACT, 2; HIGHWAY, 22; LANDS CLAUSES ACT, 5; METROPOLIS, 5; MINES, 19; SHIPPING LAW, W 2.]
- "*Owner in default.*" [See PUBLIC HEALTH ACT, 22.]
- "*Paintings.*" [See CARRIER, 1.]
- "*Palmistry, or otherwise.*" [See ROGUE AND VAGABOND.]
- "*Parishioner.*" [See CHARITY, 26.]
- "*Party aggrieved.*" [See PUBLIC HEALTH ACT, 2, 3.]
- "*Party becoming absolutely entitled.*" [See LANDS CLAUSES ACT, 29.]
- "*Party enabled by law to declare trust.*" [See TRUST, A 1.]
- "*Party interested.*" [See BANKRUPTCY, P 11; COSTS, 77; LANDS CLAUSES ACT, 32.]
- "*Party wall.*" [See TENANTS IN COMMON, 1.]
- "*Passing of Act.*" [See BANKRUPTCY, C 1.]
- "*Payable.*" [See SETTLEMENT, 11.]
- "*Per vessel or vessels.*" [See SALE, 3.]
- "*Periodical payments.*" [See APPORTIONMENT, 4.]



- "*Permitting drunkenness.*" [See ALHOUSE, 22, 23.]
- "*Person.*" [See PHARMACY ACT; PRACTICE, BB 6; VAGRANCY ACT.]
- "*Person or persons.*" [See PENALTY, 1.]
- "*Person acting in a fiduciary capacity.*" [See DEBTORS ACT, 4.]
- "*Person aggrieved.*" [See BANKRUPTCY, C 13; L 4, 5, 6, 7, 8.]
- "*Persons interested in the minerals.*" [See MINES, 19.]
- "*Personal chattels.*" [See BILL OF SALE, 1.]
- "*Personal estate, property, chattels and effects.*" [See WILL CONSTRUCTION, D 9.]
- "*Poor,*" "*poorest.*" [See CHARITY, 17.]
- "*Predecessor.*" [See SUCCESSION DUTY, 6.]
- "*Prejudice of purchaser.*" [See ADULTERATION OF FOOD, 3, 5.]
- "*Private friends.*" [See ALHOUSE, 15.]
- "*Privilege servitude or easement.*" [See SCOTCH LAW, 17.]
- "*Proceeding in a criminal cause.*" [See CRIMINAL LAW, 2.]
- "*Proceedings against Society.*" [See FRIENDLY SOCIETY, 6.]
- "*Promoter.*" [See COMPANY, A 1.]
- "*Property.*" [See BANKRUPTCY, F 19; SETTLEMENT, 21.]
- "*Property recovered or preserved.*" [See SOLICITOR, 37-45.]
- "*Proprietors.*" [See FRAUDS, STATUTE OF, 7.]
- "*Public company.*" [See APPORTIONMENT, 3.]
- "*Public highway.*" [See HIGHWAY, 1.]
- "*Published.*" [See COPYRIGHT, 9.]
- "*Purchaser.*" [See BANKRUPTCY, F 38; VOLUNTARY SETTLEMENT, 7.]
- "*Purposes of the undertaking.*" [See LANDS CLAUSES ACT, 44.]
- "*Question in the action.*" [See PRACTICE, W 81.]
- "*Raise.*" [See METROPOLIS, 1.]
- "*Rated or assessed.*" [See VESTRY, 2.]
- "*Real estate.*" [See ADMINISTRATION, 22; WILL CONSTRUCTION, D 6.]
- "*Real securities.*" [See TRUST, B 2, 3.]
- "*Realised numbers.*" [See FRIENDLY SOCIETY, 1.]
- "*Recognised British ship.*" [See SHIPPING LAW, E 7, 23.]
- "*Recovery of land.*" [See PRACTICE, Q 5.]
- "*Re-exchange.*" [See BILL OF EXCHANGE, 19.]
- "*Refreshment, resort and entertainment.*" [See PUBLIC ENTERTAINMENT, 2.]
- "*Refusal of application.*" [See PRACTICE, B 34.]
- "*Refuse of any business.*" [See METROPOLIS, 20.]
- "*Remainder.*" [See WILL CONSTRUCTION, E 16; L 1.]
- "*Remaining.*" [See WILL CONSTRUCTION, I 10.]
- "*Renewal*" or "*new license.*" [See ALHOUSE, 7.]
- "*Rent.*" [See BANKRUPTCY, D 38.]
- "*Rents and profits.*" [See HUSBAND AND WIFE, 46; VENDOR AND PURCHASER, 10.]
- "*Representatives.*" [See SETTLEMENT, 15.]
- "*Residing.*" [See BANKRUPTCY, M 24.]
- "*Residing within the United Kingdom.*" [See INCOME TAX, 6.]
- "*Residuary legatee.*" [See TRUST, E 3.]
- "*Residuary personal estate.*" [See WILL CONSTRUCTION, E 4.]
- "*Residue of personal estate.*" [See ADMINISTRATION, 22.]
- "*Reverend.*" [See CHURCH AND CLERGY, 11.]
- "*Right heir male.*" [See WILL CONSTRUCTION, H 26.]
- "*Right heirs.*" [See WILL CONSTRUCTION, H 28.]
- "*Right heirs of A. deceased and B.*" [See SETTLEMENT, 17.]
- "*Right of appeal.*" [See COUNTY COURT, 17.]
- "*Safe port.*" [See SHIPPING LAW, E 6.]
- "*Same cause.*" [See ASSAULT, 1, 2.]
- "*Say about.*" [See SHIPPING LAW, D 1.]
- "*Second cousins.*" [See WILL CONSTRUCTION, H 31.]
- "*Secured creditor.*" [See ATTACHMENT, 12, 14; BANKRUPTCY, D 22, 24, F 20, L 18; COMPANY, H 46; JUDGMENT, 3.]
- "*Securities.*" [See BANKRUPTCY, D 31.]
- "*See back.*" [See CARRIER, 9.]
- "*Seeds of another kind.*" [See ADULTERATION OF SEEDS.]
- "*Seised.*" [See WILL CONSTRUCTION, D 7, 9.]
- "*Separate maintenance of wife.*" [See HUSBAND AND WIFE, 27.]
- "*Servants.*" [See RAILWAY, 26.]
- "*Services incidental to the business of a carrier.*" [See RAILWAY, 25.]
- "*Settle.*" [See TRUST, A 2.]
- "*Settled estates.*" [See SETTLED ESTATES ACTS, 1.]
- "*Sewer.*" [See PUBLIC HEALTH ACT, 33.]
- "*Shareholder.*" [See RAILWAY, 1; COMPANY, F 9.]

- "*Sheep and all effects.*" [See WILL CONSTRUCTION, E 3.]
- "*Ship and (or) ships, steamer and (or) steamers.*" [See MARINE INSURANCE, 1.]
- "*Shipped.*" "*Shipment.*" [See SALE OF GOODS, 1.]
- "*Shipment by steamer or steamers.*" [See SALE OF GOODS, 2.]
- "*Shop.*" [See MARKET, 2.]
- "*Single woman.*" [See BASTARDY, 1.]
- "*So ill as not to be able to travel.*" [See EVIDENCE, 34.]
- "*Son or sons.*" [See SETTLEMENT, 8.]
- "*Special circumstances.*" [See COSTS, 68, 69, 78, 79.]
- "*Special ground.*" [See PRACTICE, K 21.]
- "*Specific contract.*" [See MINES, 15.]
- "*Square mile.*" [See COLONIAL LAW, 30.]
- "*Stocks or funds of foreign governments.*" [See TRUST, B 4.]
- "*Stranding.*" [See MARINE INSURANCE, 11.]
- "*Street.*" [See HIGHWAY, 13; METROPOLIS, 12, 13; STATUTE, 10.]
- "*Subscription or contribution to a prize.*" [See CONTRACT, 11.]
- "*Such prosecution.*" [See HIGHWAY, 5.]
- "*Suffering gaming.*" [See ALEHOUSE, 17-19.]
- "*Sufficient privy.*" [See PUBLIC HEALTH ACT, 10.]
- "*Superfluous lands.*" [See LANDS CLAUSES ACT, 44, 45.]
- "*Surviving children.*" [See WILL CONSTRUCTION, N 10.]
- "*Survivor.*" [See WILL CONSTRUCTION, N 7-10.]
- "*Sustained by reason of such information.*" [See LIBEL, 22.]
- "*Testamentary expenses.*" [See ADMINISTRATION, 53; EXECUTOR, 12.]
- "*The Court or a Judge.*" [See COSTS, 19.]
- "*The time being.*" [See WILL CONSTRUCTION, D 14.]
- "*Things duly done.*" [See PUBLIC HEALTH ACT, 13.]
- "*Things in action.*" [See BANKRUPTCY, E 17.]
- "*Three working days.*" [See SHIPPING LAW, G 3.]
- "*Title to land.*" [See PRACTICE, Q 5.]
- "*To be cancelled.*" [See SHIPPING LAW, D 2.]
- "*To be delivered in good order and condition.*" [See SHIPPING LAW, B 2.]
- "*To do justice.*" [See TRUST, A 10.]
- "*To the prejudice of the purchaser.*" [See ADULTERATION OF FOOD, 3.]
- "*Town.*" [See PUBLIC HEALTH ACT, 39.]
- "*Trading or other public company.*" [See AP-PORTIONMENT, 9.]
- "*Traffic.*" [See RAILWAY, 21.]
- "*Turn over.*" [See WILL FORMALITIES, 9.]
- "*Uncontrolled and irresponsible.*" [See TRUST, D 11.]
- "*Until.*" [See INJUNCTION, 29.]
- "*Usual covenants.*" [See LEASE, 4.]
- "*Valuable consideration.*" [See BANKRUPTCY, F 27.]
- "*Vested.*" [See HIGHWAY, 15.]
- "*Vested interest.*" [See ENDOWED SCHOOLS ACT, 2.]
- "*Waggon or cart road.*" [See WAY, 3.]
- "*Warren of conies.*" [See WARREN.]
- "*Watercourses.*" [See DRED, 1.]
- "*Whatever I may be possessed of at my decease.*" [See WILL CONSTRUCTION, E 2.]
- "*Who shall attain twenty-one.*" [See WILL CONSTRUCTION, L 5.]
- "*Wilful.*" [See NUISANCE, 18.]
- "*'Winning' coal.*" [See MINES, 18.]
- "*With all convenient speed.*" [See TRUST, E 7.]
- "*With all liberties and free customs belonging.*" [See MARKET, 4.]
- "*Withdrawal members.*" [See FRIENDLY SOCIETY, 1.]
- "*Without benefit of salvage but to pay loss on such part as shall not arrive.*" [See MARINE INSURANCE, 1.]
- "*Without having been married.*" [See SETTLEMENT, 12, 13, 14.]
- "*Without leaving issue.*" [See SETTLEMENT, 9.]
- "*Work and maintain.*" [See RAILWAY, 11.]
- "*Worked or navigated.*" [See THAMES, 2.]
- "*Working.*" [See MINES, 18.]
- "*Writing under their hand.*" [See BANKRUPTCY, F 50.]

## WORKING AGREEMENT.

(See RAILWAY.)

## WORKSHOP REGULATION ACT.

(See ELEMENTARY EDUCATION ACT, 8.)

## WRECK.

[Powers of general lighthouse harbour and conservancy authorities for removal of wreck. 40 & 41 Vict. c. 16; 43 & 44 Vict. c. 22. ss. 5, 7.]

## WRIT.

*Assistance, of.* [See RECEIVER.]

*Bills of Exchange Act, under.* [See BILL OF EXCHANGE, 28, 31.]

*De contumace capiendo.* [See CHURCH AND CLERGY, 27.]

*Elegit, of.* [See BANKRUPTCY, D 23.]

*Error, of.* [See PRACTICE, EE 2, 4.]

*Fieri facias, of.* [See SHERIFF.]

*Scire facias, of.* [See COMPANY, F.]

*Summons, of.* [See PRACTICE, II.]

## WRONGFUL DISMISSAL.

[See MASTER AND SERVANT, 2, 4.]

## YOUNGER SON.

*Becoming eldest.* [See WILL CONSTRUCTION L 10.]



## TABLE OF CASES.

	PAGE		PAGE
A., S. v. . . . .	238	Afrika, The, <i>Admiralty</i> 20 . . . . .	15
Aaron, Harris v. . . . .	196	Agar v. George, <i>Settlement</i> 22 . . . . .	569
Aaronson, ex parte, in re Aaronson, <i>Bankruptcy</i> K 9 . . . . .	66	Agar-Ellis v. Lascelles, in re Agar-Ellis, <i>Infant</i> 23 . . . . .	294
Abbis v. Burney, in re Finch, <i>Contingent Remainder</i> 2 . . . . .	178	Agincourt, The, <i>Admiralty</i> 63 . . . . .	19
Abbott, ex parte, in re Gourlay, <i>Bankruptcy</i> D 23 . . . . .	53	Agnew, Justices of, v. Jobson, <i>Action</i> 7 . . . . .	5
— v. Bates, <i>Evidence</i> 4 . . . . .	243	Agricultural Hall Co., Goslin v. . . . .	363
Abdy, Sneary v. . . . .	571	Ahearn v. Bellman, <i>Landlord and Tenant</i> 16 . . . . .	315
Aberayon Mutual Ship Insurance Society, Edwards v. . . . .	353	—, Sedgwick v. . . . .	315
Aberdeen Town Council v. Aberdeen University, <i>Scotch Law</i> 29 . . . . .	561	Aird v. Quick, in re Aird's Estate, <i>Advancement</i> 6 . . . . .	21
Abud v. Riches, <i>Costs</i> 42 . . . . .	195	Airedale Drainage Commissioners, Rhodes v. . . . .	31, 318
Acatos v. Burns, <i>Shipping Law</i> F 4 . . . . .	583	Aitchison v. Lohre, <i>Marine Insurance</i> 17 . . . . .	355
Accidental Death Insurance Co., in re, <i>Company</i> H 99 . . . . .	171	Aitken v. Dunbar, <i>Practice</i> W 63 . . . . .	472
Accrington Local Board v. Nutter, <i>Highway</i> 11 . . . . .	275	Aiton v. Stephen, <i>Harbour</i> . . . . .	272
Ackary, ex parte, in re Bolland, <i>Bankruptcy</i> M 46 . . . . .	77	— v. —, <i>Scotch Law</i> 11 . . . . .	559
Adair v. Young, <i>Patent</i> 24 . . . . .	422	— v. —, <i>Statute</i> 2 . . . . .	608
— v. —, <i>Practice</i> B 70 . . . . .	445	— v. —, <i>Toll</i> . . . . .	620
Adams, ex parte, <i>Solicitor</i> 2 . . . . .	594	Akroyd, Tunbridge Wells Local Board v. . . . .	515
—, ex parte, in re Griffin, <i>Bankruptcy</i> M 38, P 9 . . . . .	77, 79	Aktiebolaget Snickarefabrik, Westman v. . . . .	480
—, in re, ex parte Culley, <i>Bankruptcy</i> C 3 . . . . .	47	Albezette, in re, ex parte Smith, <i>Bankruptcy</i> M 13, P 3 . . . . .	74, 79
— v. Angell, <i>Mortgage</i> 21 . . . . .	380	Albion Assurance Soc., in re, <i>Insurance</i> 10 . . . . .	304
— v. Clementson, <i>Copyright</i> 14 . . . . .	188	—, in re, Winstone's Case, <i>Insurance</i> 9 . . . . .	304
— v. Hagger, <i>Lease</i> 10 . . . . .	234	Albion Life Assurance Soc., Blake v. . . . .	246, 464
—, Rivers, Lord, v. . . . .	213	Albion Steel and Wire Co., in re, <i>Company</i> H 44 . . . . .	164
Adams' Settled Estates, in re, <i>Settled Estates Acts</i> 10 . . . . .	565	— v. Martin, <i>Company</i> D 39 . . . . .	144
— Trusts, in re, <i>Trust</i> D 1 . . . . .	633	Alcock, ex parte, <i>Attachment</i> 15 . . . . .	37
Adamson, ex parte, in re Collie, <i>Bankruptcy</i> D 17 . . . . .	51	Alderson v. Maddison, <i>Frauds, Statute of</i> , 19 . . . . .	265
—, Copin v. . . . .	155, 257	Aldrich, Diss Urban Sanitary Authority v. . . . .	310
—, Jones v. . . . .	218, 581	Aldridge v. Hurst, <i>Parliament</i> 2 . . . . .	403
— v. Newcastle Steamship Freight Insurance Association, <i>Shipping Law</i> D 2 . . . . .	575	Alexander, ex parte, in re Eslick, <i>Bill of Sale</i> 7 . . . . .	89
—, Reg. v. . . . .	350	—, <i>Fiatures</i> 2 . . . . .	256
—, River Weir Commissioners v. . . . .	273	—, in re, in re Eslick, ex parte Phillips, <i>Bankruptcy</i> F 12 . . . . .	58
Adcock, Bird v. . . . .	274	Alexander, Hubbard v. . . . .	682
Adie v. Clark, <i>Patent</i> 16, 18 . . . . .	420, 421	Alfaro, Ranken v. . . . .	85
Adnam v. Earl of Sandwich, <i>Limitations, Statute of</i> , 9 . . . . .	340	Alhambra, The, <i>Shipping Law</i> F 3 . . . . .	582
Advocate-General of Bengal, Mayor of Lyons v. . . . .	107	Alice, The, The Constantine v. . . . .	18
		Alina, The, <i>County Court</i> 8 . . . . .	202
		Alison, in re, Johnson v. Mounsey, <i>Mortgage</i> 5 . . . . .	377
		Alison's Trusts, in re, in re Johnson, <i>Infant</i> 6 . . . . .	291

	PAGE		PAGE
Allan, Kipling v. . . . .	156	Andrade, Lazarus v. . . . .	94
Allan's Executors' Claim, in re United Kingdom Electric Telegraph Co., <i>Company</i> H 84 . . . . .	169	Andrews' Case, in re Church and Empire Fire Insurance Co., <i>Company</i> D 64 . . . . .	149
Allen, in re, Davies v. Chatwood, <i>Solicitor</i> 27 . . . . .	598	Andrew, ex parte, in re Andrew, <i>Bankruptcy</i> M 90 . . . . .	76
—, in re, Hincks v. Allen, <i>Settlement</i> 4 . . . . .	566	— v. Andrew, <i>Executory Devises</i> 2 . . . . .	252
— v. Bewsey, <i>Copyholds</i> 1 . . . . .	185	— v. —, <i>Infant</i> 21 . . . . .	293
— Birmingham, Corporation of, v. . . . .	371	— v. —, <i>Will Construction</i> I 4 . . . . .	671
— Crookes v. . . . .	587	—, Fulton v. . . . .	12
— v. Jackson, <i>Will Construction</i> O 6 . . . . .	680	Andrews, Budge v. . . . .	387
—, Griffin v. . . . .	196	Andrews, ex parte, in re Fells, <i>Bankruptcy</i> F 13 . . . . .	58
—, Hincks v. . . . .	566	Andrews' Trusts, in re, <i>Bankruptcy</i> F 37 . . . . .	61
— v. Lloyd, in re Lloyd, <i>Receiver</i> 1 . . . . .	537	Aneroid, The, <i>Admiralty</i> 17 . . . . .	15
— Marbella Iron Co. v. . . . .	278	—, <i>Shipping Law</i> O 2 . . . . .	589
— Massey v. . . . .	170, 198, 244	Angell, Adams v. . . . .	380
— v. New Gas Co., <i>Master and Servant</i> 9 . . . . .	362	— v. Baddeley, <i>Interpleader</i> 3 . . . . .	306
— v. Richardson, <i>Specific Performance</i> 15 . . . . .	603	Angerstein, Dicker v. . . . .	379, 648
— v. Seckham, <i>Light and Air</i> 10 . . . . .	338	Anglo-American Telegraph Co., <i>Direct</i> United States Cable Co. v. . . . .	124
Alley's College, Dulwich, in re, <i>Endowed Schools Act</i> 1 . . . . .	240	Anglo-American Telegraph Co. v. Spurling, <i>Company</i> D 91 . . . . .	153
Allhuesen v. Labouchere, <i>Practice</i> P 17 . . . . .	455	—, Simm v. . . . .	153
Alliance Bank of Simla v. Carey, <i>Limitations, Statute of</i> 10 . . . . .	340	Anglo-Australian and Universal Family Life Assurance Co., in re, <i>Company</i> G 5 . . . . .	158
Allison v. Bristol Marine Insurance Co., <i>Marine Insurance</i> 22 . . . . .	357	Anglo-French Co-operative Soc., in re, <i>Parliament</i> 1 . . . . .	403
Allkins v. Jupe, <i>Marine Insurance</i> 1 . . . . .	351	Anglo-Italian Bank v. Davies, <i>Judgment</i> 2 . . . . .	307
Allman, Doherty v. . . . .	298	—, Moor v. . . . .	164
Alloways, Leonard v. . . . .	406	Anglo-Moravian Hungarian Junction Railway Co., in re, ex parte Watkin, <i>Company</i> H 24 . . . . .	161
All Saints, Wigan, Reg. v. . . . .	118, 350	Anglo-Peruvian Bank, Banco de Lima v. . . . .	86
Alston, Wilkinson v. . . . .	496	Angus v. Dalton, <i>Easement</i> 1 . . . . .	235
Alt, De Busche v. . . . .	495	Anna, The, <i>Admiralty</i> 15, 16 . . . . .	15
Altman v. Royal Aquarium Soc., <i>Covenant</i> 11 . . . . .	207	Annandale, The, <i>Merchant Shipping Acts</i> 3 . . . . .	364
Ambler v. Lindsay, in re Lovett, <i>Executor</i> 15 . . . . .	250	—, <i>Shipping Law</i> I 1 . . . . .	585
Ambrose v. Evelyn, <i>Practice</i> W 92 . . . . .	476	Annunciation, Church of the, in re, <i>Church and Clergy</i> , 13 . . . . .	114
Ambrose Lake Tin and Copper Co., in re, Clarke's Case, <i>Company</i> D 60 . . . . .	148, 168	Ansdell v. Ansdell, <i>Divorce</i> 33 . . . . .	231
—, <i>Practice</i> B 52 . . . . .	443	Anson v. Potter, <i>Trust</i> D 8 . . . . .	633
— Taylor's Case, <i>Company</i> D 60, H 76 . . . . .	148, 168	Anstey v. North and South Woolwich Sub-way Co., <i>Practice</i> P 18 . . . . .	455
—, <i>Practice</i> B 52 . . . . .	443	Antrobus, Matthews v. . . . .	384
— Taylor, ex parte, ex parte Moss, <i>Company</i> D 23 . . . . .	140	Appleby, in re, ex parte Brown, <i>Debtors Act</i> 18 . . . . .	222
Amerham Burial Board, Crowhurst v. . . . .	392	Appleford v. Judkins, <i>Lord Mayor's Court</i> 5 . . . . .	345
Ames v. Cadogan; Ames v. Taylor, <i>Power</i> 14 . . . . .	434	Appleton v. Chapel Town Paper Co., <i>Practice</i> U 7 . . . . .	461
Amherst, Austin v. . . . .	128	Appleyard, Blake v. . . . .	194
Amor, Leatham v. . . . .	94	Appleyard's Case, in re Great Australian Gold Mining Co., <i>Company</i> D 70 . . . . .	149
Amos v. Chadwick, <i>Practice</i> F 2 . . . . .	447	Apden v. Seddon, Preston v. Seddon, <i>Mines</i> 6 . . . . .	371
Ampthill, The, <i>Admiralty</i> 44 . . . . .	17	Arbuthnot, ex parte, in re Entwistle, <i>Bill of Exchange</i> 23 . . . . .	85
Amstel, The, <i>Admiralty</i> 14 . . . . .	15	Arbuthnot, Duke of Norfolk v. . . . .	112, 247
Ancona v. Rogers, <i>Bill of Sale</i> 42 . . . . .	98	Arbroath (Presbytery of), Walker v. . . . .	557
— v. Waddell, <i>Forfeiture</i> 2 . . . . .	259	Arckedeckne v. Howard Vaughan, <i>Principal and Surety</i> 11 . . . . .	498
Andalusian, The, <i>Shipping Law</i> E 7, 23 . . . . .	579, 581	Archibald, Smith v. . . . .	560
Anders Knappe, The, <i>Shipping Law</i> T 7 . . . . .	591	Arden, Pilcher v. . . . .	599
Anderson v. Bank of Columbia, <i>Production</i> 12 . . . . .	507	Ardaley (Inhabitants of), Reg. v. . . . .	274
— v. Butler's Wharf Co., <i>Mortgage</i> 11 . . . . .	378	Arizona, The, <i>Admiralty</i> 60 . . . . .	19
— v. Morice, <i>Marine Insurance</i> 4 . . . . .	353		
— v. Oppenheimer, <i>Covenant</i> 17 . . . . .	208		
—, Smith v. . . . .	135		
—, Wagstaff v. . . . .	589		
Anderson's Case, in re Wedgewood Coal and Iron Co., <i>Company</i> D 58 . . . . .	147		
Anderston Foundry Co., Harrison v. . . . .	419		

	PAGE		PAGE
Arizona, <i>The, Merchant Shipping Acts</i> 5	365	Aston Local Board, <i>Roderick v.</i>	517
Arkle, <i>Williams v.</i>	670	Astor, in the goods of, <i>Probate</i> 19	503
Arkwright v. Evans, <i>Mines</i> 23	375	Astrup, ex parte, in re Le Fevre, <i>Bankruptcy</i> C 4	47
— v. Newbold, <i>Company</i> B 2	134	Atherley v. Harvey, <i>Practice</i> P 12	455
— v. —, <i>Damages</i> 9	216	—, Rochfort v.	512
Armitage, in re, ex parte Good, <i>Bankruptcy</i> D 15	51	Atherton, Thomas v.	414
—, <i>Partnership</i> 20	416	Athill, in re, Athill v. Athill, <i>Mortgage</i> 19	380
— v. Elworthy, <i>Practice</i> A 7	438	Atkins, Bennett v.	406, 535
Armstrong, McKinnon v.	557	Atkins' Estate, in re, <i>Practice</i> U 30	464
—, Marescaux v.	661	Atkinson, Bewley v.	336
—, Newbiggin-by-the-Sea Gas Co. v.	595	— v. Newcastle and Gateshead Waterworks Co., <i>Action</i> 2	3
Armytage, in re, ex parte Moore and Robinson's Banking Co., <i>Bill of Exchange</i> 11	89	Attenborough v. London and St. Katharine's Dock Co., <i>Interpleader</i> 1	305
— v. Wilkinson, <i>Colonial Law</i> 48	126	Attorney-General v. Basingstoke, Mayor of, <i>Nuisance</i> 4	598
Arnold, ex parte, in re Wright, <i>Bankruptcy</i> F 27	60	— v. Biphosphated Guano Co., <i>Covenant</i> 22	209
— v. Arnold, in re Arnold, <i>Specific Performance</i> 23	605	— v. —, <i>Vendor and Purchaser</i> 31	648
— v. Cheque Bank, <i>Negligence</i> 22	395	— v. Birmingham, Corporation of, <i>Practice</i> U 29	463
— v. —, <i>Trover</i> 4	628	— v. Brecon, Mayor of, <i>Municipal Corporation</i> 16	389
— v. City Bank, <i>Negligence</i> 22	395	— v. Charlton, <i>Succession Duty</i> 2	611
— v. —, <i>Trover</i> 4	628	— v. Constable, <i>Crown</i> 5	212
Arnott, Casey v.	479	—, De Thoren v.	559
Arrowsmith, ex parte, in re Leveson, <i>Church</i> 18	114	— v. Dowling, <i>Succession Duty</i> 8	613
—, <i>Pow</i>	426	—, Edmunds v.	481
Arthur v. Mackinnon, <i>Legacy</i> 8	329	— v. Furness Railway Co., <i>Railway</i> 6	523
— v. Wynne, in re Arthur's Estate, <i>Settlement</i> 24	569	— v. Gas Light and Coke Co., <i>Nuisance</i> 6	398
Arthur Average Association, in re, <i>Company</i> H 63	167	— v. Great Eastern Railway Co., <i>Practice</i> B 25	441
—, <i>Marine Insurance</i> 30	358	— v. —, <i>Railway</i> 10	524
Artinstall, Davis v.	37	— v. Great Western Railway Co., <i>Railway</i> 34	530
Artistic Colour Printing Co., in re, <i>Company</i> H 87	169	— Lamplough, <i>Statute</i> 11	609
Artisans and Labourers' Dwellings Improvement Act, 1875, in re, ex parte Jones, <i>Lands Clauses Act</i> 40	322	— v. London and North Western Railway Co., <i>Railway</i> 32	530
Artley, York Union Banking Co. v.	383	—, Mansell v.	331
Ashdown v. Ingamells, <i>Damages</i> 10	216	— v. Metropolitan Railway Co., <i>Practice</i> K 12	450
Ashendon v. London and Brighton Railway Co., <i>Railway</i> 23	528	— v. Moore, <i>Municipal Corporation</i> 18	389
Ashley v. Ashley, <i>Administration</i> 12	7	— v. Mutual Tontine Westminster Chambers Association, <i>Inhabited House Duty</i> 1	295
— v. Taylor, <i>Practice</i> W 25	468	—, North London Railway Co. v.	529
Ashton v. Stock, <i>Mines</i> 2	370	— v. Northumberland, Duke of, <i>Charity</i> 17	107
—, Tarry v.	391	—, Pocock v.	107
Ashwin, Davis v.	478	— v. St. John's Hospital, <i>Charity</i> 28	110
Ashworth v. Hebden Bridge Local Board, <i>Injunction</i> 2	296	— v. Sunderland, Corporation of, <i>Municipal Corporation</i> 15	389
— v. Hopper, <i>Parliament</i> 11	404	— v. Swansea Improvements and Tramways Co., <i>Practice</i> B 68	445
— v. Munn, <i>Charity</i> 6	106	— v. Tomline, <i>Copyholds</i> 2	185
— v. Outram, <i>Husband and Wife</i> 25	282	— v. —, <i>Crown</i> 2	211
— v. — (No. 2), <i>Practice</i> B 18	440	— v. —, <i>Mistake</i> 2	376
Askew v. Woodhead, <i>Tenant for Life</i> 6	615	— v. —, <i>Practice</i> R 4	457
Aspdon v. Seddon, Preston v. Seddon, <i>Mines</i> 6	371	— v. Wandsworth District Board of Works, <i>Metropolis</i> 10	367
Aspinall, Reg. v.	175	— v. Westminster Chambers Association, <i>Inhabited House Duty</i> 1	295
Asprey, Mundy v.	264	— v. Willshire, <i>Practice</i> N	458
Asquith v. Molineaux, <i>Practice</i> HH 4	485	Attorney-General for Isle of Man v. Mylchreest, <i>Colonial Law</i> 24	123
Associated Home Co. v. Whicheord, <i>Practice</i> W 78	474	— v. —, <i>Isle of Man</i>	307
Association of Land Financiers, in re, <i>Company</i> H 20	161		
Astley v. Micklethwaite, <i>Contingent Remainder</i> 1	177		

	PAGE		PAGE
Attorney-General for Quebec v. Queen Insurance Co., <i>Stamp</i> 8	607	Bailey, ex parte, in re Lancaster, <i>Bankruptcy</i> L 8	70
Attorney-General of New South Wales, Platt v.	124, 233	—, in re, Bailey v. Bailey, <i>Administration</i> 25	9
Attorney-General of Victoria, Woolley v.	126	— v. Holmes, in re Ives, <i>Settled Estates Acts</i> 5	565
Attorneys and Solicitors Act, in re, <i>Solicitor</i> 21	597	— v. Jamieson, <i>Highway</i> 1	273
Attree v. Hawe, <i>Charity</i> 9	106	—, London Tramways Co. v.	180
Attwater, ex parte, in re Turner, <i>Bankruptcy</i> M 3	73	— v. Piper, Hooper v. Smart, <i>Administration</i> 4	6
Attwood v. Case, <i>Merchant Shipping Acts</i> 7	365	—, Read v.	52
— v. Sellar & Co., <i>Marine Insurance</i> 25	387	— v. Robertson, <i>Patent</i> 8	419
— v. —, <i>Shipping Law</i> L 5	587	—, Swinton v.	683
Atwood v. Chichester, <i>Husband and Wife</i> 33	283	Baillie's Trusts, in re, <i>Practice</i> B 27	441
—, <i>Practice</i> R 2	456	—, <i>Trustees Relief Act</i> 9	640
Austin, ex parte, in re Austin, <i>Bankruptcy</i> D 41	56	Bain v. Brand, <i>Sootch Law</i> 13	559
—, in re, ex parte Sheffield, <i>Bankruptcy</i> H 14	65	—, Farmeloe v.	224, 242
—, in re, ex parte Yalden, <i>Solicitor</i> 32	598	Bainbridge, in re, ex parte Fletcher, <i>Bankruptcy</i> F 14	58
— v. Amherst, <i>Common</i> 2	128	Baines v. Wormsley, <i>Administration</i> 55	12
— v. Austin, Austin v. Boyce, <i>Trust</i> D 9	633	— v. —, <i>Costs</i> 82	199
— v. —, Austin v. Jackson, <i>Partnership</i> 29	417	Baird, Matson v.	529
— v. Mead, in re Mead, <i>Donatio Mortis Causa</i> 2	234	Baise, Hackett v.	338
— v. Jackson, <i>Partnership</i> 29	417	Baker, ex parte, in re Bellman, <i>Bill of Exchange</i> 17	84
Australia, Bank of, v. United Hand in Hand, <i>Colonial Law</i> 42	126	— v. Baker, <i>Divorce</i> 14	228
Australian Direct Steam Navigation Co., in re, Miller's Case, <i>Company</i> D 9	138	— v. Carter, <i>Coal Mines</i> 1	118
Aveland, Lord, v. Lucas, <i>Locomotive</i> 4	344	— v. —, <i>Mines</i> 19	374
Ayers, Levi v.	126	— v. Gray, <i>Mortgage</i> 29	381
—, Willans v.	85	—, Harnett v.	643
Ayles Trusts, in re, <i>Will Construction</i> H 12	668	— v. Oakes, <i>Costs</i> 19	192
Aylesbury and Buckingham Railway Co., Latimer v.	529	— v. Portsmouth, Mayor of, <i>Public Health Act</i> 11	513
Aylmer, Morrice v.	330	— v. Sebright, <i>Waste</i> 4	664
Aynard, Belmonte v.	306	— v. Spon Lane Co.	119
Aynsley, Higginbottom v.	448	—, West v.	48, 564
Babbidge, ex parte, in re Pooley, <i>Bankruptcy</i> F 16	58	Balbinnie, ex parte, <i>Bankruptcy</i> L 9, 18	70, 71
Babcock v. Lawson, <i>Pledge</i>	426	—, in re, ex parte Jameson, <i>Bankruptcy</i> L 18	71
Back v. Hay, <i>Practice</i> HH 13	485	Ball, ex parte, in re Shepherd, <i>Bankruptcy</i> D 37	55
Backhouse v. Charlton, <i>Mortgage</i> 38	383	— v. Kemp-Welch, <i>Partition</i> 24	412
— v. —, <i>Partnership</i> 14	414	Ball's Patent, in re, <i>Patent</i> 27	423
Bacon, Spice v.	301	— Settlement, in re, <i>Settlement</i> 12	568
— v. Turner, <i>Practice</i> BB 20	480	Balls, Bemment v.	462
Baddeley, Angell v.	306	Ballard v. Marsden, <i>Executor</i> 8	249
— v. Baddeley, <i>Trust</i> A 2	628	— v. Robins, <i>Parliament</i> 26	407
— v. —, <i>Voluntary Settlement</i> 10	652	— v. Shott, <i>Vendor and Purchaser</i> 27	648
—, Porter v.	616	Balls, Bemment v., in re Ward	462
Bagnall v. Carlton, <i>Company</i> A 7	133	—, Gaskin v.	299
—, <i>Practice</i> D 3	447	Bamford, in re, ex parte Games, <i>Bankruptcy</i> B 6	43
— v. Villar, <i>Mortgage</i> 12	378	Banagher Distillery Co., Walker v.	297
Bagot v. Easton, <i>Practice</i> W 35	469	Banco de Lima v. Anglo-Peruvian Bank, <i>Bill of Exchange</i> 26	86
— v. —, <i>Practice</i> W 61	472	Banco de Portugal, ex parte, in re Hooper, <i>Bankruptcy</i> D 21	52
Baghaw v. Buxton Local Board of Health, <i>Highway</i> 19	276	—, <i>Bankruptcy</i> M 9	74
—, ex parte, in re Ker, <i>Bankruptcy</i> D 34	54	— v. Waddell, <i>Bankruptcy</i> D 21	52
Baghaw's Trusts, in re, <i>Will Construction</i> I 6	672	Bangham, in the goods of, <i>Will Formalities</i> 25	684
Baigent v. Baigent, <i>Probate</i> 80	504	Banister, in re, Broad v. Munton, <i>Vendor and Purchaser</i> 3	648
		Bank of British North America v. Strong, <i>Label</i> 3	332



## TABLE OF CASES.

697

PAGE	PAGE
Bank of British North America v. Strong, <i>Malicious Prosecution</i> 1 . . . . .	Barnett, Patching v. . . . . 27, 540
Bank of Columbia, Anderson v. . . . .	—, Watt v. . . . . 479
Bank of India v. Wilson, <i>Inhabited House Duty</i> 4 . . . . .	Barnfather, in re, ex parte Yewdall, <i>Bankruptcy</i> D 27 . . . . .
Bank of Montreal v. Cameron, <i>Practice</i> I I 6 . . . . .	Barnham, Smith v. . . . . 400
Bank of New South Wales, Barclay v. . . . .	Barrand, in re, ex parte Cochrane, <i>Bill of Sale</i> 16 . . . . .
— v. Owston, <i>Banking Company</i> 3 . . . . .	Barrett, Carey v. . . . . 43
— v. —, <i>Colonial Law</i> 31 . . . . .	—, Leggott v. . . . . 615
Bank of Whitehaven, Dawson v. . . . .	Barrow, City Bank v. . . . . 253
Banks, Mackenzie v. . . . .	—, ex parte, in re Worsdell, <i>Sale of Goods</i> 28 . . . . .
Banks, ex parte, in re Dowling, <i>Bankruptcy</i> F 56 . . . . .	Barrow Haematite Steel Co., Duke of Devonshire v. . . . .
Bann Reservoir, Proprietors of, Geddis v. . . . .	Barrow Shipbuilding Co., Wimshurst, Hollick & Co. v. . . . .
Banner, ex parte, in re Tappenbeck, <i>Bill of Exchange</i> 21 . . . . .	Barrow's Case, in re Stapleford Colliery Co., <i>Company</i> D 62 . . . . .
Bannister, Brice v. . . . .	— Trade Mark, in re, <i>Trade Mark</i> 3, 4 . . . . .
—, Martin v. . . . .	Barrow-in-Furness, Overseers of, Leicester Waterworks Co. v. . . . .
Banque Franco Egyptienne, Grant v. . . . .	—, Westbury-on-Severn Union v. . . . .
Barber, in re, Dardier v. Chapman, <i>Husband and Wife</i> 14 . . . . .	Barrow-in-Furness and Northern Counties Land and Investment Co., in re, <i>Company</i> D 71 . . . . .
— v. Callow, <i>Carriage</i> . . . . .	Barry, Tottenham v. . . . . 480
—, Collison v. . . . .	530
— v. Gregson, <i>Husband and Wife</i> 39 . . . . .	Bartholomew v. Freeman, <i>Practice</i> O 1 . . . . .
— v. Mackrell, <i>Practice</i> R 5 . . . . .	—, Manvers, Earl, v. . . . . 274
—, Swann v. . . . .	440
—, Willmott v. . . . .	Barton v. Birmingham, Town Clerk of, <i>Parliament</i> 17 . . . . .
— v. Wood, <i>Will Construction</i> G 9 . . . . .	— v. Titmarsh, <i>Prohibition</i> 6 . . . . .
Barber's Case, in re East Norfolk Tramways Co., <i>Company</i> D 8 . . . . .	Barton Regis Union v. County of Berks, <i>Lunatic</i> 25 . . . . .
Barbour, Williamson v. . . . .	— v. —, <i>Poor Law</i> 18 . . . . .
Barclay v. Bank of New South Wales, <i>Practice</i> W 54 . . . . .	—, Guardians of, v. Liverpool, Overseers of, <i>Lunatic</i> 22 . . . . .
—, Clyde Navigation v. . . . .	— v. —, <i>Poor Law</i> 15 . . . . .
Baring v. Stanton, <i>Principal and Agent</i> 24 . . . . .	Barwick, Hinchliffe v. . . . . 550
Barker, ex parte, in re Bellman, <i>Bill of Exchange</i> 17 . . . . .	—, Soper v. . . . . 387
—, in re, ex parte Kilner, <i>Bankruptcy</i> B 16 . . . . .	49
— v. Cox, Cox v. Barker, <i>Practice</i> W 43 . . . . .	—, Abbott v. . . . . 243
— v. —, <i>Specific Performance</i> 21 . . . . .	— v. —, <i>Practice</i> A 5 . . . . .
— v. Hemming, <i>Costs</i> 85 . . . . .	—, Hedley v. . . . . 312, 509
—, Lowrey v. . . . .	23
—, McAndrew v. . . . .	572
—, Ray v. . . . .	489
Barker's Estate, in re, Hetherington v. Longrigg, <i>Will Construction</i> E 11 . . . . .	Bath's Case, in re Norwich Provident Insurance Society, <i>Company</i> H 60, 61 . . . . .
— Trusts, in re, <i>Trust</i> D 2 . . . . .	—, Insurance 11 . . . . . 304
Barnard, in re, ex parte Leman, <i>Bill of Sale</i> 17 . . . . .	676
Barnes v. Chipp, <i>Adulteration of Food</i> 2 . . . . .	
—, Cross v. . . . .	
— v. Edleston, <i>Nuisance</i> 13 . . . . .	
— v. —, <i>Public Health Acts</i> 38 . . . . .	
—, Elphick v. . . . .	
—, Hopewell v. . . . .	
— v. Loach, <i>Easement</i> 3 . . . . .	
Barnet, Phillips v. . . . .	
Barnet Rural Sanitary Authority, Beg. v. . . . .	
Barnett, ex parte, in re Reed, <i>Bankruptcy</i> H 11 . . . . .	
—, Carey v. . . . .	
—, Lewes, Earl of, v. . . . .	
—, Mirehouse v. . . . .	

DIGEST, 1875-1880.

4 U

	PAGE		PAGE
Bathurst, Borough of, v. Macpherson, <i>Colonial Law</i> 32	124	Bell, Jenny v.	42
Batley, Mayor of, Hall v.	518	—, McCorquodale v.	506
Batson v. Newman, <i>Contract</i> 14	180	— v. Master in Equity of Supreme Court of Victoria, <i>Colonial Law</i> 49	127
Batten, Taylor v.	507	— v. North Staffordshire Railway Co., <i>Practice B</i> 46	443
Batt v. Price, <i>County Court</i> 29	204	— v. Receiver of Land Revenue, <i>Colonial Law</i> 37	125
Battersby, Bishop of St. Albans v.	206	— v. Turner, <i>Administration</i> 48	12
Battersby's Trusts, in re, <i>Trustee Relief Act</i> 8	640	— v. —, <i>Practice Z</i> 2	478
Battison, Minors v.	431, 629	—, Weir v.	144
Bangham, in the goods of, <i>Will For- malities</i> 25	684	Bell, Lang and others' Case, in re City of Glasgow Bank, <i>Trustee D</i> 14	634
Baum, ex parte, in re Baum, <i>Bankruptcy K</i> 24	69	Bellis's Trusts, in re, <i>Will Construction E</i> 6	663
—, in re, ex parte Cooper (No. 2), <i>Bank- ruptcy B</i> 14, 15	45	Bellman, Ahearn v.	315
—, <i>Bill of Sale</i> 12	90	—, in re, ex parte Baker, <i>Bill of Ex- change</i> 17	84
—, in re, ex parte Isaacs, <i>Bankruptcy M</i>	75	Belmonte v. Aynard, <i>Interpleader</i> 7	306
—, in re, ex parte Evans, <i>Bankruptcy K</i> 11	67	Bemment v. Balls, in re Ward, <i>Practice U</i> 16	462
Baxendale v. Bennett, <i>Bill of Exchange</i> 12	84	Benbow & Sons v. Low, Son & Haydon, <i>Practice W</i> 91	476
Baxter, Jones v.	459	Benecke v. Frost, <i>Practice HH</i> 28	487
Baylis, Pickard v.	407	— v. Whittall, <i>Colonial Law</i> 22	123
—, Pilley v.	486	Benfieldside Local Board v. Consett Iron Co., <i>Mines</i> 5	371
— v. Tyssen Amhurst, <i>Common</i> 1	128	Benjamin, Bradley v.	178
Bayly, ex parte, in re Hart, <i>Bankruptcy N</i> 3	78	Bennet v. Bennet, <i>Advancement</i> 3	20
Beachim, Braham v.	623	— v. Moore, <i>Practice M</i> 1	452
Beadon, Sykes v.	346, 650	Bennett, in re, ex parte Close, <i>Bankruptcy K</i> 19	68
Beal v. Ford, <i>Parliament</i> 14	405	—, <i>Legacy</i> 5	328
Beale, in re, ex parte Corbridge, <i>Bankruptcy D</i> 10	50	—, <i>Will Construction G</i> 10	666
Beane, Shephard v.	472	—, in re, ex parte Glave, <i>Bankruptcy K</i> 19	68
Beard, Wood v.	262	—, <i>Legacy</i> 5	328
Beardsall, Reg. v.	388	—, <i>Will Construction G</i> 10	666
Beatson, Leeds and County Bank v.	414	— v. Atkins, <i>Parliament</i> 18	406
—, Mycock v.	261, 262, 416	— v. —, <i>Rates</i> 17	535
—, Yorkshire Banking Co. v.	414	—, Baxendale v.	84
Beauchamp, Braham v.	623	—, Coggins v.	275
Beaumont, Gardner v.	478	— v. Gamgee, <i>Estoppel</i> 3	241
Beazley, Norris v.	86, 462, 474, 475	— v. Holdsworth, <i>Election</i> 3	237
Beckwith v. Beckwith, <i>Will Construction N</i> 5	677	— v. —, <i>Portions</i> 2	430
Beddington v. Beddington, <i>Probate</i> 29	504	— v. Lord Bury, <i>Practice E E</i> 5	482
Beddow v. Beddow, <i>Arbitration</i> 15	32	— v. Moore, <i>Practice M</i> 1	452
— v. —, <i>Injunction</i> 1	296	—, Thompson v.	249
Bedell, in re, ex parte Crosbie, <i>Bankruptcy B</i> 25	46	Bent v. Roberts, <i>Inhabited House Duty</i> 3	295
—, in re, ex parte Gilbey, <i>Bankruptcy L</i> 30	73	— v. Wakefield Bank, <i>Reward</i>	544
Bedford v. Kirkpatrick, <i>Scotch Law</i> 30	561	Bentham v. Hoyle, <i>Railway</i> 15	526
Bedminster Union, Keynsham Union v.	428	— v. Wilson, in re Parker, <i>Will Con- struction H</i> 31	670
—, Reg. v.	533	Bentham Mills Spinning Co., in re, <i>Com- pany D</i> 93	154
Bedwell v. Wood, <i>Arbitration</i> 12	31	Bentinck v. Portland, Duke of, <i>Remoteness</i> 8	451
Beech, Blake v.	270	Bentley, ex parte, in re Regent United Stores Co., <i>Company D</i> 69	149
Beer v. Walker, <i>Sale of Goods</i> 6	549	— v. Rotherham and Kimberworth Local Board, <i>Public Health Act</i> 15	514
Beeston v. Beeston, <i>Contract</i> 9	179	— v. —, <i>Statute</i> 7	608
Beetham, Shephard v.	106	Benyon v. Benyon, <i>Divorce</i> 29	230
Begbie v. Phosphate Sewage Co., <i>Action</i> 5	4	Berdan v. Birmingham Small Arms and Metal Co., <i>Practice B</i> 83	441
Belhaven and Stanton Peerage, <i>Evidence</i> 29	247	— v. Greenwood, <i>Practice W</i> 11	467
Bell, in re, ex parte Clarke, <i>Bankruptcy F</i> 8	57		
—, in the goods of, <i>Executor</i> 2	249		
—, Blann v.	8		
—, Bowey v.	191		
— v. Corporation of Quebec, <i>Colonial Law</i> 18	122		

	PAGE		PAGE
Beresford v. Browning, <i>Partnership</i> 23	416	Bird v. Adcock, <i>Highway</i> 8	274
Bergheim v. Great Eastern Railway Co., <i>Carrier</i> 7	101	—, Kemp v.	206
Berkeley v. Standard Investment Co., <i>Com- pany</i> H 78	168	Bird's Trusts, in re, <i>Settlement</i> 29	570
— v. —, <i>Practice</i> P 7	454	Birkett, in re, <i>Charity</i> 13	107
—, Wollaston v.	280	Birmingham and Midland Land and In- vestment Co., Vallance v.	463
Berks, County of, Barton Regis Union v.	349, 430	Birmingham Canal Co. v. Cartwright, <i>Pre- emption</i>	490
Berkshire Justices, Reg. v.	22	— v. —, <i>Remoteness</i> 2	540
Berringer v. Great Eastern Railway Co., <i>Master and Servant</i> 10	362	—, Thomas v.	392
— v. —, <i>Negligence</i> 26	396	—, Warwick and Birmingham Canal Co. v.	530
Berry v. Berry, <i>Will Construction</i> I 1	671	Birmingham, Corporation of, v. Allen, <i>Mines</i> 4	371
— v. Exchange Trading Co., <i>Prac- tice</i> C 2	445	— A. G. v.	461
—, Reg. v.	627	Birmingham Estates Co. v. Smith, <i>Practice</i> W 63	472
Berthier, ex parte; in re Hinks, <i>Bankruptcy</i> B 23	46	Birmingham Small Arms Co., Berdan v.	441
Besant, in re, <i>Husband and Wife</i> 60	287	Birmingham Syndicate v. Swindell, <i>Prac- tice</i> B 24, HH 16	441, 486
—, <i>Infant</i> 24	294	Birmingham, Town Clerk of, Barton v.	406
— v. Cox, <i>Will Construction</i> L 16	676	Birnie, ex parte; Reg. v. Fletcher, <i>Criminal</i> <i>Law</i> 1	210
— v. Wood, <i>Husband and Wife</i> 60	287	Birt v. Burt, <i>Principal and Agent</i> 7	493
Besley v. Besley, <i>Lease</i> 9	324	Biscoe, Keene v.	378
Bessela v. Stern, <i>Evidence</i> 24	246	Bishop, ex parte; in re Fox, Walker & Co., <i>Bill of Exchange</i> 32	86
Bessemer, De Gaspe v.	120	—, in re; ex parte Langley; ex parte Smith, <i>Bankruptcy</i> N 6	78
Bessemer Steel and Ordnance Co., in re, <i>Company</i> I 3	172	—, —, <i>Telegraph</i> 3	614
Best v. Hamand, <i>Vendor and Purchaser</i> 5	644	—, Collins v.	360
— Penryn, Mayor of, v.	359	—, Reg. v.	349
Bestwick, in re; ex parte Bestwick, <i>Bank- ruptcy</i> L 17	71	— v. Wall, <i>Husband and Wife</i> 40	284
— in re; ex parte Hodgkinson, <i>Bank- ruptcy</i> L 17	71	Bishop of Oxford, Willis v.	117
Betteley, Hamlyn v.	92	Bishop of St. Albans v. Battersby, <i>Cove- nant</i> 6	206
Bettini v. Gye, <i>Contract</i> 31	183	Bishop Wearmouth, Burial Board of, Reg. v.	96
Betts v. Doughty, <i>Probate</i> 31	504	— Overseers of, Reg. v.	534
— v. Great Eastern Railway Co., <i>Lands</i> <i>Clauses Act</i> , 44	322	Bishopp, Tunbridge Wells Local Board v.	519
Bettws Llantwit Colliery Co., Boyle v.	171	Bissicks v. Bath Colliery Co., <i>Sheriff</i> 7	572
Bevan v. Waterhouse, <i>Tenant for Life</i> 3	615	Bizzey v. Flight, <i>Voluntary Settlement</i> 13	652
— v. —, <i>Will Construction</i> D 14	662	— v. —, <i>Will Formalities</i> 4	681
Beverley, Garland v.	271, 665, 669	Black, Chesterfield v.	455
Bew v. Harston, <i>Alehouse</i> 19	25	— v. Homersham, <i>Company</i> D 87	153
— v. —, <i>Gaming</i> 3	271	— v. —, <i>Sale of Goods</i> 8	550
Bewley v. Atkinson, <i>Light and Air</i> 1	336	Blackburn Guardians v. Brooks, <i>Practice</i> K 12	450
Bewsey, Allen v.	185	Blackburne, Lyttleton v.	118
Beyer, Drover v.	390	Blacklock v. Dobie, <i>Contract</i> 8	179
Beynon v. Godden, <i>Costs</i> 24	193	Blackmur v. Blackmur, <i>Acknowledgment of</i> <i>Deed</i> 2	2
— v. —, <i>Practice</i> B 12	439	Blackpool Pier Co. v. Fylde Union, <i>Rates</i> 7	533
Bibbens v. Potter, <i>Will Construction</i> I 9	672	Blackwell, Charles v.	83, 627
Bidder v. North Staffordshire Railway Co. <i>Practice</i> DD 2	481	Blackwell, in the goods of, <i>Executor</i> 3	249
— v. —, <i>Way</i> 3	656	Blackwood, Essendon (Mayor of) v.	127
Biddulph v. Williams, <i>Trust</i> A 13	630	Blain, ex parte; in re Sawers, <i>Bankruptcy</i> A 3, B 19	41, 45
Bigg, Mutlow v.	636	—, <i>Practice</i> U 6	460
Biggs, Rawlins v.	206, 325	—, <i>Statute</i> 4	608
Bigsby v. Dickinson, <i>Practice</i> K 22	451	Blair, Ramsay v.	559
Bilborough v. Holmes, <i>Partnership</i> 25	417	Blake, ex parte; in re McEwan, <i>Bankruptcy</i> D 7	50
Billericay Highway Board, Woodward v.	277	— v. Albion Life Assurance Society, <i>Evidence</i> 22	246
Bilton, Saner v.	194, 314, 473	— v. —, <i>Practice</i> W 5,	464
— North v.	593		
Binns, in re; ex parte Hale, <i>Landlord and</i> <i>Tenant</i> 14	915		
Biphosphated Guano Co., A. G. v.	209, 648		

	PAGE		PAGE
Blake v. Appleyard, <i>Costs</i> 32	194	Booker, ex parte; in re West of England Bank, <i>Banking Company</i> 1	38
— v. Beech, <i>Gaming</i> 1	270	Boor, Hoch v.	31
— v. Blake, <i>Power</i> 10	433	Boosey v. Fairlie, <i>Copyright</i> 12	188
Blakely Ordnance Co., in re; Ooates's Case, <i>Charging Order</i>	105	Booth v. Briscoe, <i>Libel</i> 19	335
Blakemore, ex parte; in re Blakemore, <i>Bankruptcy</i> D 5	49	—, Coop v.	160
Blakey, Hindaugh v.	83	—, Furness v.	473
Blanchard, in re; ex parte Hattersley, <i>Bankruptcy</i> F 10	57	Bordier v. Burrell, <i>Practice</i> HH 19	486
Blann v. Bell, <i>Administration</i> 18	8	Borjesson v. Carlberg, <i>Shipping Law</i> H	585
Blantyre (Lord), Lord Advocate v.	258	Bornford, Webb v.	456
"Blessing," The, <i>Shipping Law</i> W 3	592	Borquet, Peters v.	250
Blewitt, in the goods of, <i>Will Formalities</i> 12	682	Borrowman v. Drayton, <i>Sale of Goods</i> 4	549
Bligh, in re, <i>Lunatic</i> 5	347	— v. Free, <i>Sale of Goods</i> 19	552
Blight, in re; Blight v. Hartnoll, <i>Will Construction</i> O 11	680	Bosanquet, Pooley v.	343
Blissett, Cooper v.	10	Boasley v. Davies, <i>Alchouse</i> 18	25
Blockey, Waddell v.	215	Boiswell v. Gurney; in re Summers, <i>Administration</i> 6	6
Blount v. Harris, <i>Bill of Sale</i> 25	91	Bottle v. Knocker, <i>Gift</i> 1	271
Bluck v. Capstick, <i>Partnership</i> 21	416	Bouch v. Sevenoaks Railway Co., <i>Attachment</i> 6	36
Blumenthal, Johnson v.	253	Bouchard, ex parte; in re Moojen, <i>Bankruptcy</i> M 34	76
Blundell, Travers v.	660	Boucicault v. Chatterton, <i>Copyright</i> 11	188
Blyth's Case; in re Heaton Steel and Iron Co., <i>Company</i> D 59	148	Boulnois v. Peake, <i>Trade Mark</i> 21	623
Blyth & Young, in re, <i>Practice</i> B 57	444	Boulter, in re; ex parte National Provincial Bank of England, <i>Mortgage</i> 35	383
—, <i>Vendor and Purchaser</i> 36	649	Bourgoin v. La Compagnie de Chemin de Fer de Montreal, Ottawa et Occidental, <i>Colonial Law</i> 16	122
Bobbett v. Pinkett, <i>Bill of Exchange</i> 3	82	Bourne, Hooper v.	322
Boddy v. Wale, <i>Practice</i> W 21	467	Bowden, in re; ex parte Sawyer, <i>Bankruptcy</i> P 10	79
Bodington, Howard v.	117	— v. Russell, <i>Contempt of Court</i> 1	177
Bodmin Union, Spear v.	534	Bowditch, Southwell v.	97, 494
Body v. Jeffery, <i>Locomotive</i> 2	344	Bower, Cargill v.	144, 151, 193, 467, 468
Bogle, London and Provincial Bank v.	285	— v. Hartley, <i>Practice</i> W 84	475
Bolkow, Chaloner v.	373	— v. Peate, <i>Master and Servant</i> 11	362
Boldero v. London and Westminster Discount Co., <i>Fraudulent Conveyances</i> 5	267	— v. —, <i>Principal and Agent</i> 2	492
Bolding v. Strugnell. In re Holt's Estate, <i>Will Construction</i> L 4	674	Bowers, Taylor v.	261, 627
Bollingbroke, O'Rourke v.	544	Bowes, in re; ex parte Jackson, <i>House of Lords</i> 3	378
Bolland, ex parte; in re Ackary, <i>Bankruptcy</i> M 46	77	—, <i>Mortgage</i> 2	377
—, ex parte; in re Dysart, <i>Bankruptcy</i> H 15	65	— v. Shand, <i>Sale of Goods</i> 1	548
—, ex parte; in re Gibson, <i>Bankruptcy</i> B 5	43	Bowey v. Bell, <i>Costs</i> 9	191
—, ex parte; in re Winter, <i>Bankruptcy</i> E 2	56	— v. —, <i>Slander</i> 4	593
—, Williams v.	203	Bowlby, in the goods of, <i>Probate</i> 24	504
Bolton v. Bolton, <i>Way</i> 1	656	Bowling Iron Co., Firth v.	392
— v. Ferro, <i>Bankruptcy</i> D 35	54	Bowman v. Hyland, <i>Vendor and Purchaser</i> 6	644
— v. —, <i>Composition Deed</i> 2	173	—, Humble v.	432, 669
— v. School Board for London, <i>Infraction</i> 29	300	Bowyer v. Stantial, <i>Burial</i> 4	99
— v. —, <i>Vendor and Purchaser</i> 35	649	Box v. Jubb, <i>Negligence</i> 9	392
Bolton Benefit Society, in re; Coop v. Booth, <i>Company</i> H 10	160	Boyce, Austin v.	633
Bond, in re; Cole v. Hawes, <i>Trust</i> A 10	630	Boyd's Settled Estates, in re, <i>Trust</i> B 3	631
Bonelli, in the goods of, <i>Evidence</i> 26	246	— Trusts, in re, <i>Practice</i> GG 1	483
Bonham, in re; ex parte Postmaster-General, <i>Crown</i> 4	212	Boyes v. Cook, <i>Power</i> 9	433
Bonhote, Johnassen v.	470	Boyle v. Bettws Llantwit Colliery Co., <i>Company</i> H 101	171
Boning, Finch v.	618	—, Stubble v.	477
Bonnewell v. Jenkins, <i>Contract</i> 20	181	Boynton v. Boynton, <i>Costs</i> 57	196
Booker, Wiseman v.	529	Boyse, in re; Crofton v. Crofton, <i>Administration</i> 37	10
		Brackenbury, in the goods of, <i>Probate</i> 9, 25	502, 504
		— v. Gibbons, <i>Will Construction</i> O 9	680

	PAGE		PAGE
Bradburn v. Foley, <i>Custom</i> 3	213	Breslauer, Wilson v.	70
— v. —, <i>Landlord and Tenant</i> 18	315	Breton v. Mockett, <i>Tenant for Life</i> 2	615
— v. Morris, Morris v. Bradburn, <i>Way</i> 8	657	— v. —, <i>Will Construction</i> 11	672
Bradbury, Hole v.	182	Brett, ex parte; in re Hodgson, <i>Debtors Act</i> 17	222
Braddock, in the goods of, <i>Will Formalities</i> 15	683	—, ex parte; in re Irving, <i>Bankruptcy</i> F 18	58
Bradford, Emmins v.	568	— v. Clowser, <i>Way</i> 4	656
— v. Fry, <i>Church</i> 14	114	Brewer, in re, <i>Lands Clauses Act</i> 4	317
Bradford Tramways Corporation, in re, <i>Parliamentary Deposit</i> 1	408	—, Sidgreaves v.	629
—, <i>Tramways</i> 2	626	Brewster, Lamb v.	313
Bradlaugh, ex parte, <i>Obscene Publication</i> 1	400	Brice v. Bannister, <i>Chose in Action</i> 1	111
— v. Reg., <i>Obscene Publication</i> 2, 3	401	— v. —, <i>Debtor and Creditor</i> 1	219
Bradley v. Benjamin, <i>Contract</i> 2	178	Brick Stone and Clay Co., Jameson v.	66
— v. Bradley, <i>Divorce</i> 25	230	Bridge v. Branch, <i>Prohibition</i> 5	510
—, Garnett v.	191, 593	Bridger, in the goods of, <i>Probate</i> 12	502
— v. Greenwich Board of Works, <i>Metro-polis</i> 11	368	Bridges v. Strachan, <i>Will Construction</i> I 16	673
— v. Riches, <i>Mortgage</i> 30	382	Bridgewater Engineering Co., in re, <i>Company</i> H 34	163
Bradnum, Oger v.	86, 226	Bridgman, Stokes v.	434
—, Winterfield v.	197	—, Sturges v.	397
Bradshaw, ex parte; in re Colonial Trusts Corporation, <i>Company</i> H 37	163	Bridle, in re, <i>Legacy</i> 20	330
—, Hawksley v.	335	Brigden v. Heighes, <i>Alehouse</i> 13	24
Braham v. Beauchamp, <i>Trade Mark</i> 20	623	Briggs v. Briggs, <i>Divorce</i> 6	227
—, Royal Mail Steam Packet Co. v.	123, 479	—, Martineau v.	681
—, Velati & Co. v.	453	—, Rawlins v.	206
Braithwaite, ex parte; in re Yewdall, <i>Bankruptcy</i> D 27	53	Bright v. Tyndall, <i>Practice</i> DD 1	481
Bramble, ex parte; in re Toleman, <i>Solicitor</i> 35	599	—, ex parte; in re Smith, <i>Bankruptcy</i> F 7	57
—, Teasdale v.	651	Bright's Settlement, in re, <i>Chose in Action</i> 2	111
Bramley Moore, Griffiths v.	354	Brighton Aquarium Co., Girdlestone v.	210
Brampton Union, Guardians of, v. Carlisle Union, <i>Poor Law</i> 5	428	—, Mayor, &c., of, v. Guardians of Brighton, <i>Limitations, Statute of</i> , 3	339
Bramwell v. Lacy, <i>Covenant</i> 7	206	Brigstocke, ex parte; in re Brigstocke, <i>Bankruptcy</i> C 7	47
Branch, Bridge v.	510	— v. Brigstocke, <i>Tenant for Life</i> 15	617
Brancker, Cunliffe v.	680	Brindley v. Partridge; in re Norrington, <i>Administration</i> 26	9
Brand, Bain v.	559	Brine, Brown v.	179
— v. Mitson, <i>Probate</i> 4	501	Brinsop Hall Coal Co., Pennington v.	299, 545
Brandon's Trusts, in re, <i>Lunatic</i> 7	347	Briscoe, Booth v.	335
Brandreth's Trade Mark, in re, <i>Trade Mark</i> 14	622	Bristol and North Somerset Railway Co., in re, <i>Mandamus</i> 4	350
Brandt v. Lawrence, <i>Sale of Goods</i> 2	548	—, Corporation of, v. Westcott, <i>Lease</i> 13	325
Branford v. Branford, <i>Divorce</i> 35	232	— Free Grammar School, in re, <i>Lands Clauses Act</i> 39	321
Brantom v. Griffiths, <i>Bill of Sale</i> 1	87	—, Justices of, Reg. v.	23
Branwhite, ex parte; in re West of England and South Wales District Bank, <i>Company</i> H 67	167	— Marine Insurance Co., Allison v.	357
Brass, Lewis v.	180	Bristow v. Cormican, <i>Fishery</i> 1	255
Brassey, Young v.	480	—, Cory v.	533
Bray v. Stevens, <i>Administration</i> 28	9	Britain v. Rossiter, <i>Frauds, Statute of</i> , 22	266
—, Treleven v.	474	Britannia Ironworks Co., Metcalfe v.	585
Brearey, Oram v.	555	British Alliance Assurance Corporation, in re, <i>Company</i> H 16	160
Brearley, Uail v.	197	British and Foreign Exchange and Investment Bank, Oppenheimer v.	162
Brecon, Mayor of, A. G. v.	389	British, Colonial, and Foreign Property Investment Co., in re; Stephenson's Case, <i>Company</i> D 5	137
Breed's Will, in re, <i>Infant</i> 3	290	British Commercial Insurance Co. v. British Nation Life Assurance Association, <i>Company</i> G 3, H 73	167, 168
Bremner v. Cormack; the "St. Olaf," <i>Admiralty</i> 53	18	British Dynamite Co. v. Krebbs, <i>House of Lords</i> 9	278
Brentini, Mason v.	200		
Brentwood Brick and Coal Co., in re; Rowe's Claim, <i>Vender and Purchaser</i> 32	649		
Breslauer v. Brown, <i>Bankruptcy</i> D 2	49		
— v. —, <i>Bankruptcy</i> L 12	70		

	PAGE		PAGE
British Empire Mutual Life Assurance Society v. Sugden, <i>Mortgage</i> 50 . . .	384	Brooks, Tabor v. . . . .	634
—, Webster v. . . . .	303	Brotherhood, Halsey v. . . . .	421
British Farmers' Pure Linseed Cake Co., in re; Burkinshaw v. Nicholls, <i>Company</i> D 61 . . .	148	Brougham, Melbourne Banking Corporation v. . . . .	127
—, —, Potter and Brown's Case, <i>Company</i> D 66 . . . . .	149	Brown, ex parte, <i>Alehouse</i> 20 . . . . .	25
British Fisheries Society, Dunbar's Trustees v. . . . .	560	—, ex parte; in re Appleby, <i>Debtors Act</i> 18 . . . . .	222
British Guardian Life Assurance Co., in re, <i>Company</i> D 37 . . . . .	143	—, in re Reed, <i>Bill of Sale</i> 10 . . . . .	89
British Imperial Corporation, in re, <i>Company</i> H 71 . . . . .	168	—, in re Yates, <i>Bankruptcy</i> A 13 . . . . .	42
—, <i>Practice</i> BB 19 . . . . .	480	—, in re West of England Bank, <i>Company</i> H 50 . . . . .	165
—, in re; Farr and Whittall's Claim, <i>Insurance</i> 8 . . . . .	303	—, in the goods of, <i>Executor</i> 1 . . . . .	249
British Mutual Investment Co. v. Peed, <i>Production</i> 28 . . . . .	509	—, v. "The Alina;" "The Alina," <i>County Court</i> 8 . . . . .	202
British Nation Life Assurance Association, ex parte; in re European Assurance Society, <i>Company</i> G 3 . . . . .	157	— v. Breslauer, <i>Bankruptcy</i> D 2 . . . . .	49
British Provident Life and Guarantee Association, in re; De Ruvigne's Case, <i>Company</i> D 6, 32 . . . . .	137, 142	— v. —, <i>Bankruptcy</i> L 12 . . . . .	70
British Waggon Co. v. Lea, <i>Contract</i> 27 . . . . .	182	— v. Brine, <i>Contract</i> 3 . . . . .	179
Britnor, in re; ex parte Royle, <i>Bankruptcy</i> F 52 . . . . .	63	—, Comfort v. . . . .	670
Broad v. Munton; in re Banister, <i>Vendor and Purchaser</i> 3 . . . . .	643	— v. Dale, <i>Voluntary Association</i> 1 . . . . .	650
Broadhead v. Holdsworth, <i>Vaccination</i> . . . . .	642	—, Donovan v. . . . .	445
Broadwood's Settled Estates, in re, <i>Settled Estates Acts</i> 9 . . . . .	565	— v. Great Eastern Railway Co., <i>Penalty</i> 2 . . . . .	424
Brocklebank, in re; ex parte Brocklebank, <i>Bankruptcy</i> M 27 . . . . .	75	— v. —, <i>Railway</i> 14 . . . . .	525
— v. East London Railway Co., <i>Receiver</i> 14 . . . . .	538	—, Masper v. . . . .	14
— v. King's Lynn Steamship Co., <i>Costs</i> 59 . . . . .	196	—, Mather v. . . . .	387
Broder v. Saillard, <i>Injunction</i> 18 . . . . .	298	—, Middleton v. . . . .	179
— v. —, <i>Nuisance</i> 3 . . . . .	397	—, Montreal, Mayor of, v. . . . .	121
Brogden v. The Metropolitan Railway Co., <i>Contract</i> 25 . . . . .	182	—, Ortigosa v. . . . .	152
Bromley Local Board, Ellis v. . . . .	608	—, Pawson v. . . . .	566
Brook, ex parte; in re Roberts, <i>Bankruptcy</i> F 44 . . . . .	62	— v. Rutherford; in re Rutherford, <i>Limitations, Statute of</i> , 17 . . . . .	341
—, —, <i>Lease</i> 20 . . . . .	327	— v. Shaw, <i>County Court</i> 25 . . . . .	204
Brook, in re; Pilcher v. Arden, <i>Solicitor</i> 40 . . . . .	599	—, Smith v. . . . .	298
Brook's Mortgage, in re, <i>Mortgage</i> 17 . . . . .	379	— v. Smith, <i>Husband and Wife</i> 55 . . . . .	286
Brooke, ex parte; in re Newman, <i>Bankruptcy</i> D 8 . . . . .	50	— v. —, <i>Infant</i> 4 . . . . .	291
—, Dewar v. . . . .	674	—, Thomas v. . . . .	242
— v. Rooke, <i>Administration</i> 27 . . . . .	9	— v. Trotman, <i>Solicitor</i> 46 . . . . .	600
— v. Wigg, <i>Practice</i> K 11 . . . . .	450	—, Upton v. . . . .	568
Brooker, ex parte; in re Fastnedge, <i>Bankruptcy</i> K 22 . . . . .	68	Brown and Sibley's Contract, in re, <i>Remoteness</i> 15 . . . . .	541
Brookes v. Drysdale, <i>Covenant</i> 18 . . . . .	208	Browne, Davis v. . . . .	344
Brooks, Blackburn Guardians v. . . . .	450	Browning, ex parte; in re Craycroft, <i>Bankruptcy</i> F 23 . . . . .	59
—, Dicks v. . . . .	189, 445	—, —, <i>Sheriff</i> 9 . . . . .	572
— v. Israel, <i>Slander</i> 4 . . . . .	593	—, Beresford v. . . . .	416
— v. —, <i>Costs</i> 9 . . . . .	191	— v. Sabin, <i>Debtors Act</i> 16 . . . . .	221
—, Leigh v. . . . .	477	— v. —, <i>Practice</i> L 3 . . . . .	452
—, Manchester, Sheffield and Lincolnshire Railway Co. v. . . . .	472	Brownlie v. Campbell, <i>Sootch Law</i> 5 . . . . .	558
—, Palin v. . . . .	329	Brownrigg, Day v. . . . .	298
		Bruce, Lamb v., Duggan v., Cooper v. . . . .	91
		Brunskill, Holme v. . . . .	499
		Brunswick Benefit Building Society, Chapleo v. . . . .	269
		Bryan, in re; Godfrey v. Bryan, <i>Husband and Wife</i> 23 . . . . .	282
		Bryant, in re, <i>Bankruptcy</i> M 23 . . . . .	75
		—, <i>Contempt of Court</i> 3, 4 . . . . .	177
		— v. Bull, <i>Receiver</i> 11 . . . . .	538
		— v. Herbert, <i>Costs</i> 16 . . . . .	192
		— v. —, <i>Detinue</i> 5 . . . . .	224
		— v. Lefever, <i>Easement</i> 5 . . . . .	236
		Bryning, Redfern v. . . . .	664
		Bubb v. Padwick, <i>Will Construction</i> L 14 . . . . .	675
		Buocleuch, Duke of, Cowan v. . . . .	559
		Buchan's Case; in re City of Glasgow Bank, <i>Trust</i> D 13 . . . . .	634

	PAGE		PAGE
Buck, ex parte; in re Fawcus, <i>Bankruptcy</i> F 4 . . . . .	57	Burnand v. Rodocanachi, <i>Marine Insurance</i> 16 . . . . .	354
—, —, <i>Factors Acts</i> , 2 . . . . .	253	Burness, Hopper v. . . . .	585
—, in re; ex parte Sheriff of Middlesex, <i>Bankruptcy</i> A 6 . . . . .	41	Burnell v. Burnell, <i>Partition</i> 14 . . . . .	411
— v. Evans, <i>Practice</i> U 1 ( <i>Parties</i> ) . . . . .	460	Burnett, in re, ex parte Jeavons, <i>Bankruptcy</i> P 7 . . . . .	79
— v. —, <i>Practice</i> W 36 ( <i>Pleading</i> ) . . . . .	469	Burney, Abbiss v. . . . .	178
—, Hudson v. . . . .	602, 646	Burns, Acatos v. . . . .	583
— v. Robson, <i>Stamp</i> 5 . . . . .	607	— v. Irving, <i>Practice</i> D 1 . . . . .	446
Buckhurst Peerage, The, <i>Peerage</i> 2 . . . . .	424	— v. Nowell, <i>Kidnapping Act</i> . . . . .	311
Buckingham, in re, <i>Lands Clauses Act</i> 25 . . . . .	320	Burrell, Bordier v. . . . .	486
Buckland, Court v. . . . .	662	—, Krehl v. . . . .	299, 442, 485
Buckley, Fox v. . . . .	632	Burrell, ex parte, in re Robinson, <i>Bankruptcy</i> L 23 . . . . .	72
Buckton v. May; in re Ridley, <i>Remoteness</i> 11 . . . . .	541	Burroughs Lynn and Sexton, in re, <i>Vendor and Purchaser</i> 34 . . . . .	649
— v. Higgs, <i>Costs</i> 40 . . . . .	195	Burrows, Fraser v. . . . .	509
Budd, Malmesbury Railway Co. v. . . . .	32	—, Keith v. . . . .	586
— v. Marshall, <i>Landlord and Tenant</i> 7 . . . . .	814	—, Wheelodon v. . . . .	236
Budden & Roberts, ex parte; in re West of England Bank, <i>Company</i> H 54 . . . . .	165	Burt, Birt v. . . . .	493
—, Walker v. . . . .	439	Burton, ex parte, in re Tunstall, <i>Bankruptcy</i> B 17 . . . . .	45
Budding v. Murdoch, <i>Practice</i> W 27 . . . . .	468	— v. Newbery, <i>Will Formalities</i> 27 . . . . .	685
Budge v. Andrews, <i>Municipal Corporation</i> 2 . . . . .	387	— v. Sturgeon, <i>Settlement</i> 34 . . . . .	571
Buce, Roberts v. . . . .	12, 563	Bury v. Cherryholm, <i>Elementary Education Act</i> 8 . . . . .	238
Buenos Ayres and Eneanada Port Railway Co. v. Northern Railway Co. of Buenos Ayres, <i>Practice</i> W 44 . . . . .	470	Bury, Lord, Bennett v. . . . .	482
Buhl, Welply v. . . . .	203	—, Wilson v. . . . .	141
Bulbeck v. Silvester; in re Caplen's Estate, <i>Trust</i> A 4 . . . . .	629	Bushby, ex parte, in re Irving, <i>Bankruptcy</i> F 18 . . . . .	58
Bull v. Bryant, <i>Receiver</i> 11 . . . . .	538	Bustros v. Bustros, <i>Practice</i> BB 23 . . . . .	481
—, Winn v. . . . .	601	— v. White, <i>Production</i> 6 . . . . .	506
Buller, Flower v. . . . .	283	Butcher, ex parte, in re Mellor, <i>Bankruptcy</i> D 19 . . . . .	52
—, Smith v. . . . .	200	—, Smith v. . . . .	670
Bulley v. Bulley, <i>Solicitor</i> 41 . . . . .	599	Butler v. Butler, <i>Practice</i> U 13 ( <i>Parties</i> ) . . . . .	461
Bullock v. Corry, <i>Production</i> 1 . . . . .	505	—, <i>Practice</i> W 51 ( <i>Pleading</i> ) . . . . .	471
— v. Dunlap, <i>Detinue</i> 1 . . . . .	224	—, <i>Trust</i> C 6 . . . . .	632
—, Reynolds v. . . . .	414	Butler's Wharf Co., Anderson v. . . . .	378
—, Tomlinson v. . . . .	80, 608	Butt, ex parte, in re Mapleback, <i>Bankruptcy</i> B 11 . . . . .	44
Bulmer, in re, ex parte Hughes, <i>Bankruptcy</i> F 26 . . . . .	60	—, Bill of Sale 49 . . . . .	94
Bund v. Green, <i>Will Construction</i> H 21 . . . . .	669	—, Lascelles v. . . . .	477
Bunnett, in re, ex parte Jeavons, <i>Bankruptcy</i> P 7 . . . . .	79	Butter v. Tregent, <i>Practice</i> W 28 . . . . .	468
Bunting v. Sargent, <i>Charity</i> 25 . . . . .	109	— v. —, <i>Practice</i> W 33 . . . . .	468
Burah, Reg. v. . . . .	123	Butters, ex parte, in re Harrison, <i>County Court</i> 28 . . . . .	204
Burchell v. Clark, <i>Deed</i> 3 . . . . .	223	Buttery, Inglis v. . . . .	182
—, Eastland v. . . . .	279	Battifant, Culley v. . . . .	476
Burdett, in the goods of, <i>Probate</i> 13 . . . . .	502	Button, Lea Conservancy Board v. . . . .	328, 467
Burges, Johnson v. . . . .	456, 469	— v. O'Niell, <i>Bill of Sale</i> 24 . . . . .	91
Burgess, Eldridge v. . . . .	446	— v. Woolwich Building Society, <i>County Court</i> 20 . . . . .	203
Burgess's Case, in re Hull and County Bank, <i>Company</i> D 79 . . . . .	151	Buxton, Rains v. . . . .	339
Burghardt, in re, ex parte Trevor, <i>Bankruptcy</i> B 8 . . . . .	43	Buxton, ex parte, in re Müller, <i>Bankruptcy</i> F 51 . . . . .	63
Burgoine v. Taylor, <i>Practice</i> C 8 . . . . .	446	Buxton Local Board of Health, Bagshaw v. . . . .	276
Burgoyne, Topham v. . . . .	412	Byass, Cowley, Lord, v. . . . .	98
Burke, ex parte, in re Regent United Service Stores, <i>Company</i> H 36 . . . . .	163	Byers, Thiis v. . . . .	582
— v. Rooney, <i>Practice</i> B 53 . . . . .	444	"Byfoged Christensen," The, v. "The William Frederick," <i>Shipping Law</i> E 19 . . . . .	580
— v. South Eastern Railway Co., <i>Carrier</i> 20 . . . . .	103	Byles, Kelly v. . . . .	186
Burkinshaw v. Nicholls, in re British Farmers' Pure Linseed Cake Co., <i>Company</i> D 61 . . . . .	148	Byrd v. Nunn, <i>Practice</i> W 9 . . . . .	467
Burliner v. Royle, <i>Bankruptcy</i> L 15 . . . . .	71	Byrne & Co. v. Leon Van Tienhoven & Co., <i>Contract</i> 23 . . . . .	181

	PAGE		PAGE
Byron, Hall v. . . . .	129	Cannon v. Villars, <i>Way</i> 5 . . . . .	657
"Bywell Castle," The, <i>Shipping Law</i> E 18 . . . . .	580	Canot v. Morgan, <i>Practice</i> GG 2 . . . . .	483
Cabe, Codd v. . . . .	33	Canton Insurance Co., West of England, &c. Bank v. . . . .	509
Cadby, Gay v. . . . .	369	Capital and Counties Bank v. Henty, <i>Libel</i> 11 . . . . .	333
Cadett v. Earle, <i>Trust</i> B 4 . . . . .	631	Caplen's Estate, in re, Bulbeck v. Silvester, <i>Trust</i> A 4 . . . . .	629
Cadogan, Ames v. . . . .	434	Capon's Trust, in re, <i>Power</i> 20 . . . . .	434
Caerphilly Colliery Co., in re, Pearson's Case, <i>Company</i> D 33 . . . . .	142	Capper, ex parte, in re Newman, <i>Contract</i> 37 . . . . .	184
Cahen, ex parte; in re Cahen, <i>Bankruptcy</i> M 28 . . . . .	76	— v. Wallace, <i>Shipping Law</i> F 6 . . . . .	583
Calaminus v. Dowlais Iron Co., <i>Sale of Goods</i> 12 . . . . .	550	Capetick, Bluck v. . . . .	416
Calcutta Jute Mills Co. v. Nicholson, <i>Income Tax</i> 6 . . . . .	289	Carden, Reg. v. . . . .	336
Caldecott, ex parte, <i>Bankruptcy</i> B 11 . . . . .	44	Cardiff Urban Sanitary Authority, Lewis v. . . . .	515
Caldow v. Pixell, <i>Church</i> 8 . . . . .	113	Cardross's Settlement, in re, <i>Infant</i> 8 . . . . .	291
Caldwell v. Pagham Harbour Reclamation Co., <i>Practice</i> W 26 . . . . .	468	Carey, Alliance Bank of Simla v. . . . .	340
Caledonian and Glasgow and South Western Railway Co., Dixon v. . . . .	317	— v. Barrett, <i>Bankruptcy</i> B 4 . . . . .	43
Caless, Jones v.; in re Jones . . . . .	8	Cargill v. Bower, <i>Company</i> D 40, 77 . . . . .	144, 151
Callander v. Hawkins, <i>Costs</i> 28 . . . . .	193	— v. —, <i>Costs</i> 27 . . . . .	193
Callow, Barber v. . . . .	99	— v. —, <i>Practices</i> W 22, 30 . . . . .	467, 468
—, Clark v. . . . .	470	Cargo ex "Sarpedon," <i>Shipping Law</i> T 5 . . . . .	591
Cally, in re, <i>Probate</i> 16 . . . . .	503	— ex "Schiller," <i>Shipping Law</i> T 4 . . . . .	591
Calvert, ex parte; in re Messenger, <i>Solicitor</i> 29 . . . . .	598	— ex "Woosung," <i>Shipping Law</i> T 2 . . . . .	590
—, Wilkinson v. . . . .	316	Carlington, Macdonald v. . . . .	473
Camberwell and South London Building Society v. Holloway, <i>Specific Performance</i> 6 . . . . .	602	Carlberg, Borjesson v. . . . .	585
Cambrian Railway Co., in re; ex parte Manchester and Milford Railway Co., <i>Railway</i> 30 . . . . .	529	Carlill, Green v. . . . .	284
Cameron, Bank of Montreal v. . . . .	498	Carling, Hespeler and Walsh's Cases, in re Western of Canada Oil, Lands & Works Co., <i>Company</i> D 67 . . . . .	149
Campbell, in re, a lunatic, <i>Lunatic</i> 8 . . . . .	347	Carlisle Union, Brampton Union v. . . . .	428
—, Brownlie v. . . . .	558	Carlton, Bagnall v. . . . .	447
— v. Campbell, <i>House of Lords</i> 6 . . . . .	278	Carmarthenshire Anthracite Coal and Iron Co., in re, <i>Company</i> H 18 . . . . .	161
— v. —, <i>Scotch Law</i> 6 . . . . .	558	Carmichael v. Gye, <i>Annuity</i> 7 . . . . .	27
— v. Compagnie Generale de Bellegarde; in re Compagnie Generale de Bellegarde, <i>Receiver</i> 6 . . . . .	537	Carnegie, McStephens v. . . . .	481
— v. Fairlie, <i>County Court</i> 2 . . . . .	201	Carnforth Haematite Iron Co., ex parte, in re Phoenix Bessemer Steel Co., <i>Company</i> M 43 . . . . .	164
—, Graham v. . . . .	300, 440	—, <i>Sale of Goods</i> 13 . . . . .	550
— v. Holyland, <i>Mortgage</i> 52 . . . . .	385	Carr, ex parte, in re Hofmann, <i>Bankruptcy</i> D 30 . . . . .	54
— v. Im Thurn, <i>Bankruptcy</i> L 10 . . . . .	70	— v. Griffith, in re Griffith, <i>Apportionment</i> 3 . . . . .	28
—, Langridge v. . . . .	195	—, Lewis v. . . . .	386
—, Pollock v. . . . .	86, 478	— v. Metropolitan Board of Works, <i>Artisans' Dwellings</i> . . . . .	34
— v. Rothwell, <i>Principal and Surety</i> 9 . . . . .	498	—, Manchester Bonding Warehouse v. . . . .	314
— v. Strangeways, <i>Dog Licence</i> . . . . .	233	Carribean Company, in re, Crickmer's Case, <i>Company</i> D 57 . . . . .	147
Campbell's Case, in re Compagnie Generale de Bellegarde, <i>Company</i> D 27 . . . . .	141	Carrick, Ralph v. . . . .	673
Campbell's Policies, in re, <i>Settlement</i> 18 . . . . .	568	Carter, ex parte, in re Carter, <i>Bankruptcy</i> F 30, H 10 . . . . .	60, 65
Campden Charities, in re, <i>Charity</i> 30 . . . . .	110	—, ex parte, in re Threapleton, <i>Bill of Sale</i> 31 . . . . .	91
Camphausen, Padley v. . . . .	480	—, ex parte, in re Ware, <i>Bankruptcy</i> F 60 . . . . .	64
Campion, Hine v. . . . .	246	—, Baker v. . . . .	118, 374
Canada Shipping Co., Wilson v. . . . .	579	—, Reg. v. . . . .	189
Canadian Land Reclaiming and Colonising Co., in re, Coventry and Dixon's Case, <i>Company</i> D 35 . . . . .	142	—, Harrison v. . . . .	406
Canadian Oil Works Corporation, in re, Eastwick's Case, <i>Company</i> D 68 . . . . .	149	— v. Wake, <i>Mortgage</i> 39 . . . . .	383
Canning, Duchy of Cornwall (Solicitor of) v. . . . .	189	Carrington, Macdonald v. . . . .	473
		"Cartburn," The, <i>Admiralty</i> 8 . . . . .	14
		—, <i>Admiralty</i> 38 . . . . .	17
		Cartwright, in the goods of, <i>Probate</i> 27 . . . . .	504



	PAGE		PAGE
Cartwright, Birmingham Canal Co. v.	490, 540	Chaplin v. Cave; Cave v. Cave, <i>Mortgage</i> 24	381
—, Corser v.	630	— v. —, <i>Solicitor</i> 16	596
—, Pierpoint v.	204	Chapman, ex parte; in re Stockton Malle-	
—, Stirling-Maxwell v.	9	able Iron Co., <i>Company</i> D 94	154
Carver v. Alleen's College, Dulwich, <i>En-</i>		— v. Chapman, <i>Will Construction</i> E 15	664
dowed Schools Act 1	240	—, Dardier v.	281
Case, Attwood v.	365	—, Fitzgerald v.	570
Casey v. Arnott, <i>Practice</i> BB 11	479	—, General Share Trust Co. v.	599
Cash v. Parker; in re Parker, <i>Practice</i> U 38	464	—, German v.	207
— v. —, <i>Receiver</i> 10	538	— v. Great Western Railway Co., <i>Carrier</i>	
Cashin v. Cradock, <i>Practice</i> W 3	466	6	101
— v. —, <i>Production</i> 22	508	— v. Knight, <i>Bill of Sale</i> 5	88
Cassa Maritima of Genoa, Kleinwort v.	575	— v. London and North Western Rail-	
"Cassiopeia," The, <i>Admiralty</i> 26	15	way Co., <i>Carrier</i> 6	101
Castle, ex parte; in re Meikle, <i>Bankruptcy</i>		— v. Midland Railway Co., <i>Costs</i> 86	199
P 5	79	— v. Real Property Trust, Limited,	
— v. Downton, <i>Bill of Sale</i> 27	91	<i>Practice</i> GG 12	484
Castleman, Kingdon v.	631	— v. Royal Netherland Steam Navigation	
Castro, Reg. v.	210	Co., <i>Shipping Law</i> E 21	581
Catarino Chiazzare, The, <i>Admiralty</i> 6	14	Charles v. Blackwell, <i>Bill of Exchange</i> 9	83
Catling v. King, <i>Frauds, Statute of</i> , 5	263	— v. —, <i>Trover</i> 3	627
— v. —, <i>Practice</i> W 46	470	— v. Taylor, <i>Master and Servant</i> 8	362
Catlow v. Catlow, <i>Solicitor</i> 44	600	Charlton, ex parte; in re Charlton, <i>Bank-</i>	
Caughy, in re; ex parte Caughy, <i>Bank-</i>		<i>ruptcy</i> L 27	72
<i>ruptcy</i> H 12	65	— v. Attorney-General, <i>Succession Duty</i>	
—, in re; ex parte Ford, <i>Bankruptcy</i> F 33	61	2	611
— v. Gordon, <i>Shipping Law</i> D 5	576	—, Backhouse v.	414
Cave v. Cave; Chaplin v. Cave, <i>Mortgage</i> 24	381	—, Coverdale v.	275, 626
— v. —, <i>Solicitor</i> 16	596	Charrington, Smith v.	445
— v. —; in re Cave, <i>Solicitor</i> 24	597	Charter v. Charter, <i>Costs</i> 22	193
—, Chatterton v.	187	Chartered Mercantile Bank of India v.	
— v. Mackenzie, <i>Frauds, Statute of</i> , 12	264	Wilson, <i>Inhabited House Duty</i> 4	296
Cavendish, Crump v.	490	Chasemore v. Turner, <i>Limitations, Statute</i>	
"Cecilie," The, <i>Shipping Law</i> C 1	574	of, 18	342
Central African Trading Co. v. Grove,		Chatfield v. Sedgwick, <i>Costs</i> 30	194
<i>Practice</i> W 79	474	Chatteris, ex parte; in re Stapleford Colliery	
Central Wingland (inhabitants of), Reg. v.	273	Co., <i>Company</i> D 13	139
Cesena Sulphur Co. v. Nicholson, <i>Income</i>		Chatterton, in re; ex parte Hemming,	
<i>Tax</i> 6	290	<i>Bankruptcy</i> H 6	64
Chadwick, Amos v.	447	—, Boucicault v.	188
—, Robinson v.	448	— v. Cave, <i>Copyright</i> 8	187
—, Smith v.	448	—, Dauney v.	619
Chalker, in re, <i>Acknowledgment of Deed</i> 4	2	— v. Lawson, <i>Bankruptcy</i> F 19	58
Chalk, Roose v.	249	Chattock v. Muller, <i>Specific Performance</i> 8	602
Chalmers, ex parte; in re Sawers, <i>Bank-</i>		Chatwood, Davis v.	598
<i>ruptcy</i> O 3	78	Chaytor, Redondo v.	197
Chaloner v. Bolokow, <i>Mines</i> 14	378	Cheavin v. Walker, <i>Trade Mark</i> 18	623
Chamberlain, ex parte; in re Metropolitan		Cheese v. Lovejoy; in re Harris, <i>Will For-</i>	
Street Improvement Act, 1877, <i>Lands</i>		<i>malities</i> 17	683
<i>Clauses Act</i> 33	321	—, Smith v.	91
— v. Napier, <i>Conflict of Laws</i> 3	174	Chelmsford Local Board, Wells v.	317
— v. —, <i>Power</i> 3	432	Chennell, in re; Jones v. Chennell, <i>Practice</i>	
Chambers, Clark v.	393	B 14 ( <i>Appeals</i> )	440
— v. Kingham, <i>Morger</i>	365	—, <i>Practice</i> K 21 ( <i>Evidence</i> )	451
—, McNeile v.	294	—, <i>Trust</i> B 2	631
—, Potter v.	192, 194	Cheque Bank, Arnold v.	395, 628
— v. Smith, <i>Scotch Law</i> 28	561	Cherryholm, Bury v.	238
Champion v. Formby, <i>Practice</i> W 1	465	Chesney, ex parte; in re Dempster, <i>Bank-</i>	
Champney v. Davy, <i>Charity</i> 4	106	<i>ruptcy</i> H 8	65
— v. —, <i>Will Construction</i> E 17	664	Chester v. Phillips; in re Peppitt's Estate,	
Chandler v. Howell, <i>Charity</i> 8	106	<i>Administration</i> 32	10
— v. Pocock, <i>Power</i> 11	433	— v. —, <i>Partition</i> 4	410
Chapel Town Paper Co., Appleton v.	461	Chesterfield v. Black, <i>Practice</i> P 19	455
Chapleo v. Brunswick Benefit Building		Chesters, in re; ex parte Rylands, <i>Bank-</i>	
Society, <i>Friendly Society</i> 12	269	<i>ruptcy</i> O 1	78

	PAGE		PAGE
Chesworth v. Hunt, <i>Bill of Sale</i> 47 . . . . .	94	City of London, Clerk of the Peace of,	
— v. —, <i>Mortgage</i> 83 . . . . .	382	Parish of Great Yarmouth v. . . . .	428
Chichester, Atwood v. . . . .	283, 456	City of London Real Property Co., Hunt v. . . . .	458
Chick, ex parte; in re Meredith, <i>Sequestration</i> . . . . .	562	"City of Manchester," The, <i>Admiralty</i> D 46, 49 . . . . .	17, 18
Chidley, in re; in re Lennard, <i>Bankruptcy</i> L 19 . . . . .	71	"City of Mecca," The, <i>Admiralty</i> 5, 7 . . . . .	14
Chilcott, Cooke v. . . . .	209	City of Moscow Gas Co. v. International Financial Society, <i>Practice</i> B 84 . . . . .	442
Child, Dover v. . . . .	241, 627	Civil Engineers' Institution, Reg. v. . . . .	532
— v. Stenning, <i>Damages</i> 12 . . . . .	216	Civil Service Supply Association v. Dean, <i>Trade Mark</i> 21 . . . . .	623
— v. —, <i>Practice</i> U 2 ( <i>Parties</i> ) . . . . .	460	Clague, Great Laxey Mining Co. v. . . . .	372
— v. —, <i>Practice</i> HH 27 ( <i>Trial</i> ) . . . . .	487	Clare's Will, in re the trusts of, <i>Husband and Wife</i> 17 . . . . .	281
Childerhouse, Mansfield v. . . . .	453, 605	Clark, in re; ex parte Newland, <i>Solicitor</i> 37 . . . . .	599
Chillingworth, Mackley v. . . . .	201	— v. Adie, <i>Patent</i> 16, 18 . . . . .	420, 421
Chilton v. Corporation of London, <i>Common</i> 8 . . . . .	128	—, Burchell v. . . . .	223
Chipp, Barnes v. . . . .	19	— v. Chambers, <i>Negligence</i> 12 . . . . .	393
Chislehurst, Church of the Annunciation, The, <i>Church</i> 13 . . . . .	114	— v. Girdwood, <i>Settlement</i> 27 . . . . .	570
Choisy, Allkins v. . . . .	351	— v. —, <i>Solicitor</i> 11 . . . . .	595
Chorlton v. Dickie, <i>Practice</i> C 10 ( <i>Appearance</i> ) . . . . .	446	— v. Molyneux, <i>Libel</i> 12 . . . . .	334
— v. —, <i>Practice</i> U 36 ( <i>Parties</i> ) . . . . .	464	—, Pigg v. . . . .	668
Chorlton-upon-Medlock, Reg. v. . . . .	427, 535	—, Singer Manufacturing Co. v. . . . .	423
Christie v. Ovington, <i>Trust</i> D 20 . . . . .	635	—, Uaill v. . . . .	197
Christopher, Nagle-Gillman v. . . . .	487	Clark's Estate, in re; Maddick v. Marks, <i>Power</i> 13 . . . . .	433
Christ's Hospital, Brecknock, v. Martin, <i>Arbitration</i> 20 . . . . .	33	Clarke, ex parte; in re Bell, <i>Bankruptcy</i> F 8 . . . . .	57
Chubb, Ewart v. . . . .	287	—, in re; Maddick v. Marks, <i>Power</i> 13 . . . . .	433
Chunder Canto Mooharjee, Ram Coomarr Coondoo v. . . . .	105	—, in the goods of, <i>Probate</i> 7 . . . . .	502
Church v. Tyacke; in re Walker's Estate, <i>Will Construction</i> L 19 . . . . .	676	— v. Callow, <i>Practice</i> W 45 . . . . .	470
—, Wilson v. . . . .	96, 445, 453, 460, 463	— v. Cookson, <i>Practice</i> HH 17 . . . . .	486
Church and Empire Fire Insurance Co., in re; Andreas's Case, <i>Company</i> D 64 . . . . .	149	—, Gothard v. . . . .	387
—; Pagin and Gill's Case, <i>Company</i> D 63 . . . . .	148	—, Neale v. . . . .	192
Chynoweth's Case; in re Wheal United Wood Mining Co., <i>Company</i> D 96 . . . . .	154	—, Pigg v. . . . .	669
Cigala's Settlement, <i>Succession Duty</i> 5 . . . . .	612	—, Robinson v. . . . .	681
City and County Bank, Collins v. . . . .	151	— v. Roche, <i>Costs</i> 72 . . . . .	198
City and County Investment Co.; in re, <i>Company</i> H 106 . . . . .	172	— v. —, <i>Stamp</i> 1 . . . . .	606
City Bank, Arnold v. . . . .	395, 628	—, Spencer v. . . . .	302
— v. Barrow, <i>Factors Acts</i> 3 . . . . .	253	—, Will v. . . . .	197
"City of Berlin," The, <i>Admiralty</i> 57 . . . . .	18	Clarke's Case; in re Ambrose Lake Tin and Copper Co., <i>Company</i> D 60, H 76 . . . . .	148, 168
"City of Brooklyn," The, <i>Shipping Law</i> 16 . . . . .	580	—, <i>Practice</i> B 52 . . . . .	443
City of Glasgow Bank, in re, <i>Company</i> H 70 . . . . .	168	Clarke's Trusts, in re, <i>Charity</i> 18 . . . . .	108
—; Bell, Lang and others' Case, <i>Trust</i> D 14 . . . . .	634	—, <i>Friendly Society</i> 13 . . . . .	269
—; Buchan's Case, <i>Trust</i> D 13 . . . . .	634	Clarkson v. Henderson, <i>Mortgage</i> 3 . . . . .	377
—; Cuninghame's Case, <i>Trust</i> D 17 . . . . .	635	Clason, O'Neil v. . . . .	479
—, Gillespie v. . . . .	634	Clay, Walker v. . . . .	92
—, Houldsworth v. . . . .	151	Clayton, Leavers v. . . . .	107, 328
—; Ker's Case, <i>Trust</i> D 15 . . . . .	634	Clements, in re; Republic of Costa Rica v. Erlanger, <i>Contempt of Court</i> 5 . . . . .	177
—; Mitchell's (Alexander) Case, <i>Company</i> D 97 . . . . .	154	— v. Norris, <i>Lease</i> 22 . . . . .	327
—, <i>Trust</i> D 13 . . . . .	634	— v. —, <i>Partnership</i> 17 . . . . .	415
—; Mitchell's (Nelson) Case, <i>Company</i> D 95 . . . . .	154	Clementson, Adams v. . . . .	188
—, <i>Trust</i> D 13 . . . . .	634	—, Coulthart v. . . . .	498
—; Muir's Case, <i>Trust</i> D 12 . . . . .	634	Clemson v. Hubbard, <i>Master and Servant</i> 3 . . . . .	361
—; Rutherford's Case, <i>Trust</i> D 13 . . . . .	634	Clench, Moore v. . . . .	108
—; Tennent's Case, <i>Company</i> D 75 . . . . .	150	"Cleopatra," The, <i>Shipping Law</i> T 11 . . . . .	591
City of Glasgow Life Assurance Co., Crossley v. . . . .	302	Clerk of the Peace of the City of London, Parish of Great Yarmouth v. . . . .	428

	PAGE		PAGE
Clifford, Wright v.	446	Coleman and Jarrom, in re, <i>Will Construc-</i>	
Clifton v. Ridsdale; Ridsdale v. Clifton,		tion H 4	667
Church 19, 20, 22, 35	114, 115, 116	Coleridge, Reg. v.	527
Clifton Union, Guardians of, v. Overseers		Collett v. Dickenson, <i>Husband and Wife</i> 37	283
of Liverpool, <i>Poor Law</i> 13	429	Collette v. Goode, <i>Practice</i> W 52	471
— Reg. v.	429	Colley v. London and North Western Rail-	
Close, ex parte; in re Bennett and Glave,		way Co., <i>Railway</i> 9	523
<i>Bankruptcy</i> K 19	68	Collie, in re; ex parte Adamson, <i>Bank-</i>	
—, —, <i>Legacy</i> 5	328	ruptcy D 17	51
—, —, <i>Will Construction</i> G 10	666	—, in re; ex parte Manchester and	
Clow v. Harper, <i>Arbitration</i> 10	31	County Bank, <i>Bankruptcy</i> D 26	53
Clowes v. Hilliard, <i>Administration</i> 31	10	—, in re; ex parte Smith, <i>Bankruptcy</i>	
— v. —, <i>Practice</i> U 24	463	N 1	77
Clowser, Brett v.	556	Collier v. Worth, <i>Public Health Acts</i> 39	519
Cluff v. Cluff, <i>Charity</i> 10	106	Collingridge v. Royal Exchange Assurance	
"Clutha," The, <i>Limitation of Liability</i>	338	Corporation, <i>Insurance</i> 13	304
Clutton v. Lee, <i>Registration</i> 2	539	Collins v. Bishop, <i>Marriage</i> 2	360
Clutton Union, Guardians of, v. Pointing,		— v. City and County Bank; Stone v.	
<i>Public Health Act</i> 10	513	Same, <i>Company</i> D 78	151
—, Reg. v.	513	— v. Locke, <i>Colonial Law</i> 53	127
Clyde Navigation Co. v. Barclay, <i>Shipping</i>		— v. —, <i>Contract</i> 5	179
<i>Law</i> R 3	590	— v. Paddington Vestry, <i>Metropolis</i> 18	369
Coal Consumers' Association, in re, <i>Com-</i>		— v. —, <i>Practice</i> B 38, 55	442, 444
pany H 34	163	—, Reg. v.	520
Coal Economising Gas Co., in re; Gover's		— v. Welch, <i>Costs</i> 11	191
Case, <i>Company</i> D 74	150	Collison v. Barber; in re Collison, <i>Will</i>	
Coate's Case; in re Blakely Ordnance Com-		Construction L 13	675
pany (Lim.), <i>Charging Order</i>	105	Colne Valley Water Co., Edgware Highway	
Coates, ex parte; in re Skelton, <i>Bank-</i>		Board v.	656
ruptcy M 37	77	Colonial Trusts Corporation, in re; Brad-	
Cobbold v. Fryke, <i>County Court</i> 6	202	shaw's Case, <i>Company</i> H 37	163
Cochrane, ex parte; in re Barraud, <i>Bill of</i>		Colquhoun, Orr Ewing v.	545
<i>Sale</i> 16	90	Colthurst, Tomkins v.	8
—, ex parte; in re Sendall, <i>Bankruptcy</i>		Colville, ex parte, <i>Justice of the Peace</i> 4	309
M 14	74	—, Migotti v.	253
—, Heath v.	45	Colville's Case; in re St. James's Bank,	
Cock, in re; ex parte Rosevear China Clay		<i>Company</i> D 85	152
Co., <i>Sale of Goods</i> 29	554	Combe v. Edwards, <i>Church</i> 33, 34	117
Cocker's Case; in re European Assurance		Comfort v. Brown, <i>Will Construction</i> H 28	670
Soc.; in re Industrial and General Life		Commercial Union Assurance Co., Pearson v.	353
Assurance and Deposit Co., <i>Company</i>		Commissioners of Inland Revenue, Wale v.	606
G 8	158	Commissioners of Sewers of the City of	
Cockerell, Alice, ex parte, <i>Acknowledgment</i>		London v. Gellatly, <i>Practice</i> W 39	469
of Deed 3	2	—, Ecclesiastical Commissioners v.	319
Cockle v. Joyce, <i>Practice</i> C 9	446	Compagnie Générale de Bellegarde, in re;	
Cockshott v. London General Cab Co., <i>Prac-</i>		Campbell's Case, <i>Company</i> D 27	141
tice C 5	446	—, —, <i>Receiver</i> 6	537
Cod v. Cabe, <i>Arrest</i>	33	Comptoir d'Escompte de Paris, Lutscher v.	85
Codrington v. Codrington, <i>Election</i> 2	237	Conder, Smith v.	21
Coenen, Taylor v.	552	"Condor," The, <i>Admiralty</i> 58	18
Cogan v. Duffield, <i>Settlement</i> 2	566	—, <i>Shipping Law</i> E 11	580
Coggins v. Bennett, <i>Highway</i> 14	275	Conibeer, in re; ex parte Huxtable, <i>Bank-</i>	
Cohen v. Davidson, <i>Shipping Law</i> D 13	577	ruptcy F 36	61
— v. Hale, <i>Attachment</i> 4	35	—, —, <i>Voluntary Settlement</i> 6	631
— v. South Eastern Railway Co., <i>Carrier</i>		Conington v. Gilliat, <i>Counsel</i> 1	201
12	102	— v. —, <i>Husband and Wife</i> 20	281
Cole v. Hawes; in re Bond, <i>Trust</i> A 10	630	— v. —, <i>Practices</i> HH 25	487
— v. Manning, <i>Bastardy</i> 4	80	Connol, Rigby v.	625
— Union Bank of Canada v.	39	Conquest's Case; in re European Assurance	
— Wyndham v.	115	Society; in re Wellington Reversionary	
— Marchant & Co. v. Firth, <i>Costs</i> 18	192	Annuity and Life Assurance Society,	
Colebeck v. Girdlers' Co., <i>Landlord and</i>		<i>Company</i> G 6	158
<i>Tenant</i> 3	313	"Consett," The, <i>Admiralty</i> D 47	17
Colebourne v. Colebourne, <i>Practice</i> I I 2	488	Consett Iron Co., Benfieldside Local	
Coleby, Green v.	481	Board v.	371

	PAGE		PAGE
Constable, A.G. v. . . . .	212	Corbett, ex parte; in re Shand, <i>Bankruptcy</i>	
— v. Constable, <i>Apportionment</i> 2	28	D 20 . . . . .	52
"Constantine," The, <i>Admiralty</i> 55	18	— v. Haigh, <i>Alehouse</i> 15 . . . . .	24
"Constitution," The, <i>Admiralty</i> 3	13	Corbridge, ex parte; in re Beale, <i>Bank-</i>	
Conybeare v. Lewis, <i>Practice</i> G 5	448	ruptcy D 10 . . . . .	50
Cooch v. Walden, <i>Inclosure</i> 1 . . . . .	288	—, Sheffield Waterworks Co. v. . . . .	665
— v. —, <i>Will Construction</i> D 3 . . . . .	660	Corbishley's Trusts, in re, <i>Presumption</i> 2	491
Cook, Boyes v. . . . .	433	Corcoran, Wegmann v. . . . .	430
— v. Dey, <i>Practice</i> BB 3 . . . . .	479	—, Witt v. . . . .	440
— v. Enchmarch, <i>Practice</i> Q 3 . . . . .	456	Cordillo v. Weguelin, <i>Bond</i> 1 . . . . .	95
— v. Fearn, <i>Settlement</i> 28 . . . . .	570	Corke, King v. . . . .	468
—, Jakeman v. . . . .	64	Corlaas, in re, <i>Will Construction</i> H 15 . . . . .	668
—, Jenkins v. . . . .	115	Cormack, Bremner v. . . . .	18
—, Smith v. . . . .	22, 391	Cormican, Bristow v. . . . .	255
— v. Ward, <i>Public Health</i> 17 . . . . .	515	Cornell v. Keith, <i>Settlement</i> 21 . . . . .	569
— v. —, <i>Drainage</i> . . . . .	234	Cornwall Minerals Railway Co., Harrison v.	521
—, Young v. . . . .	248	Corpus Christi College v. Rogers, <i>Limita-</i>	
Cook's Case; Harrison v. Carter, <i>Parlia-</i>		tions, <i>Statute of</i> , 16 . . . . .	341
ment 19 . . . . .	406	Corrie, Elmslie v. . . . .	64
Cooke, ex parte; in re Strachan, <i>Broker</i> 2 . . . . .	98	Corry, ex parte; in re Fothergill, <i>Principal</i>	
—, —, <i>Principal and Agent</i> 14 . . . . .	494	and <i>Surety</i> 10 . . . . .	498
—, in re; ex parte Saffery; Tomkins v.		—, Bullock v. . . . .	505
Saffery, <i>Bankruptcy</i> B 1 . . . . .	42	Corser v. Cartwright, <i>Trust</i> A 9 . . . . .	630
—, —, <i>Stock Exchange</i> 1 . . . . .	610	Corsten, Godden v. . . . .	489
— v. Chilcott, <i>Covenant</i> 21 . . . . .	209	Cory v. Bristow, <i>Rates</i> 6 . . . . .	533
—, Lucas v. . . . .	189	Costa Rica, Republic of, v. Erlanger, <i>Con-</i>	
— v. Simpson, <i>Will Construction</i> I 14 . . . . .	673	tempt of <i>Court</i> 4 . . . . .	177
—, Vernon v. . . . .	91	— v. —, <i>Costs</i> , 58, 62 . . . . .	196, 197
—, Wallington, v. . . . .	305	— v. —, <i>Practice</i> EE 6 . . . . .	482
Cooke's Contract, in re, <i>Power</i> 25 . . . . .	435	— v. Strousberg, <i>Practice</i> K 27 . . . . .	453
Cookson, Clarke v. . . . .	486	— v. —, <i>Production</i> 24 . . . . .	508
Coombe v. Edwards, <i>Church</i> 33, 34 . . . . .	117	Costine, Wightman v. . . . .	558
Coop v. Booth; in re Bolton Benefit Loan		Cotterell v. Hallett, <i>Trust</i> C 7 . . . . .	633
Society, <i>Company</i> H 10 . . . . .	160	Cottingham Local Board, Newington Local	
Cooper, ex parte; in re Baum, <i>Bankruptcy</i>		Board v. . . . .	518
B 15 . . . . .	45	Cotton, in re, <i>Infant</i> 2 . . . . .	290
—, —, <i>Bill of Sale</i> 12 . . . . .	90	—, Mercier v. . . . .	455
—, —; in re Joseph, <i>Bankruptcy</i>		—, Potter v. . . . .	459
O 2 . . . . .	78	Coulbert v. Troke, <i>Alehouse</i> 21 . . . . .	25
—, —; in re McLaren, <i>Sale of</i>		Coulson, Newoomen v. . . . .	288, 448, 657
<i>Goods</i> 30 . . . . .	555	—, Seymour v. . . . .	204
—, in re, <i>Succession Duty</i> 4 . . . . .	612	Coulthart v. Clementson, <i>Principal and</i>	
—, <i>Trust</i> D 3 . . . . .	633	<i>Surety</i> 6 . . . . .	498
— v. Blissett, <i>Administration</i> 33 . . . . .	10	Coupland, Howell v. . . . .	549
— v. Bruce, <i>Bill of Sale</i> 28 . . . . .	91	Court v. Buckland, <i>Will Construction</i> E 4 . . . . .	663
— v. Cooper, <i>Costs</i> 49 . . . . .	196	Cousens v. London Deposit Bank, <i>County</i>	
— v. —, <i>Practice</i> B 67 . . . . .	445	<i>Court</i> 21 . . . . .	303
—, Ginesi v. . . . .	645	Cousins, Humphreys v. . . . .	392, 399
—, Jupp v. . . . .	571	Coventry and Dixon's Case; in re Canadian	
—, Lancaster Banking Co. v. . . . .	385	Land Reclaiming and Colonising Co.,	
— v. London and Brighton Railway Co.,		<i>Company</i> D 35 . . . . .	143
<i>Contract</i> 32 . . . . .	183	Coverdale v. Charlton, <i>Highway</i> 15 . . . . .	275
— v. —, <i>Railway</i> 19 . . . . .	526	— v. —, <i>Trespass</i> 1 . . . . .	626
— v. Macdonald, <i>Entail</i> . . . . .	240	Cowan v. Buccleuch, Duke of, <i>Scottish Law</i> 18	659
— v. —, <i>Husband and Wife</i> 42 . . . . .	284	—, Morrell v. . . . .	497
—, Reg. v. . . . .	248, 254	Cowans, in re; Rapier v. Wright, <i>Attach-</i>	
— v. Reg., <i>Petition of Right</i> 4 . . . . .	425	ment 8 . . . . .	36
— v. Whittingham, <i>Copyright</i> 6 . . . . .	187	Cowie, Mozeley v. . . . .	468
— v. —, <i>Statute</i> 8 . . . . .	609	—, Peters v. . . . .	643
Cooper and Allen's Sale to Harlech, in re,		Cowles, Gardner v. . . . .	637
<i>Vendor and Purchaser</i> 30 . . . . .	648	Cowley, Lord, v. Byass, <i>Burial</i> 1 . . . . .	98
Cope v. De la Warr, Earl, <i>Practice</i> I 2 . . . . .	449	— v. Wellesley, <i>Trust</i> D 7 . . . . .	633
Copin v. Adamson, <i>Company</i> E 7 . . . . .	156	Cowlshaw, Renals v. . . . .	209
— v. —, <i>Foreign Judgment</i> 2 . . . . .	257	Cox, ex parte; in re Reed, <i>Bankruptcy</i>	
Coppock, Midgley v. . . . .	313, 645	F 3 . . . . .	56

	PAGE		PAGE
Cox v. Barker ; Barker v. Cox, <i>Practice</i> W 43	470	Crom v. Samuel, <i>Practice</i> B 42	443
— v. —, <i>Specific Performance</i> 21	605	Crook v. Hill, <i>Will Construction</i> H 10	668
—, Besant v.	676	—, Johnson v.	675
— v. Davie ; in re Cox, <i>Charity</i> 2	106	Crookes v. Allen and the Montreal Ocean Steamship Co., <i>Shipping Law</i> L 4	587
—, Eyre v.	490	— v. Whitworth, <i>Partition</i> 12	410
—, Freeman v.	465	Cropper, Hall v.	407
—, Marson v.	268	Crosbie, ex parte ; in re Bedell, <i>Bankruptcy</i> B 25	46
—, Pearson v.	395	Cross, in re ; ex parte Payne, <i>Bill of Sale</i> 37	92
— v. Rabbits, <i>Hospital</i> 1	277	— v. Barnes, <i>Fixtures</i> 3	256
— v. —, <i>Land Tax</i> 2	312	—, Leadbeater v.	680
— v. Watson, <i>Mortgage</i> 51	385	Crossley v. City of Glasgow Life Assurance Co., <i>Insurance</i> 4	302
—, White v.	281, 570	—, Long v.	463
— v. Willoughby, <i>Partnership</i> 10	414	— v. Tomey, <i>Patent</i> 30	422
Cox's Trusts, in re, <i>Apportionment</i> 4	29	Croughton's Trusts, in re, <i>Husband and Wife</i> 28	282
Coxhead v. Mullis, <i>Infant</i> 18	293	Crow, James v.	446
Crabtree, Smith v.	329, 667	Crowe v. Barnicot, <i>Practice</i> W 56	471
Cracknall v. Janson, <i>Bankruptcy</i> D 29	53	Crowe's Trusts (No. 1), <i>Trustee Acts</i> 13	637
— v. —, <i>Costs</i> 84	199	— (No. 2), <i>Trustee Acts</i> 14	638
— v. —, <i>Mortgage</i> 34	382	Crowhurst v. Amersham Burial Board, <i>Negligence</i> 5	392
— v. —, <i>Practice</i> Z 5	478	Crowle v. Russell, <i>Mortgage</i> 47	384
Craddock, Cashin v.	134, 466, 508	— v. —, <i>Practice</i> EE 3	482
Cragg, Mortimore v., <i>Sheriff</i> 8	572	Crowther, Marshall v.	615
Craig v. Phillips, <i>Company</i> B 1	134	Croxon, Morley v.	106
— v. —, <i>Practice</i> B 51	443	Croxton v. May, <i>Presumption</i> 4	491
"Craigs," The, <i>Shipping Law</i> T 14	591	Croydon Commercial Gas Co. v. Dickinson, <i>Principal and Surety</i> 16	500
Cramp, Reg. v.	1	Cruikshank v. Floating Baths Co., <i>Arbitration</i> 16	32
Crane v. Jullion, <i>Practice</i> BB 8	479	Crumlin Viaduct Works Co., in re, <i>Company</i> H 25	161
Craven v. Stanley ; Bathurst v. Errington ; Hervey Bathurst v. Stanley, <i>Will Construction</i> L 20	676	Crump, ex parte ; in re Hendrey, <i>Bankruptcy</i> G 1	64
Crawcour, ex parte ; in re Robertson, <i>Bill of Sale</i> 13	90	— v. Cavendish, <i>Practice</i> II 17	490
Crawford v. Hornsea Brick, & Co., <i>Injunction</i> 26	300	Crush v. Turner, <i>Practice</i> B 6	439
— v. —, <i>Practice</i> R 9	457	— v. —, <i>Innocence</i> 3	288
—, Kevan v.	266, 450, 457	Cuddeford, ex parte ; in re Hincks, <i>Contempt of Court</i> 2	177
— v. Toogood, <i>Specific Performance</i> 17	604	Cuddon v. Cuddon, <i>Succession Duty</i> 7	612
Crawley, Noyes v.	341	Culley, ex parte ; in re Adams, <i>Bankruptcy</i> C 3	47
Crawshaw v. Crawshaw, <i>Will Construction</i> E 10	663	— v. Buttifant, <i>Practice</i> X	476
Craycroft, in re ; ex parte Browning, <i>Bankruptcy</i> F 23	59	— v. Wortley ; in re Wortley, <i>Practice</i> F 1	447
—, <i>Sheriff</i> 9	572	Culliford, Hayn v.	574
Credit Co., in re, <i>Company</i> H 79	169	Cumberland, in re ; ex parte Worthington, <i>Bankruptcy</i> D 1	49
—, <i>Production</i> 32	509	Cumberlege, Reg. v.	535
Credit Foncier of England, in re ; in re the Patent Ventilating Granary Co., <i>Company</i> D 55	147	Cummins v. Fletcher, <i>Mortgage</i> 32	382
Crédit Lyonnais, Johnson v.	253	— v. Herron, <i>Practice</i> B 28	441
Cree v. Somervail, <i>Company</i> D 34	143	Cumpton, Reg. v.	310
Green v. Wright, <i>Costs</i> 1	190	Cunard's Trusts, in re, <i>Trustee Acts</i> 8	637
— v. —, <i>Master and Servant</i> 4	361	Cundy, Lindsay v.	262, 551
Cremetti v. Crom, <i>Attachment</i> 1	35	Cunliffe v. Brancker, <i>Will Construction</i> O 8	680
Cresswell v. Parker, <i>Practice</i> BB 21	480	Cunningham v. Dunn, <i>Shipping Law</i> D 6	576
—, Reg. v.	81	— v. Foote, <i>Limitations, Statute of</i> , 5	339
Crew v. Terry, <i>Bankruptcy</i> C 12	48	Cunninghame v. The City of Glasgow Bank, <i>Trustee</i> D 18	635
Crickmer's Case ; in re the Carribean Co., <i>Company</i> D 57	147	Currie, in re, <i>Trustee Acts</i> 15	638
Cripps, Tourret v.	263	—, Misa v.	82
Crisp v. Martin, <i>Church</i> 17, 31	114, 117	Curteis v. Wormald, <i>Trust</i> E 2	635
Croft, Dymond v.	458, 488		
Crofton v. Crofton ; in re Boyse, <i>Administration</i> 37	10		
Crom, Cremetti v.	35		

	PAGE		PAGE
Curtis, Worthington v. . . . .	20, 302	David Lloyd & Co., in re, <i>Company H</i> 86 . . .	169
—, ex parte, <i>Alehouse</i> 24 . . . . .	26	Davidson, in re; Martin v. Trimmer, <i>Trust</i>	
Cushing v. Dupuy, <i>Colonial Law</i> 5 . . . . .	120	<i>E</i> 7 . . . . .	636
Cuvillier, Symes v. . . . .	121	—, Cohen v. . . . .	577
Cwmorthin Slate Co., Jones v. . . . .	289	— v. Sinclair, <i>Scott's Law</i> 26 . . . . .	560
"Cybele," The, <i>Admiralty</i> 9 . . . . .	14	Davie, Cox v. . . . .	106
—, <i>Shipping Law</i> T 8 . . . . .	591	Davies, in re; ex parte King, <i>Bankruptcy</i>	
"Cynthia," The, <i>Harbours, Docks and Piers</i>		<i>M</i> 39 . . . . .	77
<i>Clauses Act</i> 1 . . . . .	272	—, Anglo-Italian Bank v. . . . .	307
—, <i>Shipping Law</i> E 22 . . . . .	581	—, Bosley v. . . . .	25
		— v. Chatwood; in re Allen, <i>Solicitor</i>	
Dacre (Lord), Pitt v. . . . .	339	27 . . . . .	598
Dahl v. Nelson, <i>Shipping Law</i> G 5 . . . . .	584	—, Dargan v. . . . .	26
"Daioz," The, <i>Admiralty</i> 50 . . . . .	18	— v. Felix, <i>Practice</i> B 2 . . . . .	438
—, <i>Shipping Law</i> E 17 . . . . .	580	— v. Games, <i>Tenant in Common</i> 3 . . . . .	618
Dale, in re; ex parte Dale, <i>Bankruptcy</i> C		— v. Garland, <i>Practice</i> II 19 . . . . .	490
10, O 1 . . . . .	48, 78	—, Jenkins v. . . . .	458
—, in re; ex parte Monkhouse, <i>Bank-</i>		— v. Jenkins, <i>Husband and Wife</i> 52 . . . . .	285
<i>ruptcy</i> L 28 . . . . .	72	—, Jones v. . . . .	282, 630
— & Co., ex parte; in re West of Eng-		—, Lawford v. . . . .	228
land Bank, <i>Principal and Agent</i> 7 . . . . .	493	— v. London and Provincial Marine In-	
—, Brown v. . . . .	650	<i>urance Co., Principal and Surety</i> 1 . . . . .	497
—, Serjeant v. . . . .	116	—, McHole v. . . . .	359
Dalgleish's Settlement, in re, <i>Trustee Acts</i>		— v. McVeagh, <i>Shipping Law</i> G 4 . . . . .	584
11 . . . . .	637	— v. Mercer on; in re Mercer on's Trusts,	
"Dalhousie," The, <i>Shipping Law</i> T 2 . . . . .	590	<i>Will Construction</i> L 15 . . . . .	675
Dallas v. Glyn, <i>Debtors Act</i> 15 . . . . .	221	—, Moore v. . . . .	413
— v. —, <i>Practice</i> L 2 . . . . .	452	—, Morgan v. . . . .	315
—, Hamilton v. . . . .	233	—, Robinson v. . . . .	247
Dalston v. Nanson, <i>Debtors Act</i> 7 . . . . .	220	—, Roe v. . . . .	467
— v. —, <i>Practice</i> BB 4 . . . . .	479	— v. Williams, <i>Practice</i> GG 15 . . . . .	484
Dalton, Angus v. . . . .	235	—, Wright v. . . . .	113
D'Alton v. D'Alton, <i>Divorce</i> 27 . . . . .	230	Davis, ex parte; in re Russ, <i>Bankruptcy</i>	
Dalzell, in re; ex parte Rashleigh, <i>Bank-</i>		<i>K</i> 2 . . . . .	66
<i>ruptcy</i> C 1 . . . . .	46	—, —; in re Sneezum, <i>Bankruptcy</i> F 45 . . . . .	62
Damodhar Gordham v. Deoram Kauji,		— v. Artingstall, <i>Auction</i> 3 . . . . .	37
<i>Crown</i> 1 . . . . .	211	— v. Ashwin, <i>Practice</i> Z 1 . . . . .	478
Danby v. Hunter, <i>Highway</i> 25 . . . . .	277	— v. Browne, <i>Locomotives</i> 3 . . . . .	344
— v. Watson, <i>Inclosure</i> 4 . . . . .	288	— v. Davis, <i>Compromise</i> 2 . . . . .	173
Dangerfield, Jones v. . . . .	113	— v. —, <i>Practice</i> E 3 ( <i>Compromise</i> ) . . . . .	447
D'Angibau, in re; Andrew v. Andrew, <i>In-</i>		— v. —, <i>Practice</i> F 3 ( <i>Consolidation of</i>	
<i>fant</i> 21 . . . . .	293	<i>Actions</i> ) . . . . .	447
Daniel v. James, <i>Malicious Injury</i> 1 . . . . .	349	— v. —, <i>Practice</i> GG 11 ( <i>Transfer of</i>	
Daniel's Settlement Trusts, in re, <i>Settle-</i>		<i>Actions</i> ) . . . . .	484
<i>ment</i> 8 . . . . .	567	—, Evans v. . . . .	260
Dardier v. Chapman; in re Barber, <i>Hus-</i>		—, Finlay v. . . . .	226
<i>band and Wife</i> 14 . . . . .	281	— v. Flagstaff Silver Mining Co. of Utah,	
Dargan v. Davies, <i>Animals</i> 2 . . . . .	26	<i>County Court</i> 3 . . . . .	902
Darley, Hagg v. . . . .	205, 470	— v. —, <i>Lord Mayor's Court</i> 3 . . . . .	345
Darlington, Mayor of, <i>Lax</i> v. . . . .	391	— v. Godbehere, <i>Practice</i> T 4 . . . . .	469
Darrell v. Tibbits, <i>Insurance</i> 15 . . . . .	305	— v. Goodman, <i>Bill of Sale</i> 30 . . . . .	91
Dashwood v. Jermy, <i>Settlement</i> 3 . . . . .	566	— v. Spence, <i>Practice</i> II 14 . . . . .	489
Daubney v. Shuttleworth, <i>Practice</i> S 8 . . . . .	458	Davy, Champney v. . . . .	106, 664
Daun v. Simmins, <i>Practice</i> S 3 . . . . .	458	— v. Garrett, <i>Practice</i> W 10 . . . . .	467
Dauney v. Chatterton, <i>Theatre</i> . . . . .	619	Dawes, Sharpe v. . . . .	146
Davenport, Holdsworth v. . . . .	106	Dawes' Trusts, in re, <i>Will Construction</i> N 5 . . . . .	677
—, King v. . . . .	449	Dawkins v. Penrhyn, Lord, <i>Practice</i> W 48 . . . . .	470
— v. Reg., <i>Colonial Law</i> 38 . . . . .	125	— v. Prince Edward of Saxe-Weimar,	
Davey, Harry v. . . . .	462	<i>Libel</i> 17 . . . . .	334
— v. Shannon, <i>Frauds, Statute of</i> , 21 . . . . .	266	— v. —, <i>Practice</i> EE 4 . . . . .	482
— v. Ward; in re Hodges, <i>Infant</i> 5 . . . . .	291	— v. Rokeby, Lord, <i>Libel</i> 4 . . . . .	332
Davey and the Railway Passengers' Assur-		— v. Stephenson, <i>Libel</i> 17 . . . . .	334
<i>ance Co.'s Arbitration, in re, Arbitration</i>		— v. —, <i>Practice</i> EE 4 . . . . .	482
8 . . . . .	81	— v. Wynyard, <i>Libel</i> 17 . . . . .	334
		— v. —, <i>Practice</i> EE 4 . . . . .	482

	PAGE		PAGE
Dawson v. Bank of Whitehaven, <i>Husband and Wife</i> 59	287	Denham, Mellor v.	288
— v. —, <i>Principal and Surety</i> 7	498	Dennis, Luker v.	207
—, Fitzgerald v.	443	— v. Seymour, <i>Practice</i> II 12	489
— v. Lord Fitzgerald, <i>Arbitration</i> 1	29	Denny v. Thwaites, <i>Highway</i> 20	276
— v. —, <i>Covenant</i> 25	209	— v. —, <i>Malicious Injury</i> 2	349
— v. Oliver Massey, <i>Will Construction</i> L 7	674	De Oleaga v. West Cumberland Iron and Steel Co., <i>Sale of Goods</i> 11	550
— v. Robins, <i>Parliament</i> 9	404	Deoram Kauji, Damodhar Gerdhan v.	211
— v. Shepherd; Grier third party, <i>Costs</i> 35	194	Depositors, ex parte; in re Southwold Railway Bill, <i>Parliamentary Deposit</i> 2	408
Day, ex parte; in re Day, <i>Bankruptcy</i> K 3	66	Derby Municipal Estates, in re, <i>Lands Clauses Act</i> 24	320
— v. Brownrigg, <i>Injunction</i> 15	298	Dering's Patent, in re, <i>Patent</i> 14	420
— v. Gudgen, <i>Costs</i> 45	195	De Rosaz, in the goods of, <i>Evidence</i> 2	243
— v. —, <i>Mortgage</i> 44	384	De Rutzen, Reg. v.	22
— v. Radcliffe, <i>Settlement</i> 11	567	De Ruigne's Case; in re British Provident Life and Guarantee Association, <i>Company</i> D 6, 32	137, 142
—, Robertson v.	124	De Thoren v. Attorney-General, <i>Sootch Law</i> 15	559
—, Smith v.	301	De Valdor, Worms v.	174
— v. Whittaker, <i>District Registry</i> 4	226	Devenish, Meek v.	636
Dean, ex parte; in re Dean, <i>Bankruptcy</i> K 13	67	De Villiers, Divisional Council of the Cape Division v.	122
—, Civil Service Supply Association v.	623	Devonshire, Duke of, v. Barrow Hematite Steel Co., <i>Rates</i> 16	535
— v. McDowell, <i>Partnership</i> 7	413	Dewar v. Brooke, <i>Will Construction</i> L 6	674
— v. Wilson, <i>Practice</i> Z 3	478	Dewis, Whetstone v.	456
Deane, Reg. v.	254	Dey, Cook v.	479
Dear, ex parte; in re White, <i>Bankruptcy</i> D 16	51	D'Eyncourt v. Gregory, <i>Will Construction</i> O 1	679
—, v. Swarder; Swarder v. Dear, <i>Practice</i> W 76	474	"D. H. Bills," The, <i>Admiralty</i> 34	16
Deards v. Putt; in re Hutley, <i>Practice</i> GG 10	484	Dhuleep Singh, Robinson v.	653
Dearle, in the goods of, <i>Will Formalities</i> 9	682	Diamond Rock Boring Co., in re; ex parte Shaw, <i>Company</i> D 82	152
De Barros, Sottomayor v.	228, 234	Diamond Fuel Co., in re, <i>Company</i> H 6, 97 159, 171	220
Debenham v. Mellon, <i>Husband and Wife</i> 5	279	—; Metcalfe's Case, <i>Debtors Act</i> 5	453, 625
—, Morris v.	647	Diaper, Orr v.	123
—, Theed v.	338	Dias v. De Livera, <i>Colonial Law</i> 20	347
De Busche v. Alt, <i>Principal and Agent</i> 17	495	Dicoonson, in re, <i>Lunatic</i> 12	79
De Cordova v. De Cordova, <i>Executor</i> 13, 18	250, 251	Dickens, ex parte; in re Foster, <i>Bankruptcy</i> P 4	379
— v. —, <i>Trust</i> C 10	632	Dicker v. Angerstein, <i>Mortgage</i> 15	648
D'Eyncourt v. Gregory, <i>Heirloom</i> 2	273	— v. —, <i>Vendor and Purchaser</i> 28	446, 464
Defries, Metropolitan Railway Co. v.	645	—, Lucas v.	46
—, Myers v.	190, 191, 593	Dickin, ex parte; in re Pollard, <i>Bankruptcy</i> A 4	41
De Gaspé v. Bessemer, <i>Colonial Law</i> 2	120	—, in re Waugh, <i>Bankruptcy</i> F 29	60
De Gruchy v. Wills, <i>Husband and Wife</i> 57	286	Dickinson, Bigsby v.	451
De Hart v. Stevenson, <i>Practice</i> U 26	463	—, Collett v.	283
Deighton's Settled Estates, in re, <i>Will Construction</i> L 8	675	—, Croydon Commercial Gas Co. v.	500
De la Warr, Earl, Cope v.	449	— v. Dickinson; in re Ord, <i>Annuity</i> 1	26
—, v. Miles, <i>Common</i> 6	129	— v. —, <i>Will Construction</i> D 5	660
Delhasse, ex parte; in re Megevand, <i>Partnership</i> 2	412	— v. Dodds, <i>Contract</i> 22	181
De Livera, Dias v.	123	—, Gill v.	371
Delmar v. Freemantle, <i>Practice</i> L 4	452	Dicks v. Brooks, <i>Copyright</i> 16	189
— v. —, <i>Sheriff</i> 3	471	— v. —, <i>Practice</i> B 65	445
"Delta," The, <i>Admiralty</i> 18	15	—, Weldon v.	186
De Morgan v. Metropolitan Board of Works, <i>Metropolis</i> 21	369	Dickson v. Harrison, <i>Practice</i> B 45	443
Dempsey v. Lawson, <i>Will Formalities</i> 22	684	— v. —, <i>Production</i> 18	508
—, Steamship Company "Norden" v.	243	— v. Reuter's Telegraph Co., <i>Damages</i> 1	214
Dempster, in re; ex parte Chesney, <i>Bankruptcy</i> H 8	65	— v. —, <i>Telegraph</i> 1	614
Denby, Swaine v.	410	Dickson's Case; in re Elham Valley Railway Co., <i>Company</i> H 74	168
Dench v. Dench, <i>Will Formalities</i> 16	683		
Dendy, in re, <i>Settled Estates Acts</i> 4	565		

	PAGE		PAGE
Digby, <i>ex parte</i> , <i>Solicitor</i> 1 . . . . .	594	Doughty, Betts v. . . . .	504
Diggle v. Higgs, <i>Contract</i> 11 . . . . .	180	—, Northote v. . . . .	298
Dilkea, Dupuy v. . . . .	188	Dover v. Child, <i>Estoppel</i> 2 . . . . .	241
Dillon, Grills v. . . . .	197	— v. —, <i>Trover</i> 1 . . . . .	627
Dimmack, Lloyd v. . . . .	460	—, London and County Bank v. . . . .	584
Direct United States Cable Co. v. Anglo-American Telegraph Co., <i>Colonial Law</i> 29 . . . . .	124	Dowdeswell v. Dowdeswell, <i>Practice</i> U 15 . . . . .	463
Disney v. Longbourne, <i>Practice</i> P 18 . . . . .	465	Dowlais Iron Co., <i>Calaminus</i> v. . . . .	550
Diss Urban Sanitary Authority v. Aldrich, <i>Justice of the Peace</i> 8 . . . . .	810	Dowling, A. G. v. . . . .	613
Ditcham v. Worrall, <i>Infant</i> 20 . . . . .	293	—, in re; <i>ex parte</i> Banks, <i>Bankruptcy</i> F 56 . . . . .	63
Ditton, <i>ex parte</i> ; in re Woods, <i>Bankruptcy</i> A 15 ( <i>Jurisdiction</i> ) . . . . .	42	Dowling's Trusts, in re, <i>Lands Clauses Act</i> 21 . . . . .	390
—, <i>Bankruptcy</i> D 10 ( <i>Proof</i> ) . . . . .	50	Downes, Reg. v. . . . .	351
—, <i>Bankruptcy</i> F 39 ( <i>Disclaimer</i> ) . . . . .	62	Downing, Plevins v. . . . .	552
—, <i>Bankruptcy</i> M 2 ( <i>Practice</i> ) . . . . .	73	Downman, West v. . . . .	517
Divisional Council of the Cape Division v. De Villiers, <i>Colonial Law</i> 18 . . . . .	132	Downton, Castle v. . . . .	91
Dix v. Groom, <i>Replevin</i> . . . . .	542	Dowse's Case; in re European Assurance Society, <i>Company</i> G 7 . . . . .	158
Dixon, <i>ex parte</i> ; in re Henley, <i>Principal and Agent</i> 8 . . . . .	493	Doyle v. Kaufman, <i>Practice</i> II 21 . . . . .	490
—, in re; <i>ex parte</i> Shepherd, <i>Bankruptcy</i> A 8, P 6 . . . . .	41, 79	Dracachis, Nicholas v. . . . .	501
—, in the goods of, <i>Will Construction</i> H 29 . . . . .	670	Drake, Eales v. . . . .	434, 676
— v. Caledonian and Glasgow and South Western Railway Co., <i>Lands Clauses Act</i> 3 . . . . .	317	—, <i>ex parte</i> ; in re Ware, <i>Detinue</i> 3 . . . . .	224
— v. Dixon, <i>Trust</i> C 3 . . . . .	631	Drayton, Borrowman v. . . . .	549
— v. London Small Arms Co., <i>Patent</i> 23 . . . . .	422	— Highway Board, Reg. v. . . . .	275
—, Moore v. . . . .	200	Dressler, <i>ex parte</i> ; in re Solomon, <i>Bankruptcy</i> F 43 . . . . .	62
— v. Reuter's Telegraph Co., <i>Damages</i> 1 . . . . .	214	Drew, Ford v. . . . .	405
— v. —, <i>Telegraph</i> 1 . . . . .	614	— v. Nunn, <i>Husband and Wife</i> 2 . . . . .	279
— v. Whitworth, <i>Marine Insurance</i> 21 . . . . .	356	— v. —, <i>Lunatic</i> 19 . . . . .	348
—, Wimbledon and Putney Common Conservators v. . . . .	657	— v. —, <i>Principal and Agent</i> 9 . . . . .	494
Dixon's Trusts, in re, <i>Husband and Wife</i> 21 . . . . .	281	—, Porter v. . . . .	209, 267
Dobbin, Smith v. . . . .	446	Drewett, Fisher v. . . . .	496
Dobie, Blacklock v. . . . .	179	Dreyfus, Twycross v. . . . .	257
Docker, <i>ex parte</i> ; in re Heritage, <i>Costs</i> 79 . . . . .	198	Driver, Pooley v. . . . .	86, 199, 412, 485
Dodd, <i>ex parte</i> ; in re Ormston, <i>Bankruptcy</i> M 31 . . . . .	76	Drover v. Beyer, <i>Ne Exeat Regno</i> 2 . . . . .	390
Dodds, Dickinson v. . . . .	181	Droitwich Assessment Committee, Corporation of Worcester v. . . . .	534
— v. Shepherd, <i>Interpleader</i> 6 . . . . .	306	Drummond, Mayor of Montreal v. . . . .	121
—, Wymer v. . . . .	464	Drury Building Estate Co., Nicholson v. . . . .	280
Doherty v. Allman, <i>Injunction</i> 17 . . . . .	298	Dryden v. Putney Overseers of, <i>Metropolis</i> 8 . . . . .	367
Dollman v. Jones, <i>Practice</i> T 7 . . . . .	459	Drysdale, Brookes v. . . . .	208
Dolphin v. Layton, <i>Attachment</i> 7 . . . . .	36	Du Barry, Stirling v. . . . .	443
Doman's Case; in re European Assurance Society, <i>Company</i> G 1 . . . . .	156	Dublin, Wicklow and Wexford Railway Co. v. Slaterry, <i>Negligence</i> 24 . . . . .	396
Donaldson v. Donaldson, <i>Tenant for Life</i> 17 . . . . .	617	Duce, <i>ex parte</i> ; in re Whitehouse, <i>Bankruptcy</i> K 17 . . . . .	68
Donovan v. Brown, <i>Practice</i> B 68 . . . . .	445	Duchess of Westminster Silver Lead Ore Co., in re, <i>Practice</i> B 11 . . . . .	439
"Don Ricardo," <i>The, Admiralty</i> 56 . . . . .	18	Duchy of Cornwall, Solicitor of, v. Canning, <i>Cornwall, Duchy of</i> , 1 . . . . .	189
Doolan v. Midland Railway Co., <i>Railway</i> 26 . . . . .	528	Duckett v. Gover, <i>Company</i> E 3 . . . . .	155
Dorin v. Dorin, <i>Will Construction</i> H 11 . . . . .	668	— v. —, <i>Costs</i> 26 . . . . .	193
Dorion v. Les Écolésiasitiques de Séminaire de St. Sulpice de Montréal, <i>Colonial Law</i> 3 . . . . .	120	Duckworth, Goldstraw v. . . . .	513
Dost Aly Khan, in the goods of, <i>Probate</i> 21 . . . . .	503	Dudgeon v. Pembroke, <i>Marine Insurance</i> 23 . . . . .	357
Doucet v. Geoghan, <i>Domicil</i> 4 . . . . .	233	— v. Thomson, <i>House of Lords</i> 1 . . . . .	278
Dougal, Goodchild v. . . . .	2	— v. —, <i>Patent</i> 35 . . . . .	423
		Dudson, in re, <i>Fines and Recoveries Act</i> . . . . .	255
		Duffield, Cogan v. . . . .	566
		Dugdale's Application, in re, <i>Trade Mark</i> 7 . . . . .	621
		Duggan v. Bruce, <i>Bill of Sale</i> 28 . . . . .	91
		Duke v. Littleboy, <i>Trades Unions</i> 1 . . . . .	625
		Duke's Case; in re New Buxton Lime Co., <i>Company</i> H 57 . . . . .	166
		Dulwich College, in re, <i>Endowed Schools Act</i> 1 . . . . .	240



	PAGE		PAGE
Dunbar, Aitken v. . . . .	472	Ebbw Vale Iron and Coal Co., in re, <i>Company D 53</i> . . . . .	147
Dunbar's Trustees v. British Fisheries Society, <i>Scotch Law 24</i> . . . . .	560	Ecclehill Local Board, in re, <i>Lands Clauses Act 10</i> . . . . .	318
Duncan, Swansea Shipping Co. v. . . . .	475	Ecclesiastical Commissioners v. Commissioners of Sewers of City of London, <i>Lands Clauses Act 13</i> . . . . .	319
Duncan, Fox & Co. v. N. & S. Wales Bank, <i>Principal and Surety 8</i> . . . . .	498	— v. Kino, <i>Light and Air 3</i> . . . . .	337
Dundas v. Waddell, <i>Scotch Law 25</i> . . . . .	560	— v. North Eastern Railway Co., <i>Mines 8</i> . . . . .	371
Dundonald, Lord, Scully v. . . . .	173	— v. Rowe, <i>Limitations, Statute of, 1</i> . . . . .	338
Dunnett, Robotham v. . . . .	108	—, Whidborne v. . . . .	312
Dunkirk Colliery Co. v. Lever, <i>Damages 8</i> . . . . .	215	Ecclesiastical Commissioners and the Marquis of Salisbury, in re, <i>Places of Worship Sites Act</i> . . . . .	426
— v. —, <i>Practice Y 7</i> . . . . .	477	Eckersley, Taylor v. . . . .	60, 537
Dunkley, Nene Valley Drainage Commissioners v. . . . .	603	Eckhardt, Jewitt v. . . . .	189
Dunlap, Bullock v. . . . .	224	Eddleston v. Barnes, <i>Nuisance 14</i> . . . . .	400
Dunman, Saunders v. . . . .	378	— v. —, <i>Public Health Acts 38</i> . . . . .	519
Dunn, Cunningham v. . . . .	576	Eden v. Naish, <i>Compromise 4</i> . . . . .	173
Dunovan v. Brown, <i>Practice B 63</i> . . . . .	445	— v. —, <i>Practice E 2</i> . . . . .	447
Dupuy, Cushing v. . . . .	121	— Sheffield v. . . . .	596
— v. Dilkes, <i>Copyright 15</i> . . . . .	189	Edgware Highway Board v. Colne Valley Water Co., <i>Waterworks 2</i> . . . . .	646
Durling v. Lawrence, <i>Practice W 20</i> . . . . .	467	Edinburgh, Lord Provost of, v. Lord Advocate, <i>Charity 29</i> . . . . .	110
Durnford, Nurse v. . . . .	595	—, Magistrates of, v. Edinburgh Roperie and Sail Cloth Co., <i>Scotch Law 23</i> . . . . .	560
Durst v. Masters, <i>Church 21</i> . . . . .	115	— Street Tramways Co. v. Torbain, <i>Scotch Law 27</i> . . . . .	561
Dutton, in re; ex parte Peake, <i>Remoteness 1</i> . . . . .	540	Edleston v. Barnes, <i>Nuisance 14</i> . . . . .	400
Dymond v. Croft, <i>Practice S 7 (Notice of Motion)</i> . . . . .	458	—, Barnes v. . . . .	399, 519
— v. —, <i>Practice II 1 (Writ of Summons)</i> . . . . .	488	Edmonds v. Foster, <i>Company C 2</i> . . . . .	135
Dynevor Duffryn and Neath Abbey Collieries Co., in re, <i>Company I 2</i> . . . . .	172	—, Prudential Assurance Co. v. . . . .	491
Dysart, in re; ex parte Bolland, <i>Bankruptcy H 15</i> . . . . .	65	Edmunds v. Attorney-General, <i>Practice EE 2</i> . . . . .	481
E. S. —, in re, <i>Lunatic 11</i> . . . . .	347	Edward v. Lowther, <i>Practice U 20</i> . . . . .	463
Eade v. Jacob, <i>Practice P 5</i> . . . . .	453	Edwards, in re; McNeile v. Chambers, <i>Infant 25</i> . . . . .	294
— v. Winsor, <i>Attachment 9</i> . . . . .	36	—, —, <i>Lancaster Palatine Court 3</i> . . . . .	312
Eaglesfield v. Londonderry, Marquis of, <i>Company D 19</i> . . . . .	140	— v. Aberayon Mutual Ship Insurance Society, <i>Marine Insurance 6</i> . . . . .	353
Eagleton, Tapley v. . . . .	664	—, Combe v. . . . .	117
Eales v. Drake, <i>Power 15</i> . . . . .	434	— v. Edwards, <i>Bill of Sale 18</i> . . . . .	90
— v. —, <i>Will Construction M 1</i> . . . . .	676	— v. —, <i>Receiver 12</i> . . . . .	538
Eardley v. Granville, <i>Copyholds 3</i> . . . . .	186	—, Foster v. . . . .	192, 226
— v. —, <i>Mines 1</i> . . . . .	370	— v. Hancher, <i>Bankruptcy L 25</i> . . . . .	72
Earle, Cadett v. . . . .	631	—, Hughes v. . . . .	114
Early, ex parte; in re Golding, <i>Bankruptcy K 15</i> . . . . .	68	—, Humphreys v. . . . .	483
Earp v. Henderson, <i>Practice W 90</i> . . . . .	476	—, Lysaght v. . . . .	663
East, Longman v. . . . .	477	— v. Noble, Noble v. Edwards, <i>Vendor and Purchaser 16</i> . . . . .	646
—, Webb v. . . . .	507	— v. Warden, <i>Bombay Civil Service Fund 95</i> . . . . .	95
East and West India Docks Co., Glynn Mills & Co. v. . . . .	584	— v. West, <i>Landlord and Tenant 18</i> . . . . .	315
East India Cotton Agency, in re; Furdonjee's Case, <i>Company H 58</i> . . . . .	166	— v. —, <i>Lease 11</i> . . . . .	325
East London Railway Co., Brocklebank v. . . . .	538	Eglinton v. Norman, <i>Harbours, Docks and Piers Clauses Act 2</i> . . . . .	272
East Norfolk Tramway Co., in re; Barber's Case, <i>Company D 8</i> . . . . .	138	Egmont, Earl of, v. Smith, <i>Auction and Auctioneer 4</i> . . . . .	37
Easterbrook, Saxby v. . . . .	334	— v. —, <i>Specific Performance 24</i> . . . . .	605
Easton v. Bagot, Bagot v. Easton, <i>Practice W 35, 61</i> . . . . .	469, 472	— v. —, <i>Vendor and Purchaser 26</i> . . . . .	647
Eastwick's Case; in re The Canadian Oil Works Corporation, <i>Company D 68</i> . . . . .	149	Egremont Burial Board v. Egremont Iron Ore Co., <i>Production 8</i> . . . . .	506
Eastwood, Thomson v. . . . .	193, 339, 631	Eldridge v. Burgess, <i>Practice C 7</i> . . . . .	446
Eaton, Muskett v. . . . .	674	—, Newington Local Board v. . . . .	599

	PAGE		PAGE
Eley, Bates v. . . . .	2, 438	Englefield v. Marquis of Londonderry, Company D 19 . . . . .	140
— v. Positive Government Security Life Assurance Co., Company D 42 . . . . .	145	Englefield Colliery Co., in re, Company D 30 . . . . .	142
— v. —, <i>Frauds, Statute of</i> , 20 . . . . .	265	English v. Tottie, <i>Production</i> 3 . . . . .	506
Elford, Morgan v. . . . .	278, 495	"Englishman," The, <i>Shipping Law</i> E 11 . . . . .	580
Elham Valley Railway Co., in re; Dickson's Case, Company H 74 . . . . .	168	Entwistle, in re; ex parte Arbuthnot, <i>Bill of Exchange</i> 23 . . . . .	85
Elias v. Griffith, <i>Mines</i> 3 . . . . .	370	Erlanger, Republic of Costa Rica v. . . . .	177, 196, 197, 482
— v. —, <i>Practice</i> K 14 . . . . .	450	—, New Sombrero Phosphate Co. v. . . . .	133
— v. Snowdon Slate Quarries Co., <i>Waste</i> 1 . . . . .	654	"Erminia Foscolo," The, <i>Admiralty</i> 18 . . . . .	15
— v. —, <i>Mines</i> 3 . . . . .	370	Errington, Bathurst v. . . . .	676
Ellershaw, in re, <i>Justice of the Peace</i> 1 . . . . .	310	Escott v. Gray, Company E 6 . . . . .	155
Ellicott, Lindsay v. . . . .	568	Esdaile v. Visser, <i>Debtors Act</i> 11 . . . . .	221
Elliot, ex parte; Middleton v. Pollock, <i>Ad- ministration</i> 5 . . . . .	6	Eslick, in re; ex parte Alexander, <i>Bill of Sale</i> 7 . . . . .	89
—, —, <i>Fraudulent Conveyance</i> 1 . . . . .	266	—, —, <i>Fiatures</i> 2 . . . . .	256
—, in re; ex parte Hopper, <i>Bankruptcy</i> L 6 . . . . .	69	—, in re; ex parte Phillips; ex parte Alexander, <i>Bankruptcy</i> F 12 . . . . .	58
—, Lord Rokeby v. . . . .	373	Esparto Trading Co., in re; Finch and God- dard's Case, Company D 10, 84 . . . . .	138, 152
—, Lyons v. . . . .	37, 314	Essendon, Mayor of, v. Blackwood, <i>Colonial Law</i> 51 . . . . .	127
—, Washer v. . . . .	220, 345	Essex Justices, Reg. v. . . . .	81
Ellis, in re; ex parte Ellis, <i>Bankruptcy</i> M 4 . . . . .	73	Etherington v. Wilson, <i>Charity</i> 26 . . . . .	109
—, in re; ex parte Thoday, <i>Bankruptcy</i> M 4 . . . . .	73	Etna Insurance Co., ex parte; in re United Ports Co., Company H 69 . . . . .	168
— v. Bromley Local Board, <i>Statute</i> 6 . . . . .	608	Etty v. Wilson, <i>Practice</i> T 3 . . . . .	458
— v. Emanuel, <i>Principal and Surety</i> 4 . . . . .	497	European Assurance Society v. Radcliffe; in re Radcliffe, <i>Exeoutor</i> 11 . . . . .	250
— v. Fleming, <i>Prohibition</i> 3 . . . . .	510	—, in re; British Nation Life Assurance Association, Liquidator of, ex parte; British Commercial Insurance Co. v. The British Nation Life Assurance Associa- tion, Company G 3, H 73 . . . . .	157, 168
— v. Houston, <i>Will Construction</i> H 13 . . . . .	668	—; Cocker's Case, Company G 8 . . . . .	158
— v. Manchester Carriage Co., <i>Light and Air</i> 5 . . . . .	337	—; Doman's Case, Company G 1 . . . . .	156
—, Thomas v. . . . .	464	—; Dowse's Case, Company G 7 . . . . .	158
—, Williams v. . . . .	640	—; Grain's Case, Company G 4 . . . . .	157
Elmit, Richardson v. . . . .	35	—; Harman's Case, Company G 5 . . . . .	158
Elmore v. Hunter, <i>Thames</i> 2 . . . . .	619	—; Hort's Case, Company G 4 . . . . .	157
Elmslie v. Corrie, <i>Bankruptcy</i> H 1, K 5 . . . . .	64, 66	—; Industrial and General Life Assurance and Deposit Co., in re; Cocker's Case, Company G 8 . . . . .	158
Elphick v. Barnes, <i>Sale of Goods</i> 10 . . . . .	550	—; Miller's Case, Company G 9 . . . . .	159
Elphinstone, Lord, Earl of Perth and Mel- fort v. . . . .	558	—; Pratt's Case, Company G 5 . . . . .	158
Elsom, in re; Thomas v. Elsom, <i>Costs</i> 56 . . . . .	196	—; Ramsay's Case, Company H 59 . . . . .	166
Elwes v. Payne, <i>Injunction</i> 25 . . . . .	300	—; Rivington's Case, Company G 2 . . . . .	157
— v. —, <i>Market</i> 3 . . . . .	359	—; Wellington Reversionary Annuity and Life Assurance Society, in re; Conquest's Case, Company G 6 . . . . .	168
Elworthy, Armitage v. . . . .	438	European Central Railway Co., in re; ex parte Oriental Financial Corporation, Company H 89 . . . . .	163
Emanuel, Ellis v. . . . .	497	"Evangelistria," The, <i>Admiralty</i> 10 . . . . .	14
Emery v. Jones; in re Emery's Estate, <i>Will Construction</i> H 8 . . . . .	668	Evans, Arkwright v. . . . .	375
Emma Silver Mining Co. v. Grant, Company A 8 . . . . .	183	—, ex parte; in re Baum, <i>Bankruptcy</i> K 11 . . . . .	67
— v. —, <i>Practice</i> HH 10 . . . . .	485	—, ex parte; in re Watkins, <i>Bankruptcy</i> D 24 . . . . .	53
— v. Lewis, Company A 1 . . . . .	131	—, —, <i>Judgment</i> 3 . . . . .	308
— v. —, <i>Practice</i> B 66 ( <i>Appeal</i> ) . . . . .	445	— v. Buck, <i>Practice</i> U 1 ( <i>Parties</i> ) . . . . .	460
— v. —, <i>Practice</i> S 4 ( <i>Motion for Judg- ment</i> ) . . . . .	458	— v. —, <i>Practice</i> W 36 ( <i>Pleading</i> ) . . . . .	469
Emmens, Portal v. . . . .	156, 521	— v. Davis, <i>Forfeiture</i> 5 . . . . .	260
Emmett v. Emmett; in re Emmett's Es- tate, <i>Remoteness</i> 9 . . . . .	541		
Emmins v. Bradford, <i>Settlement</i> 14 . . . . .	568		
Emmott v. Marchant, <i>Bill of Sale</i> 20 . . . . .	90		
Empirikos v. Piangos; The Evangelistria, <i>Admiralty</i> 10 . . . . .	14		
Empusa, The, <i>Shipping Law</i> E 25 . . . . .	582		
Emson, Stevens v. . . . .	24		
Enchmarch, Cook v. . . . .	456		
Endean, Gilbert v. . . . .	173		
Endora, The, <i>Admiralty</i> 35 . . . . .	16		
England, in re; ex parte Pannell, <i>Bank- ruptcy</i> A 11 . . . . .	42		

	PAGE		PAGE
Evans v. Hooper, <i>Action</i> 3 . . . . .	3	Farr and Whittall's Claim, in re British Imperial Insurance Corporation, <i>Insurance</i> 8 . . . . .	303
— v. Jones, <i>Will Construction</i> E 2 . . . . .	662	Farrand, in the goods of, <i>Probate</i> 11 . . . . .	502
—, Jones v. . . . .	249	Farrer, Mortlock v. . . . .	407
— v. Morris, Wadling v. Oliphant, <i>Bankruptcy</i> F 55 . . . . .	63	Fastnedge, in re; ex parte Brooker, <i>Bankruptcy</i> K 22 . . . . .	68
— v. Mostyn, <i>Mines</i> 19 . . . . .	374	Faulconer, School Board for London v. . . . .	109
—, Roberts v. . . . .	461	Fawcus, Garbutt v. . . . .	297
—, Rose v. . . . .	621	—, in re; ex parte Buck, <i>Bankruptcy</i> F 4 . . . . .	57
— v. Walker, <i>Remoteness</i> 3 . . . . .	540	—, —, <i>Factors Acts</i> 2 . . . . .	253
—, Williams v. . . . .	270	Fearn, Cook v. . . . .	570
— v. Wills, <i>County Court</i> 4 . . . . .	202	Fearnley, London Guarantee Co. v. . . . .	174
— v. —, <i>Debtors Act</i> 10 . . . . .	221	— v. Ormsby, <i>Highway</i> 21 . . . . .	277
Evans's Settlement, in re, <i>Lands Clauses Act</i> 31 . . . . .	320	Fearon, Turquand v. . . . .	463, 466
Eve, Hall v. . . . .	475	Felix, Davies v. . . . .	438
Evelyn, Ambrose v. . . . .	476	Fells, in re; ex parte Andrews, <i>Bankruptcy</i> F 13 . . . . .	58
— v. Evelyn, <i>Practice</i> H 6 . . . . .	449	Fendall v. Goldsmid, <i>Marriage</i> 3 . . . . .	360
Evenett v. Lawrence; in re Lawrence, <i>Practice</i> B 49 . . . . .	443	Fenning, ex parte; in re Wilson and Armstrong, <i>Bankruptcy</i> K 21 . . . . .	68
Everall, Holt v. . . . .	285	Fenton v. Wells, <i>Administration</i> 19 . . . . .	8
Everett v. Everett, <i>Advancement</i> 4 . . . . .	21	—, in re; ex parte Lithgow, <i>Bankruptcy</i> F 25 . . . . .	60
— v. —, <i>Legacy</i> 4 . . . . .	328	Fenwick, Keay v. . . . .	590
— v. Lawrence, <i>Practice</i> B 49 . . . . .	443	Fereday, ex parte, <i>Solicitor</i> 3 . . . . .	594
—, Polak v. . . . .	499	Fergusson, Gilbertson v. . . . .	289
Evershed v. London and North Western Railway Co., <i>Railway</i> 22 . . . . .	527	Fernandez, in the goods of, <i>Probate</i> 26 . . . . .	504
Ewart v. Chubb, <i>Husband and Wife</i> 58 . . . . .	287	Ferrett, Rivers v. . . . .	213
Ewen, Faithfull v. . . . .	599	Ferro, Bolton v. . . . .	54, 173
Exchange Trading Co., Berry v. . . . .	445	Ferryman, Lockyer v. . . . .	559
Eykyn's Trusts, in re, <i>Husband and Wife</i> 8 . . . . .	279	Finch, Jenner v. . . . .	666, 684
Eyre v. Cox; in re Jones, <i>Practice</i> II 20 . . . . .	490	Fiddeman, Isaacs v. . . . .	187
— v. Hughes, <i>Solicitor</i> 23 . . . . .	597	Field v. Great Northern Railway Co., <i>Costs</i> 4 . . . . .	190
— v. Smith, <i>Practice</i> W 87 . . . . .	475	—, Mayd v. . . . .	282, 430
—, Ward v. . . . .	596	— v. Seward, <i>Advancement</i> 7 . . . . .	21
Eyston, ex parte; in re Throckmorton, <i>Annuity</i> 5 . . . . .	27	Fielding v. Rhyl Improvement Commissioners, <i>Public Health Act</i> 8 . . . . .	513
Faircloth, in re, <i>Lunatic</i> 18 . . . . .	348	— v. Walshaw, <i>Will Formalities</i> 2 . . . . .	681
Fairclough v. Marshall, <i>Covenant</i> 14 . . . . .	207	Finch, in re; Abbiss v. Burney, <i>Contingent Remainder</i> 2 . . . . .	178
— v. —, <i>Practice</i> U 18 . . . . .	462	— v. Boning, <i>Tender</i> . . . . .	618
Fairer v. Park, <i>Legacy</i> 11 . . . . .	329	— v. Finch, <i>Foreign Law</i> 3 . . . . .	258
Fairlie v. Boosey, <i>Copyright</i> 12 . . . . .	188	— v. Great Western Railway Co., <i>Way</i> 8 . . . . .	657
—, Campbell v. . . . .	201	— v. Underwood, <i>Lease</i> 8 . . . . .	324
Fairs, Jefferys v. . . . .	373, 602	— v. York Union, Guardians of, <i>Lunatic</i> 21 . . . . .	348
Faithfull v. Ewen, <i>Solicitor</i> 38 . . . . .	599	Finch's Case; in re Esparto Trading Co., <i>Company</i> D 10, 84 . . . . .	138, 152
"Falcon," The, <i>Admiralty</i> 24 . . . . .	15	Finch Hatton, Wilson v. . . . .	313
Falconer, London School Board v. . . . .	109	Fincham, Hodges v. . . . .	452
Falk, ex parte; in re Kiell, <i>Sale of Goods</i> 32 . . . . .	555	Findlater, Siegert v. . . . .	624
Fall, Powell v. . . . .	344	Finlay v. Davis, <i>District Registry</i> 8 . . . . .	226
Falle, Hamon v. . . . .	123, 333	—, Robinson v. . . . .	623
"Fanchon," The, <i>Shipping Law</i> M 4 . . . . .	589	Finn, Yates v. . . . .	416
Fane v. Fane, <i>Administration</i> 54 . . . . .	12	Finney v. Grice, <i>Will Construction</i> D 12 . . . . .	662
— v. —, <i>Heirloom</i> 1 . . . . .	273	— v. Hinde, <i>Practice</i> D 4 . . . . .	447
Fardon's Vinegar Co., ex parte; in re Jones, <i>Practice</i> B 59 . . . . .	444	Fire Insurance Corporation, Imperial Marine Insurance Co. v. . . . .	357
Farmer, Mayer v. . . . .	32	Firebrace v. Firebrace, <i>Divorce</i> 2 . . . . .	227
Farmiloe v. Bain, <i>Detinue</i> 2 . . . . .	224	Firth, in re; ex parte Schofield, <i>Bankruptcy</i> D 29, M 45 . . . . .	77
— v. —, <i>Estoppel</i> 6 . . . . .	242		
Farncombe's Trusts, in re, <i>Power</i> 17 . . . . .	434		
Farnie, Harvey v. . . . .	227		
Farnworth, Spaight v. . . . .	586		
Farquhar, Moffatt v. . . . .	154		
Farquharson v. Floyer, <i>Administration</i> 24 . . . . .	9		

	PAGE		PAGE
Firth v. Bowling Green Co., <i>Negligence</i> 4	392	Forbes, Whitaker v.	649
—, Cole, Marchant & Co. v.	192	Ford, ex parte; in re Caughey, <i>Bankruptcy</i>	
—, Sykes v.	484, 486	F 33	61
Fisher v. Drewett, <i>Principal and Agent</i> 21	496	—, Beal v.	405
— v. Fisher, <i>Probate</i> 38	505	— v. Drew, <i>Parliament</i> 15	405
— v. Keane, <i>Club</i> 2	118	—, Shaw v.	252, 672
— v. Longbourne	461	— v. Taylor, <i>County Court</i> 15	203
— v. Owen, <i>Practice</i> P 11	454	Ford and Hill, in re, <i>Vendor and Purchaser</i> 15	645
— v. Smith, <i>Marine Insurance</i> 27	358	Forder v. Handyside, <i>Income Tax</i> 2	289
— v. Tully, <i>Colonial Law</i> 40	125	Forest of Dean Coal Mining Co., in re, <i>Company</i> A 11	134
— v. Val de Travers Asphalte Co., <i>Damages</i> 19	217	Formby, Champion v.	465
— v. —, <i>Practice</i> B 3	438	Forrester, Wynne v.	374
Fishmongers' Co., Lyon v.	545, 619	Forster v. Manchester and Milford Railway Co., <i>Lands Clauses Act</i> 1	316
Fitzgerald v. Chapman, <i>Settlement</i> 33	570	Forwood v. North Wales Mutual Insurance Co., <i>Marine Insurance</i> 20	356
— (Lord), Dawson v.	29, 109	—, Rhodes v.	492
— v. —, <i>Practice</i> B 48	443	— v. Watney, <i>Arbitration</i> 2	30
Fitzgibbon, Pike v.	283	Foster, ex parte; in re Roberts, <i>Bankruptcy</i>	
Fitzpatrick, Leslie v.	292, 361	F 41	62
Flagstaff Silver Mining Co., Davis v.	202, 345	—, in re; ex parte Dickens, <i>Bankruptcy</i>	
—, in re, <i>Company</i> H 92	170	P 4	79
Flattery, Reg. v.	531	—, Edmonds v.	135
Fleetwood, in re; Sidgreaves v. Brewer, <i>Trust</i> A 5	629	— v. Edwards, <i>Costs</i> 21	192
Fleming, Ellis v.	510	— v. —, <i>District Registry</i> 5	226
— v. Gray, <i>Salmon Fishery</i> 3	556	— v. Foster, <i>Infant</i> 10	292
— v. Greaves	464	— v. —, <i>Partition</i> 20	411
—, Harris v.	480	— v. Gamgee, <i>Costs</i> 36	194
— v. Manchester and Sheffield Railway Co., <i>Costs</i> 14	192	—, Macdonald v.	225
Fletcher, ex parte; in re Bainbridge, <i>Bankruptcy</i> F 14	58	— v. Medwin, <i>Parliament</i> 16	405
—, ex parte; in re Hart, <i>Bankruptcy</i> A 7, A 10	41, 42	— v. Parker, <i>Bill of Exchange</i> 16	84
—; in re Henley, <i>Bill of Sale</i> 43	93	— v. —, <i>Mortgage</i> 57	385
—; in re Vaughan, <i>Bankruptcy</i> E 1	56	—, Reg. v.	254
—, Cummins v.	382	— v. Usherwood, <i>County Court</i> 10	202
— v. Hudson, <i>Public Health Act</i> 5	512	—, Wingate, Birrell & Co. v.	353
—, Lawrence v.	600	— v. Wright, <i>Fishery</i> 3	256
—, Pease v.	537	—, Yetts v.	459
—, Regina v.	210	Foster and Lister, in re, <i>Voluntary Settlement</i> 2	651
—, Schuster v.	588	Fothergill, Goodbarne v.	445
— v. Smith, <i>Mines</i> 9	372	—, in re; ex parte Turquand, <i>Bankruptcy</i> K 20	68
—, Trotter v.	373	—, —, <i>Principal and Surety</i> 10	498
Flight, Bizzey v.	652, 681	Foulds, in re; ex parte Learoyd, <i>Bankruptcy</i> C 8, M 5	48, 73
Flint, Patey v.	384	Foulkes v. Metropolitan District Railway Co., <i>Carrier</i> 15	102
Floating Baths Co., Cruikshank v.	32	Fourth City Mutual Benefit Building Society v. Williams, <i>Friendly Society</i> 5	268
Florence, in re; ex parte Wingfield, <i>Bankruptcy</i> F 11	57	Fowle, Knatchbull v.	294, 450
—, Mulliner v.	301	Fowler v. Knoop, <i>Shipping Law</i> B 6	574
—, Sandys v.	301	— v. Monmouthshire Canal Co., <i>Solicitor</i> 6	595
Florence Land and Public Works Co., in re; ex parte Moor, <i>Company</i> D 48	146	Fowles v. Walker, <i>Light and Air</i> 4	337
—, Norton v.	97, 259	Fox v. Buckley, <i>Trust</i> C 5	632
Flower v. Buller, <i>Husband and Wife</i> 38	283	— v. Hawkes; Hawkes v. Fox, <i>Husband and Wife</i> 34	283
— v. Lloyd, <i>Patent</i> 31	422	— v. —, <i>Mortgage</i> 20	380
— v. —, <i>Practice</i> B 4	439	— v. —, <i>Trust</i> A 3	628
—, London and South Western Railway Co. v.	608	—, Hodgson v.	563
— v. Low Leyton Local Board, <i>Public Health Acts</i> 35	518	— v. Wallis, <i>Practice</i> B 43	443
Floyer, Farquharson v.	9	—, White v.	309
Foley, Bradburn v.	213	Fox, Walker & Co., ex parte; in re Bishop, <i>Bill of Exchange</i> 32	86
Footo, Cunningham v.	339		
Forbes v. Lea Conservancy Board, <i>River</i> 1	545		

	PAGE		PAGE
Foxwell, King v. . . . .	233	Gabell v. South Eastern Railway Co., Carrier 9 . . . . .	101
France, White v. . . . .	363, 394	Gadd v. Houghton, Principal and Agent 11 . . . . .	494
Francis v. Maas, <i>Adulteration of Seeds</i> . . . . .	20	Gage, Stace v. . . . .	409
—, Swire v. . . . .	260, 492	Galatti v. Wakefield, <i>Arbitration</i> 24 . . . . .	33
—, in re; ex parte National Guardian Assurance Co., <i>Bill of Sale</i> 40 . . . . .	93	Gale v. Gale, <i>Voluntary Settlement</i> 10 . . . . .	652
"Franconia," The, <i>Central Criminal Court</i> 104 . . . . .	104	—, Martin v. . . . .	292
—, <i>Shipping Law E</i> 2 . . . . .	579	—, Reg. v. . . . .	239
—, Harris v. . . . .	479	— v. Squier, <i>Vendor and Purchaser</i> 24 . . . . .	647
Franklin, Guardians of St. Leonard's, Shoreditch, v. . . . .	424	Gally, in the goods of, <i>Probate</i> 17 . . . . .	503
Fraser v. Burrows, <i>Production</i> 29 . . . . .	509	Gamble, Harris v. . . . .	467, 473, 484
Frearson v. Loe, <i>Patent</i> 11, 17, 25 . . . . .	420, 421, 422	— v. Ocean Marine Insurance Co. of Bombay, <i>Marine Insurance</i> 10 . . . . .	353
Freccia, Sturla v. . . . .	245, 300	Games, Davies v. . . . .	618
Frederici v. Vanderzee, <i>Practice</i> II 15 . . . . .	489	—, ex parte; in re Bamford, <i>Bankruptcy</i> B 6 . . . . .	43
Free, Borrowman v. . . . .	552	Gamee, Bennett v. . . . .	241
Freeland, Postlethwaite . . . . .	582	—, Foster v. . . . .	194
Freeman, Bartholomew v. . . . .	453	Garnston, Rector of, ex parte, <i>Lands Clauses</i> <i>Act</i> 26 . . . . .	320
— v. Cox, <i>Practice V</i> 4 . . . . .	465	Ganges, The, <i>Liverpool Passage Court</i> . . . . .	343
—, Morris v. . . . .	505	Garbutt v. Fawcus, <i>Company H</i> 81 . . . . .	169
Freemantle, Delmar v. . . . .	452, 471	— v. —, <i>Injunction</i> 10 . . . . .	297
—, Scott v. . . . .	203	— v. Raven, <i>Injunction</i> 6 . . . . .	297
—, Wright v. . . . .	305	Gardden Lodge Coal, &c., Co., Rose v. . . . .	169
French v. Gerber, <i>Shipping Law D</i> 9 . . . . .	577	Garden Gully United Quartz Mining Co. v. McLister, <i>Company D</i> 86 . . . . .	152
— v. Newgass, <i>Shipping Law D</i> 11 . . . . .	577	Gardiner, Macdougall v. . . . .	155
—, Reg. v. . . . .	274, 640	—, Thompson v. . . . .	98
Frere, Talbot v. . . . .	249	Gardner v. Beaumont; in re Gardner, <i>Practice Z</i> 4 . . . . .	478
Freshfield's Trusts, in re, <i>Mortgage</i> 25 . . . . .	381	— v. Cowles, <i>Trustee Acts</i> 4 . . . . .	637
Frewen v. Hamilton, <i>Settlement</i> 7 . . . . .	567	— v. Gardner, <i>Presumption</i> 3 . . . . .	491
Friend v. London, Chatham and Dover Railway Co., <i>Production</i> 11 . . . . .	507	— v. Irwin, <i>Production</i> 15 . . . . .	507
Frith, in re, <i>Power</i> 24 . . . . .	435	— v. Lucas, <i>Scotch Law</i> 12 . . . . .	559
—, <i>Tenant in Common</i> 2 . . . . .	618	Gardner's Trusts, in re, <i>Trustee Acts</i> 3 . . . . .	637
—, ex parte Schofield, <i>Bankruptcy D</i> 31 . . . . .	54	Garett, Davy v. . . . .	457
Fritz v. Hobson, <i>Costs</i> 37 . . . . .	194	Garland v. Beverley, <i>Garolkind</i> . . . . .	271
— v. —, <i>Nuisance</i> 9 . . . . .	399	— v. —, <i>Will Construction G</i> 4 . . . . .	665
Froehlich, Meyerhoff v. . . . .	342	— v. —, <i>Will Construction H</i> 25 . . . . .	669
Frodsham v. Frodsham, <i>Trustee Acts</i> 18 . . . . .	638	—, Davies v. . . . .	490
Frost, Benecke v. . . . .	487	Garling v. Boyds, <i>Practice L</i> 1 . . . . .	452
Fry, Bradford v. . . . .	114	Garnett v. Bradley, <i>Costs</i> 7 . . . . .	191
—, Gatty v. . . . .	82	— v. —, <i>Slander</i> 3 . . . . .	593
—, Queen's Proctor v. . . . .	245	Garrad, ex parte; in re Lewer, <i>Bankruptcy</i> M 17 . . . . .	74
Fryer v. Morland, <i>Succession Duty</i> 1 . . . . .	611	—, in re; ex parte Wilkes, <i>Trust C</i> 9 . . . . .	632
— v. Royle; in re Royle, <i>Administration</i> 35 . . . . .	10	Garratt v. Weekes, <i>Will Construction H</i> 9 . . . . .	668
— v. Salisbury and Dorset Junction Railway Co., <i>Lands Clauses Act</i> 19 . . . . .	320	Garrett, Davey v. . . . .	467
— v. Wiseman, <i>Practice K</i> 9 . . . . .	450	—, Law v. . . . .	30
Fulford, Hilliard v. . . . .	11	Gaskarth, Regina v. . . . .	512
—, Kelland v. . . . .	292	Gaskell, ex parte; in re Manchester and Leeds Railway Co., <i>Lands Clauses Act</i> 37 . . . . .	321
—, Walrond v. . . . .	307	—, Lee v. . . . .	263
Fulham Board of Works v. Goodwin, <i>Me-</i> <i>tropolis</i> 15 . . . . .	368	Gaskin v. Balls, <i>Injunction</i> 24 . . . . .	299
—, Sheffield v. . . . .	368	Gas Light and Coke Co., A. G. v. . . . .	398
Fullwood v. Fullwood, <i>Injunction</i> 12 . . . . .	298	—, Patterson v. . . . .	418
Fulton v. Andrew, <i>Administration</i> 50 . . . . .	12	— v. Mead, <i>Gas Works Clauses Acts</i> 1 . . . . .	270
Furber, Hunt-Foulston v. . . . .	27	Gatenby v. Morgan, <i>Will Construction I</i> 3 . . . . .	671
—, ex parte; in re Pellew, <i>Bill of Sale</i> 38 . . . . .	92	Gatti v. Webster, <i>Mortgage</i> 49 . . . . .	384
Furdonjee's Case; in re East India Cotton Agency, <i>Company H</i> 58 . . . . .	166	Gatty v. Fry, <i>Bill of Exchange</i> 8 . . . . .	82
Furness v. Booth, <i>Practice W</i> 66 . . . . .	473	Gaudet Freres Steamship Co., in re, <i>Com-</i> <i>pany H</i> 49 . . . . .	164
—, Vale of Neath Colliery Co. v. . . . .	263	Gay v. Cadby, <i>Metropolis</i> 20 . . . . .	369
— Railway Co., A. G. v. . . . .	523	— v. Labouchere, <i>Practice P</i> 16 . . . . .	455
Fylde Union, Blackpool Pier Co. v. . . . .	533		

	PAGE		PAGE
Geddis v. Bann Reservoir, Proprietors of, <i>Public Body</i> 1 . . . . .	511	Gillespie and Paterson's Case; in re City of Glasgow Bank, <i>Trustee</i> D 16 . . . . .	634
Gee, Carmichael v. . . . .	27	Gilliat, Conington v. . . . .	201, 281, 487
—, Laming v. . . . .	10	Gilpin, McCollin v. . . . .	140
— v. Mahood, <i>Annuity</i> 7 . . . . .	27	Ginesi v. Cooper, <i>Vendor and Purchaser</i> 13 . . . . .	645
Gellatly, Commissioners of Sewers of City of London v. . . . .	469	Girdlers' Co., Colebeck v. . . . .	313
General Finance Mortgage and Discount Co. v. Liberator Permanent Benefit Building Society, <i>Estoppel</i> 4 . . . . .	242	Girdlestone v. Brighton Aquarium Co., <i>Covin and Collusion</i> . . . . .	110
General Iron Screw Colliery Co., Wilson v. . . . .	218	Girdwood, Clark v. . . . .	570, 595
General Share Trust Co. v. Chapman, <i>Solicitor</i> 36 . . . . .	599	Girvin v. Grepe, <i>Practice</i> II 16 . . . . .	490
General South American Co., ex parte; in re Yglesias & Co., <i>Bill of Exchange</i> 14, 20 . . . . .	84, 85	Gisborne v. Gisborne, <i>Lunatic</i> 4 . . . . .	346
—, in re, <i>Company</i> H 38 . . . . .	163	— v. —, <i>Trust</i> D 10 . . . . .	633
General Steam Navigation Co. v. London and Edinburgh Shipping Co., <i>Costs</i> 44 . . . . .	195	Gist, in re, <i>Lunatic</i> 13 . . . . .	347
General Works Co., in re; Gill's Case, <i>Com- pany</i> H 68 . . . . .	168	Gladstone v. Gladstone, <i>Divorce</i> 7, 30 . . . . .	227, 231
Geoghan, Doucet v. . . . .	233	—, Steuart v. . . . .	246, 247, 414, 452
George, Agar v. . . . .	569	Glanford Brigg, Newark Union v. . . . .	429
—, King v. . . . .	329, 664	"Glannibanta," The, <i>Admiralty</i> 13, 22 . . . . .	15
—, Rees v. . . . .	11	—, <i>County Court</i> 7 . . . . .	202
—, in re, <i>Infant</i> 1 . . . . .	290	—, <i>Shipping Law</i> E 4 ( <i>Collision</i> ) . . . . .	579
—, <i>Legacy</i> 24 . . . . .	331	—, <i>Shipping</i> T 12 ( <i>Salvage</i> ) . . . . .	591
George's Estate, in re; King v. George, <i>Legacy</i> 12 . . . . .	329	Glave, ex parte; in re Bennett, <i>Will Con- struction</i> G 10 . . . . .	666
—, <i>Will Construction</i> E 14 . . . . .	664	Gleaves v. Mariner, <i>Church</i> 5 . . . . .	113
Gerber, French v. . . . .	577	Gledhill v. Hunter, <i>Practice</i> Q 5 . . . . .	456
German v. Chapman, <i>Covenant</i> 9 . . . . .	207	Glegg v. Gilbey, <i>Bankruptcy</i> L 29 . . . . .	73
Gery v. Redman, <i>Evidence</i> 6 . . . . .	244	Gloag, Pringle v. . . . .	563
Gething v. Keighley, <i>Account</i> 1 . . . . .	2	Globe New Patent Iron and Steel Co., Lim- ited, in re, <i>Company</i> D 17 . . . . .	139
Gibb, Original Hartlepool Collieries Co. v. 472, 545 . . . . .	472, 545	Glossop v. Heston and Isleworth Local Board, <i>Nuisance</i> 5 . . . . .	398
Gibbes, ex parte; in re Whitworth, <i>Sale of Goods</i> 26 . . . . .	553	— v. —, <i>Practice</i> K 10 . . . . .	450
Gibbons, Brackenbury v. . . . .	680	Glover, Hutchinson v. . . . .	506
— v. London Financial Association, <i>Practice</i> B 54 . . . . .	444	Glyn, Dallas v. . . . .	221, 452
Gibbs, Hope v. . . . .	645	Glynn Mills & Co. v. East and West India Dock Co., <i>Shipping Law</i> F 7 . . . . .	583
Gibson, in re; ex parte Bolland, <i>Bank- ruptcy</i> B 5 . . . . .	43	Godbehere, Davis v. . . . .	459
—, Roughton v. . . . .	411	Goddard v. Thompson, <i>Practice</i> EE 7 . . . . .	482
Giddy, Webb v. . . . .	123	—, Pelling v. . . . .	639
Gidlow, Lancashire and Yorkshire Railway Co. v. . . . .	528	Godden, Beynon v. . . . .	193, 439
Gilbert, in re; ex parte Viney, <i>Bankruptcy</i> M 10 . . . . .	74	— v. Corsten, <i>Practice</i> II 7 . . . . .	489
— v. Endean, <i>Compromise</i> 1 . . . . .	173	Godfrey v. Bryan; in re Bryan, <i>Husband and Wife</i> 23 . . . . .	282
— v. Harben, in re Harvey's Estate, <i>Hus- band and Wife</i> 41 . . . . .	284	— v. Harben; in re Harvey's Estate, <i>Husband and Wife</i> 41 . . . . .	284
— v. Smith, <i>Partition</i> 9 . . . . .	410	—, Woodgate v. . . . .	38
— v. —, <i>Practice</i> W 17 . . . . .	467	Godhew v. Williams, <i>Vestry</i> 2 . . . . .	650
Gilbertson v. Fergusson, <i>Income Tax</i> 4 . . . . .	289	Gold Co., in re, <i>Company</i> D 1 ( <i>Articles of Association</i> ) . . . . .	136
Gilbey, Glegg v. . . . .	73	—, <i>Company</i> H 88 ( <i>Witnesses</i> ) . . . . .	170
—, ex parte; in re Bedell, <i>Bankruptcy</i> L 30 . . . . .	73	Golden Valley Railway Co., Pugh v. . . . .	439, 533
Giles v. Hamer, <i>Solicitor</i> 42 . . . . .	600	Goldie, Swabey v. . . . .	675
— v. —, <i>Partnership</i> 28 . . . . .	417	Golding v. Wharton Saltworks Co., <i>Prac- tice</i> W 6 . . . . .	466
Gill v. Dickinson, <i>Mines</i> 7 . . . . .	371	— v. —, <i>Practice</i> W 53 . . . . .	471
—, Phillips and, in re, <i>Practice</i> S 6 . . . . .	458	—, in re; ex parte Early, <i>Bankruptcy</i> K 15 . . . . .	68
Gill's Case; in re General Works Co., <i>Com- pany</i> H 68 . . . . .	168	Golding, Davis & Co., Limited, ex parte; in re Knight, <i>Sale of Goods</i> 31 . . . . .	555
		Goldring v. La Banque d'Hochelega, <i>Colonial Law</i> 4 . . . . .	120
		Goldsmid, Fendall v. . . . .	360
		Goldstraw v. Duckworth, <i>Public Health Act</i> 12 . . . . .	513
		Goldsworthy, in re, <i>Parent and Child</i> 1 . . . . .	402
		Gomersall, in re; Jones v. Gordon, <i>Bank- ruptcy</i> D 36 . . . . .	55

	PAGE		PAGE
Gomersall, in re; Jones v. Gordon, <i>Fraud</i> 2	260	Grant v. Pagham, Overseers of, <i>Parliament</i>	
Gooch's Estate, in re, <i>Lands Clauses Act</i> 30	320	13	405
Good, ex parte; in re Armitage, <i>Bankruptcy</i>		— v. Secretary of State for India, <i>Crown</i> 8	212
D 15	51	—, Stokes v.	466
—, <i>Partnership</i> 20	416	—, Twycross v.	3, 131, 464
—, ex parte; in re Lee, <i>Bankruptcy</i> D 33	54	Granville, Eardley v.	186, 370
Goodall, Naylor v.	602	Grason, in re; ex parte Taylor, <i>Bankruptcy</i>	
Goodbarne v. Fothergill; in re Harker,		D 12	50
<i>Practice</i> B 62	445	Gray, Baker v.	381
Goodchap v. Roberts; in re Roberts,		—, Escott v.	155
<i>Interest</i> 1	305	—, Fleming v.	556
Goodchild v. Dougal, <i>Acknowledgment of</i>		—, Lewis v.	364
<i>Deed</i> 1	2	— v. North Eastern Railway Co., <i>Lands</i>	
Goode, Collette v.	471	<i>Clauses Act</i> 14	319
Goodhew v. Williams, <i>Vestry</i> 2	650	— v. Paul, <i>Practice</i> E 1	447
Goodman, Davis v.	91	—, Polini v.	245, 300
—, Saltash, Mayor of, v.	213, 255	—, Richardson v.	556
Goodman's Trusts, in re, <i>Distributions,</i>		—, Rowe v.	411
<i>Statute of</i>		— v. Siggers, <i>Tenant for Life</i> 8	616
Goodwin, Fulham Board of Works v.	368	—, Watson v.	618
— v. Roberts, <i>Scip Certificate</i> 2	561	Gray's Case, in re West Hartlepool Iron	
—, Sawyer v.	596	Co., <i>Company</i> H 59	165
—, Taylor v.	277	Grayson, in re, <i>Will Construction</i> H 26	669
Gordillo v. Weguelin, <i>Bond</i> 1	95	Great Australian Gold Mining Co. v. Martin,	
Gordon, ex parte; in re Gomersall, <i>Bank-</i>		<i>Practice</i> BB 12	479
<i>ruptcy</i> D 36	55	—, in re; Appleyard's Case, <i>Company</i> D 70	149
—, <i>Fraud</i> 2	260	Great Eastern Railway Co., Attorney-	
—, Caughey v.	576	General v.	441, 524
—, Nanson v.	50	—, Bergheim v.	101
—, in re, Roberts v. Gordon, <i>Trust</i> E 4	635	—, Berringer v.	362, 396
Goslin v. Agricultural Hall Co., <i>Master and</i>		—, Betts v.	322
<i>Servant</i> 15	363	—, Brown v.	424, 525
Gosling, Taite v.	209	—, Way v.	100
Gosman, in re, <i>Crown</i> 7	212	Great Laxey Mining Co. v. Clague, <i>Mines</i> 12	372
—, <i>Petition of Right</i> 5	425	Great Northern and London and North	
Gothard v. Clarke, <i>Municipal Corporation</i> 6	387	Western Joint Committee v. Inett, <i>Costs</i>	
Gott v. Nairne, <i>Trust</i> E 8	636	43	195
Gould v. Lakes, <i>Will Formalities</i> 24	684	Great Northern Railway Company, Field v.	190
Gourlay, in re; ex parte Ormandy, <i>Bank-</i>		—, Hopkins v.	255
<i>ruptcy</i> D 23	53	—, Leggott v.	241
Gover, Duckett v.	155, 193	—, Reg. v.	318
—, Street v.	473	—, Sandwich, Earl of, v.	655
Government Security Fire Insurance Co.,		Great Western Railway Co., Attorney-	
in re; White's Case, <i>Company</i> D 65	149	General v.	530
—; Mudford's Claim, <i>Company</i> D 72	150	—, Chapman v.	101
Government Stock Investment Co., Reg. v.	145	—, Finch v.	657
Gover's Case; in re Coal Economising Gas		—, Harris v.	101
Co., <i>Company</i> D 74	150	—, Lewis v.	101, 528
Graham v. Campbell, <i>Injunction</i> 27	300	—, Owen v.	103
— v. —, <i>Practice</i> B 15	440	—, Patscheider v.	102
—, Taylor v.	561	—, Purnell v.	469
— v. Wilcockson, <i>Bill of Sale</i> 2	87	— v. Smith, <i>Railway</i> 5	523
Grain's Case; in re European Assurance		— v. —, <i>Lease</i> 12	325
Society, <i>Company</i> G 4	157	—, Turner v.	203, 439
Grange, Taylor v.	409	Great Yarmouth, Parish of, v. City of	
Grant, ex parte; in re Plumbly, <i>Stock Ex-</i>		London, Clerk of the Peace of, <i>Poor Law</i>	
<i>change</i> 2	610	11	428
—, in the goods of, <i>Probate</i> 18	503	Greaves v. Fleming, <i>Practice</i> V 1	464
— v. Banque Franco-Egyptienne, <i>Costs</i>		Greaves, in re; ex parte Whitton, <i>Bank-</i>	
50, 69	196, 197	<i>ruptcy</i> M 15	74
—, Emma Silver Mining Co. v.	133, 485	— v. Greenwood, <i>Evidence</i> 27	247
— v. Holland, <i>Practice</i> T 13	459	— v. Keene, <i>False Imprisonment</i> 2	254
— v. —; in re Norton, <i>Solicitor</i> 26	597	— v. Tofield, <i>Annuity</i> 11	27
—, Household Fire and Carriage Accident		— v. —, <i>Mortgage</i> 28	381
Insurance Co. v.	181	Grece v. Hunt, <i>Public Health Act</i> 25	516

	PAGE		PAGE
Green, Bund v. . . . .	669	Grimstone, Hartley v. . . . .	505
— v. Carlill, <i>Husband and Wife</i> 43 . . . . .	284	Grimwood v. Bartels, <i>Lunatic</i> 17 . . . . .	348
— v. Coleby, <i>Practice</i> CC . . . . .	481	Grindley, Smith v. . . . .	445
—, Judd v. . . . .	198, 449, 544	Grissell, ex parte; in re Regent's Canal Ironworks Co., <i>Company</i> H 40 . . . . .	165
—, Marshall v. . . . .	263	—, in re; ex parte Jones, <i>Bankruptcy</i> C 5 . . . . .	47
— v. Mepham, <i>Parliament</i> 21 . . . . .	407	—, <i>Husband and Wife</i> 53 . . . . .	285
— v. Pratt; in re Green's Estate, <i>Practice</i> U 37 . . . . .	464	Groom, Dix v. . . . .	542
— v. Reg., <i>Statute</i> 3 . . . . .	608	Grove v. Central African Trading Co., <i>Practice</i> W 79 . . . . .	474
— v. Sevin, <i>Practice</i> K 19, 26 ( <i>Evidence</i> ) . . . . .	451, 452	—, Nant-y-glo, &c. Iron Co. v. . . . .	140
— v. —, <i>Practice</i> W 14 ( <i>Pleading</i> ) . . . . .	467	Grubb, in re; ex parte Sims, <i>Bankruptcy</i> B 21 . . . . .	46
— v. —, <i>Specific Performance</i> 26 . . . . .	606	—, <i>Sheriff</i> 5 . . . . .	572
—, Smith v. . . . .	218	Gudgen, Day v. . . . .	196, 384
— v. Tribe, <i>Will Formalities</i> 21 . . . . .	684	Guerin, Hancock v. . . . .	508
—, Whaley Bridge Calico Printing Co. v. . . . .	132	Guildfield, Overseers of, Kenrick v. . . . .	533
Greener, ex parte; in re Greener, <i>Bankruptcy</i> B 24 . . . . .	46	Gurney, Boswell v. . . . .	6
—, ex parte; in re Vane, <i>Bankruptcy</i> B 13 . . . . .	44	Gush, ex parte; in re Pratt, <i>Bankruptcy</i> L 2 . . . . .	69
Greenhalgh, Pendlebury v. . . . .	276	Gutierrez, ex parte; in re Gutierrez, <i>Debtors Act</i> 20 . . . . .	222
Greenhill, Provident Permanent Benefit Building Society v. . . . .	268, 457	Guy v. Cadby, <i>Metropolis</i> 20 . . . . .	369
Greenhough v. Littler, <i>Mortgage</i> 54 . . . . .	385	—, Holme v. . . . .	108
Greenhow, Inhabitants of, Reg. v. . . . .	273	Gwynn v. Gwynn, in re Rainforth, <i>Debtor and Creditor</i> 4 . . . . .	219
Greenlaw Turnpike Trustees, Reg. v. . . . .	640	—, <i>Limitations, Statute of</i> , 11 . . . . .	340
Greenwich Board of Works, Bradley v. . . . .	368	Gye, Bettini v. . . . .	183
Greenwood, Berdan v. . . . .	467	—, Carmichael v. . . . .	27
—, Greaves v. . . . .	247		
— v. Greenwood, <i>Will Construction</i> G 2 . . . . .	665	H.'s Estate, in re; H. v. H. <i>Receiver</i> 4. . . . .	537
Greer v. Poole, <i>Marine Insurance</i> 13 . . . . .	354	Hackett v. Baiss, <i>Light and Air</i> 6 . . . . .	338
Gregory, D'Eyncourt v. . . . .	679	Hackney Newspaper Co., in re, <i>Company</i> D 49 . . . . .	146
Gregson, Barber v. . . . .	283	Hadgett v. Commissioners of Inland Revenue, <i>Stamp</i> 6 . . . . .	607
—, Kirk v. . . . .	250	Hadley, Norris and Jacob's Case; in re London and Provincial Coal Co., <i>Company</i> D 73 . . . . .	150
— v. Potter, <i>Piers and Harbours</i> 1 . . . . .	426	Hagen's Trusts, in re, <i>Will Construction</i> N 9 . . . . .	678
Greenfell v. Commissioners of Inland Revenue, <i>Stamp</i> 7 . . . . .	607	Hagg v. Darley, <i>Covenant</i> 2 . . . . .	205
Grepe, Girvin v. . . . .	490	— v. —, <i>Practice</i> W 41 . . . . .	470
Gretton v. Mees, <i>Principal and Agent</i> 4 . . . . .	492	Hagger, Adams v. . . . .	324
Grey, Shippey v. . . . .	600	Hagle Gillman v. Christopher, <i>Practice</i> HH 29 . . . . .	487
Grice, Finney v. . . . .	662	Haigh, Corbett v. . . . .	24
—, Protector Endowment Society v. . . . .	96	Hale, ex parte; in re Binns, <i>Landlord and Tenant</i> 14 . . . . .	315
— v. Richardson, <i>Sale of Goods</i> 25 . . . . .	553	—, Cohen v. . . . .	35
Grieves, in re; ex parte Pearce, <i>Bankruptcy</i> K 18 . . . . .	68	— v. Hale, <i>Remoteness</i> 7 . . . . .	541
Griffin, ex parte; in re Adams, <i>Bankruptcy</i> M 38 ( <i>Petition</i> ) . . . . .	77	—, Maddy v. . . . .	616
—, <i>Bankruptcy</i> P 9 ( <i>Set-off of Costs</i> ) . . . . .	79	Hales, Usill v. . . . .	333
— v. Allen, <i>Costs</i> 55 . . . . .	196	Halford, Hodgson v. . . . .	259, 541
Griffith, in re; Carr v. Griffith, <i>Apportionment</i> 3 . . . . .	28	Halkett v. Emmott, <i>Bill of Sale</i> 19 . . . . .	90
—, Carr v. . . . .	28	Hall, ex parte; in re Jackson, <i>Bankruptcy</i> B 12 . . . . .	44
—, Elias v. . . . .	370, 450	—, ex parte; in re Townsend, <i>Bankruptcy</i> F 21 . . . . .	59
—, Mills v. . . . .	326	—, ex parte; in re Whitting, <i>Stamp</i> 4 . . . . .	607
— v. Paget, <i>Company</i> G 10 . . . . .	159	—, in re, <i>Costs</i> 81 . . . . .	199
— v. Taylor, <i>Action</i> 8 . . . . .	5	—, <i>Solicitor</i> 23 . . . . .	597
Griffiths v. Bramley Moore, <i>Marine Insurance</i> 12 . . . . .	354	— v. Batley, Mayor of, <i>Public Health Acts</i> 34 . . . . .	518
—, Brantom v. . . . .	87	— v. Byron, <i>Common</i> 5 . . . . .	129
Grills v. Dillon, <i>Costs</i> 70 . . . . .	197	— v. Cropper, <i>Parliament</i> 22 . . . . .	407
Grimoldby, Rector of, ex parte; in re Louth and East Coast Railway Co., <i>Lands Clauses Act</i> 27 . . . . .	320		
Grimshaw's Trusts, in re, <i>Will Construction</i> L 5 . . . . .	674		



	PAGE		PAGE
Hall v. Eve, <i>Practice</i> W 86 . . . . .	475	Hampshire v. Wickens, <i>Lease</i> 4 . . . . .	324
— v. Hall, <i>Receiver</i> 15 . . . . .	538	Hampson, National Mercantile Bank v. . . . .	92
— v. Hall and Richardson, <i>Divorce</i> 38 . . . . .	232	— v. Price's Patent Candle Co., <i>Company</i>	
—, Hand v. . . . .	262, 323	D 26 . . . . .	141
—, Higginson v. . . . .	508	Hampton v. Holman, <i>Remoteness</i> 6 . . . . .	540
—, Hill v. . . . .	609	Hancher, Edwards v. . . . .	72
— v. Hopwood, <i>Coal Mines</i> 4 . . . . .	119	Hancock v. Guerin, <i>Production</i> 23 . . . . .	508
— v. Jupe, <i>Marine Insurance</i> 19 . . . . .	355	—, Whistler v. . . . .	449
— v. Ley; in re Heiron's Estate, <i>Sheriff</i> 1 . . . . .	571	Hancocks v. Lablache, <i>Husband and Wife</i>	
— v. Lichfield Brewery Co., <i>Damages</i> 2 . . . . .	214	51 . . . . .	285
— v. —, <i>Light and Air</i> 8 . . . . .	338	Hand v. Hall, <i>Frauds, Statute of</i> , 1 . . . . .	262
—, Moore v. . . . .	216, 338	— v. —, <i>Lease</i> 2 . . . . .	323
— v. Nottingham, <i>Custom</i> 2 . . . . .	213	Handley, Wade Gery v. . . . .	661
— v. Old Talargoch Lead Mining Co.,		Handyside, Forder v. . . . .	289
<i>Company</i> H 82 . . . . .	169	Hankin v. Kilburn; in re Tootal's Estate,	
— v. Pritchett, <i>Attachment</i> 3 . . . . .	35	<i>Will Construction</i> E 18 . . . . .	664
—, St. George's, Hanover Square (Burial		— v. Turner; in re Ivory, <i>Probate</i> 35 . . . . .	505
Board of), v. . . . .	113	"Hankow," The, <i>Shipping Law</i> R 1 . . . . .	590
—, Spurr v. . . . .	464	Hanley v. Pearson, <i>Settlement</i> 30 . . . . .	570
—, Standing v. . . . .	411	Hannah, New Westminster Brewery Co. v. . . . .	450
— v. Tepper, <i>Practice</i> D 2 . . . . .	446	Hansard, Master v. . . . .	208
— v. Turner, <i>Release</i> . . . . .	540	— v. Parishioners of St. Matthew, Bethnal	
Hall and Barker, in re, <i>Costs</i> 81 . . . . .	199	Green, <i>Church</i> 9 . . . . .	113
—, <i>Solicitor</i> 25 . . . . .	597	Hanson v. Stubbs; in re Stubbs' Estate,	
Hallett, Cotterell v. . . . .	632	<i>Administration</i> 39 . . . . .	10
— v. Hallett, <i>Trust</i> C 8 . . . . .	632	— v. —, <i>Practice</i> GG 6 . . . . .	483
—, Knatchbull v. . . . .	632	Harben, Godfrey v. . . . .	284
Hallett and Morton, in re, <i>Trust</i> D 4 . . . . .	633	Harbord v. Monk, <i>Practice</i> P 15 . . . . .	455
Hallett's Estate; Knatchbull v. Hallett,		Harding, Spike v. . . . .	97
<i>Trust</i> C 7 . . . . .	632	— v. Williams, <i>Evidence</i> 11 . . . . .	244
Halling, ex parte; in re Haydon, <i>Bank-</i>		—, ex parte; in re Smith, Fleming &	
<i>ruptcy</i> F 24 . . . . .	59	Co., <i>Principal and Surety</i> 2 . . . . .	497
Hallmark's Case; in re Wincham Shipbuilding,		Hardingham, Markwick v. . . . .	342
ing, Boiler and Salt Co., <i>Company</i> D 38 . . . . .	144	Hardley's Trusts, in re, <i>Trustee Relief</i>	
Hallums v. Hills, <i>Practice</i> T 11 . . . . .	459	<i>Act</i> 5 . . . . .	639
Halkett v. Emmott, <i>Bill of Sale</i> 19 . . . . .	90	Hardy, Thacker v. . . . .	180
Halse v. Rumford, <i>Charity</i> 20 . . . . .	108	Hare, in re; ex parte Welchman, <i>Bank-</i>	
— v. —, <i>Legacy</i> 13 . . . . .	329	<i>ruptcy</i> F 31 . . . . .	61
Halsey v. Brotherhood, <i>Patent</i> 20 . . . . .	421	—, Rummens v. . . . .	224, 271
Hamand v. Best, <i>Vendor and Purchaser</i> 5 . . . . .	644	Harford, Miles v. . . . .	541
Hamblett, Wood and Ivery (Lim.) v. . . . .	485	Harford's Trusts, in re, <i>Trustee Acts</i> 7 . . . . .	637
Hamel v. Panet, <i>Colonial Law</i> 12 . . . . .	121	Hargreaves v. Hopper, <i>Parliament</i> 7 . . . . .	404
Hamer v. Giles, <i>Partnership</i> 28 . . . . .	417	— v. Scott, <i>Municipal Corporation</i> 13 . . . . .	388
— v. —, <i>Solicitor</i> 42 . . . . .	600	— v. Simpson, <i>Municipal Corporation</i> 11 . . . . .	388
Hamilton, in re; ex parte Hamilton, <i>Bank-</i>		Hargreaves' Trade Mark, in re, <i>Trade Mark</i>	
<i>ruptcy</i> H 7 . . . . .	65	10 . . . . .	622
— v. Dallas, <i>Domicil</i> 2 . . . . .	233	Harington, Reg. v. . . . .	202
—, Frewen v. . . . .	567	Harker, in re; Goodbarne v. Fothergill,	
— v. Johnson, <i>Practice</i> T 14 . . . . .	459	<i>Practice</i> B 52 . . . . .	445
—, Kendall v. . . . .	219, 307, 415	Harman's Case; in re European Assurance	
—, Ottaway v. . . . .	279	Society, <i>Company</i> G 5 . . . . .	158
Hamilton's Windsor Ironworks, in re; ex		Harnett v. Baker, <i>Vendor and Purchaser</i> 2 . . . . .	643
parte Pitman and Edwards, <i>Company</i> D		— v. Wise, <i>Costs</i> 12 . . . . .	191
50 . . . . .	146	Harold, ex parte; in re Meade, <i>Bank-</i>	
Hamley's Case; in re Percy and Kelly		<i>ruptcy</i> K 6 . . . . .	66
Nickel, Cobalt and Chrome Iron Mining		—, <i>Injunction</i> 11 . . . . .	298
Co., <i>Company</i> D 7 . . . . .	137	Harper, Clow v. . . . .	31
Hamlyn v. Betteley, <i>Bill of Sale</i> 33 . . . . .	92	—, Hutton v. . . . .	559
Hammersmith Town Hall Co., in re, <i>Com-</i>		—, Lloyds v. . . . .	497
<i>pany</i> H 23 . . . . .	161	—, Peacock v. . . . .	451
Hammond, Barrett v. . . . .	220	— v. Scrimgeour, <i>Debtors Act</i> 8 . . . . .	221
— Roe v. . . . .	572	—, Tildesley v. . . . .	468
Hamon v. Falle, <i>Colonial Law</i> 27 . . . . .	123	Harrington, Reg. v. . . . .	202
— v. —, <i>Libel</i> 10 . . . . .	333	— v. Victoria Graving Dock Co., <i>Con-</i>	
Hampden v. Walsh, <i>Contract</i> 10 . . . . .	179	<i>tract</i> 7 . . . . .	179

	PAGE		PAGE
Harris, ex parte; in re Lewis, <i>Bankruptcy</i>		Hartnoll, Blight v.	680
M 26	75	Harvard v. Storey; in re Wortley, <i>Practice</i>	
—, —, <i>Receiver</i> 13	538	F 1	447
—, in re, <i>Lunatic</i> 6	347	Harvey, Atherley v.	455
—, in re: Cheese v. Lovejoy, <i>Will For-</i>		— v. Farnie, <i>Divorce</i> 5	227
malities 17	683	—, London School Board v.	238
—, in re; Jacson v. The Governors of		—, Reed v.	62
Queen Anne's Bounty, <i>Charity</i> 11	106	Harvey's Estate, in re; Gilbert v. Harben,	
— v. Aaron, <i>Costs</i> 47	196	<i>Husband and Wife</i> 39, 41	284
—, Blount v.	91	Harwich Harbour, &c. Co., in re, <i>Company</i>	
— v. Fleming, <i>Practice</i> BB 22	480	D 56	147
— v. "Franconia," Owners of the, <i>Prac-</i>		Haskett Smith's Trusts, in re, <i>Will Con-</i>	
tice BII 9	479	struction N 4	677
— v. Gamble, <i>Practice</i> W 15 ( <i>Pleading</i> )	467	Haslam, Hindley v.	361
— v. —, <i>Practice</i> W 65 ( <i>Pleading</i> )	473	Haslingden Local Board, Warburton v.	32
— v. —, <i>Practice</i> HH 2 ( <i>Trial</i> )	484	Hastie v. Hastie, <i>Practice</i> B 64	445
— v. Great Western Railway Co., <i>Car-</i>		Hastings, in re; Shirreff v. Hastings, <i>Ad-</i>	
rier 8	101	ministration 9	7
— v. Harris; in re Woolwich, <i>Will Con-</i>		—, in the goods of, <i>Probate</i> 8	502
struction N 2	677	Hatcher, ex parte; in re West of England	
— v. James, <i>Nuisance</i> 2	397	Bank, <i>Company</i> H 55	165
—, Mason v.	155	—, <i>Husband and Wife</i> 56	286
— v. Mobbs, <i>Nuisance</i> 8	399	Hatfield v. Minet, <i>Advancement</i> 1	20
—, Moore v.	574	Hathway, Williams v.	209
— v. Mulkern, <i>Ejectment</i> 2	236	Hattersley, ex parte; in re Blanchard,	
— v. Newton, <i>Will Construction</i> H 24	669	<i>Bankruptcy</i> F 10	57
—, Parsons v.	458	Hatton v. May, <i>Annuity</i> 4	27
— v. Petherick, <i>Costs</i> 13	191	Hawe, Attree v.	106
—, Ruther v.	556	Hawes, Cole v.	630
— v. Warre, <i>Libel</i> 16	334	— v. Hawes, <i>Settlement</i> 17	568
Harrison, ex parte; in re Harrison, <i>Bank-</i>		— v. Paveley, <i>Prohibition</i> 4	510
ruptcy A 14	42	Hawkes v. Hawkes, <i>Divorce</i> 41	232
—, in re; ex parte Butters, <i>County</i>		Hawkesley v. Bradshaw, <i>Libel</i> 18	335
Court 28	204	Hawkins, Callender v.	193
—, in re; ex parte Jay, <i>Bankruptcy</i> B		— v. Hawkins, <i>Administration</i> 8	6
20	45	— v. Morgan, <i>Practice</i> GG 9	484
—, in re; ex parte Meads, <i>Bankruptcy</i>		— v. Walrond, <i>Landlord and Tenant</i> 11	315
B 20	46	—, Whiteman v.	596
— v. Anderston Foundry Co., <i>Patent</i> 6	419	Hawks v. Fox; Fox v. Hawks, <i>Husband</i>	
— v. Carter, <i>Parliament</i> 19	406	and <i>Wife</i> 34	283
— v. Cornwall Minerals Railway Co.,		— v. —, <i>Mortgage</i> 20	380
<i>Railway</i> 2	521	— v. —, <i>Trust</i> A 3	628
—, Dickson v.	443, 508	Hawksworth, King v.	343, 593
— v. Jackson, <i>Legacy</i> 17	330	Hawley v. Steele, <i>Injunction</i> 20	299
—, Spencer v.	404	Hay, Back v.	485
— v. Wearing, <i>Costs</i> 97	200	—, Buckton v.	541
Harry v. Davey, <i>Practice</i> U 17	462	Haycock's Policy, in re, <i>Insurance</i> 6	303
Harston, Bew v.	25, 271	—, <i>Trustee Relief Act</i> 2	639
—, Scaltock v.	236	Haydon, in re; ex parte Halling, <i>Bank-</i>	
Hart, ex parte; in re Law, <i>Bankruptcy</i> L 3	69	ruptcy F 24	59
—, in re; ex parte Bayly, <i>Bankruptcy</i>		Hayman, ex parte; in re Pulsford, <i>Bank-</i>	
N 3	78	ruptcy F 5	57
—, in re; ex parte Fletcher, <i>Bankruptcy</i>		Hayn v. Culliford, <i>Shipping Law</i> B 4	574
A 7, 10	41, 42	Haynes, in re; ex parte National Mercan-	
— v. Swain, <i>Damages</i> 24	218	tile Bank, <i>Bill of Sale</i> 32	91
— v. Wall, <i>Libel</i> 1	332	—, Redgate v.	25, 270
Hart's Case; in re European Assurance		Hayton v. Irwin, <i>Shipping Law</i> F 5	583
Society, <i>Company</i> G 4 ( <i>nom. Hart's Case</i> )	157	Hayward v. Scott, <i>Parliament</i> 29	408
Hartley, Bower v.	475	Haywood, Mills v.	604
— v. Hudson, <i>Landlord and Tenant</i> 6	314	Hazeldine, Stannanought v.	388
— v. —, <i>Public Health Act</i> 23	516	Head, Powell v.	187
—, Rimington v.	410	Head and Walter's Claims; in re Hereford	
Hartley's Trusts, in re, <i>Will Construction</i>		and South Wales Waggon, &c. Co., <i>Com-</i>	
O 2	679	pany A 9	134
Hartmont, Phosphate Sewage Co. v.	132, 197, 261	Heap v. Marris, <i>Practice</i> W 7	466

	PAGE		PAGE
Hearfield, Wilberforce v. . . . .	245	Hesketh, McKenzie v. . . . .	605
Heath v. Cochrane, <i>Bankruptcy</i> B 14 . . . . .	45	Hesketh's Case; in re Norwich Provident Insurance Co., <i>Company</i> H 27, 62 . . . . .	162, 167
Heather v. Webb, <i>Bankruptcy</i> K 8 . . . . .	66	—, <i>Insurance</i> 12 . . . . .	304
Heaton Steel and Iron Co., in re; Blyth's Case, <i>Company</i> D 59 . . . . .	148	Heston and Isleworth Local Board, <i>Glossop</i> v. . . . .	398, 450
Heavens v. Jones, <i>Covenant</i> 3 . . . . .	206	Hetherington v. Longrigg; in re Barker's Estate, <i>Will Construction</i> E 11 . . . . .	663
Hebden Bridge Local Board, Ashworth v. . . . .	296	—, <i>Practice</i> V 6 . . . . .	465
"Hebe," The, <i>Shipping Law</i> T 13 . . . . .	591	Heyland, Turner v. . . . .	191
Hedgeman, in re; Morley v. Croxon, <i>Charity</i> 3 . . . . .	106	Hickley v. Hickley, <i>Trust</i> D 5 . . . . .	633
Hedley v. Bates, <i>Land Drainage</i> . . . . .	312	Hickman v. Upsall, <i>Limitations, Statute of</i> , 8 . . . . .	340
— v. —, <i>Prohibition</i> 1 . . . . .	509	— v. —, <i>Mortgage</i> 14 . . . . .	378
Hednesford Gas Co., Turner v. . . . .	473	Hicks v. May; in re Metcalfe, <i>Administration</i> 7 . . . . .	6
Helges, Brigdon v. . . . .	24	—, Walker v. . . . .	488
Heiron v. Hobson, <i>Solicitor</i> 39 . . . . .	599	Higginbottom v. Aynsley, <i>Practice</i> H 2 . . . . .	448
—, Metropolitan Bank v., <i>Limitations, Statute of</i> , 14 . . . . .	341	Higginson v. Hall, <i>Production</i> 19 . . . . .	508
Heiron's Case; in re Metropolitan Bank, <i>Company</i> H 108 . . . . .	172	— v. Simpson, <i>Contract</i> 12 . . . . .	180
— Estate, in re; Hall v. Ley, <i>Sheriff</i> 1 . . . . .	571	Higgs, Buckton v. . . . .	195
Helyar, Trethewy v. . . . .	8, 328, 670	—, Diggle v. . . . .	180
Hemming, ex parte; in re Chatterton, <i>Bankruptcy</i> H 6 . . . . .	64	Higgs v. Schroeder, <i>Solicitor</i> 48 . . . . .	600
—, Barker v. . . . .	199	Higham v. Wright, <i>Mines</i> 22 . . . . .	374
Henderson, Clarkson v. . . . .	377	Hight, White v. . . . .	676
—, Karp v. . . . .	476	Highton v. Treherne, <i>Practice</i> B 32 . . . . .	441
— v. Maxwell, <i>Copyright</i> 1, 5 . . . . .	186, 187	Hill, ex parte; in re Roberts, <i>Bankruptcy</i> D 38 . . . . .	55
— Oastler v. . . . .	327, 458	—, —, <i>Landlord and Tenant</i> 13 . . . . .	315
Hendrey, in re; ex parte Crump, <i>Bankruptcy</i> G 1 . . . . .	64	— v. Crook, <i>Will Construction</i> H 10 . . . . .	668
Henley, in re; ex parte Dixon, <i>Principal and Agent</i> 8 . . . . .	493	— v. Hall, <i>Statute</i> 9 . . . . .	609
— in re; ex parte Fletcher, <i>Bill of Sale</i> 43 . . . . .	93	—, Hull v. . . . .	330, 662
Henley & Co., in re, <i>Company</i> H 45 . . . . .	164	—, Lacey v.; Leney v. . . . .	52
—, <i>Property Tax</i> 1 . . . . .	510	— v. Managers of Metropolitan Asylums District, <i>Costs</i> 100 . . . . .	201
Henry, Mitchell v. . . . .	623	— v. —, <i>Nuisance</i> 7 . . . . .	398
"Henry Coxon," The, <i>Admiralty</i> 29 . . . . .	15	— v. —, <i>Practice</i> B 17 . . . . .	440
—, <i>Evidence</i> 9 . . . . .	244	—, Smith v. . . . .	340
Henshaw, Owen v. . . . .	227, 600	—, Trimble v. . . . .	180
Henson, Phillips v. . . . .	315, 344	— v. Wilson, <i>Shipping Law</i> K 3 . . . . .	586
Henty, Capital and Counties Bank v. . . . .	333	— v. Wormsley; in re Wormsley's Estate, <i>Administration</i> 14 . . . . .	8
— v. Schröder, <i>Vendor and Purchaser</i> 22 . . . . .	647	Hilliard, Clowes v. . . . .	10, 463
Herbert, Bryant v. . . . .	192, 224	— v. Fulford, <i>Administration</i> 42 . . . . .	11
— v. Webster, <i>Remoteness</i> 13 . . . . .	541	Hillman, ex parte; in re Pumfrey, <i>Bankruptcy</i> F 38 . . . . .	61
Hereford, Senior v. . . . .	410	—, —, <i>Voluntary Settlement</i> 7 . . . . .	651
Hereford and South Wales Waggon and Engineering Co., in re, <i>Company</i> A 9 . . . . .	134	— v. Mayhew, <i>Practice</i> GG 3 . . . . .	483
Hereford Election Petition, in re; Preece v. Pulley, <i>Parliament</i> 3 . . . . .	403	Hills v. Renney, <i>Interpleader</i> 4 . . . . .	306
Hereford Union v. Warwick Union, <i>Lunatic</i> 20 . . . . .	348	—, Hallum v. . . . .	459
— v. —, <i>Poor Law</i> 8 . . . . .	428	Hilton v. Jones; in re Richards, <i>Administration</i> 10 . . . . .	7
Heritage v. Paine, <i>Company</i> D 90 . . . . .	153	—, Monck v. . . . .	545
—, in re; ex parte Docker, <i>Costs</i> 79 . . . . .	198	Hinchcliffe v. Barwick, <i>Sale of Goods</i> 9 . . . . .	550
Hermann, Reg. v. . . . .	119	Hincks v. Allen; in re Allen, <i>Settlement</i> 4 . . . . .	566
Hernandez, in the goods of, <i>Probate</i> 26 . . . . .	504	—, in re; ex parte Cuddeford, <i>Contempt of Court</i> 2 . . . . .	177
Herne Bay Waterworks Co., in re, <i>Company</i> H 14 . . . . .	160	Hindaugh v. Blakey, <i>Bill of Exchange</i> 10 . . . . .	83
Herring v. Barrow; in re Thomson's Estate, <i>Will Construction</i> I 10 . . . . .	672	Hinde, Finney v. . . . .	447
Herron, Cummins v. . . . .	441	Hindle, Megson v. . . . .	668
Hertford College, Reg. v. . . . .	641	Hindley v. Haslam, <i>Master and Servant</i> 2 . . . . .	361
Hervey Bathurst v. Stanley; Bathurst v. Errington; Craven v. Stanley, <i>Will Construction</i> L 20 . . . . .	676	Hinds, in re, <i>Insolvency</i> . . . . .	302
		—, Pilcher v. . . . .	456
		Hine v. Campion, <i>Evidence</i> 21 . . . . .	246
		Hingston v. Wendt, <i>Shipping Law</i> M 2 . . . . .	588

	PAGE		PAGE
Hinks, in re; ex parte Berthier, <i>Bankruptcy</i> B 23	46	Holloway v. York, <i>Practice</i> GG 5	483
Hinks and Son v. Safety Lighting Co., <i>Patent</i> 9	419	Hollyman v. Noonan, <i>Colonial Law</i> 41	125
Hjort v. London and South Western Railway Co., <i>Damages</i> 7	215	Holm, Penryn, Mayor of, v.	189
Hirsch v. Jonas, <i>Trade Mark</i> 26	624	Holman, Hampton v.	540
Hirschfield v. London, Brighton and South Coast Railway Co., <i>Fraud</i> 5	261	Holme v. Brunskill, <i>Principal and Surety</i> 12	499
Hirst, ex parte; in re Wherly, <i>Bankruptcy</i> N 2	98	— v. Guy, <i>Charity</i> 22	108
Hitchinor, Reddish v.	311	Holmes, Bailey v.	565
Hitchman, Hoyle v.	19	—, Bilborough v.	417
Hjemmett, The, <i>Shipping Law</i> V 1	592	— v. Milward, <i>Presumption</i> 5	491
Hoare, in re; ex parte Nelson, <i>Bankruptcy</i> D 25	53, 59	— v. —, <i>Will Construction</i> E 5	663
— v. Oriental Bank Corporation, <i>Colonial Law</i> 35	124	— v. Newcastle-upon-Tyne Freehold Abattoir Co., <i>Company</i> D 51	146
Hobbs, Ward v.	176	Holste v. Robertson, <i>Patent</i> 26	422
Hobson, Fritz v.	194, 399	Holt, in re, <i>Attachment</i> 16	37
—, Heiron v.	599	— v. Everall, <i>Husband and Wife</i> 48	285
Hobson's Trusts, in re, <i>Lands Clauses Act</i> 29	320	— v. Jesse, <i>Counsel</i> 2	201
Hoch v. Boor, <i>Arbitration</i> 9	31	— v. —, <i>Practice</i> R 3	487
Hodge's Estate, in re; Davey v. Ward, <i>Infant</i> 5	291	Holt's Case; in re United Patriots' National Benefit Society, <i>Friendly Society</i> 8	269
Hodges v. Fincham, <i>Practice</i> L 5	452	— Claim; in re Orrell Colliery and Fire Brick Co., <i>Company</i> H 48	164
— v. Hodges, <i>Practice</i> W 40	469	— Estate, in re; Bolding v. Strugwell, <i>Will Construction</i> L 4	674
Hodgkinson, ex parte; in re Bestwick, <i>Bankruptcy</i> L 17	71	Holyland, Campbell v.	385
Hodgson, in re; ex parte Brett, <i>Debtors Act</i> 17	222	Homburg, Osborne v.	202
—, in re; Kenlis v. Hodgson, <i>Trustees Acts</i> 9	637	Home Investment Society, in re, <i>Company</i> H 96	170
— v. Fox; in re Hodgson, <i>Set-off</i> 4	563	Homer v. Homer, <i>Will Construction</i> D 1	660
— v. Halford, <i>Forfeiture</i> 4	259	Homersham, Black v.	153, 550
— v. —, <i>Remoteness</i> 14	541	Homfray, Lady Llanover v.	247
— v. Jex, <i>Will Construction</i> E 12	664	Honduras Inter-Oceanic Railway Co. v. Lefevre and Tucker, <i>Practice</i> W 77	474
—, Myers v.	186	Hood v. Stally-bras, Balmer & Co., <i>Commission Agent</i>	127
— v. Williamson, <i>Husband and Wife</i> 36	283	Hoof, in re; Picken v. Matthews, <i>Remoteness</i> 4	450
Hodgson's School, in re, <i>Endowed Schools Act</i> 3	240	Hooper, ex parte; in re Hooper, <i>Bankruptcy</i> C 9	48
Hodson v. Mochi, <i>Practice</i> W 67	473	—, in re; ex parte Banco de Portugal, <i>Bankruptcy</i> D 21	52
— v. The Tea Co., <i>Company</i> H 19	161	—, —, <i>Bankruptcy</i> M 9	74
Hofmann, in re; ex parte Carr, <i>Bankruptcy</i> D 30	54	— v. Bourne, <i>Lands Clauses Act</i> 43	322
Hogarth v. Latham, <i>Bill of Exchange</i> 13	84	—, Evans v.	3
— v. —, <i>Partnership</i> 15	414	— v. Keay, <i>Debtor and Creditor</i> 3	219
Hoggett, Weidner v.	494	— v. Kenshole, <i>Market</i> 2	359
Holborn Union, Guardians of, v. St. Leonard's, Shoreditch, Vestry of, <i>Metropolis</i> 19	369	— v. Smart, <i>Administration</i> 4	6
Holbrook, Reg. v.	335	Hope, ex parte; in re Hope, <i>Bankruptcy</i> H 9, K 10	65, 66
Holden v. King, <i>Assault</i> 2	34	— v. Gibbs, <i>Vendor and Purchaser</i> 12	645
Holdsworth, in re; ex parte North Kent Bank, <i>Bankruptcy</i> M 40	77	— v. International Financial Society, <i>Company</i> D 52	146
—, Bennett v.	237, 430	Hopewell v. Barnes, <i>Practice</i> FF 2	483
—, Broadhead v.	642	Hopkins v. Great Northern Railway Co., <i>Ferry</i> 7	255
— v. Davenport, <i>Charity</i> 7	106	— v. —, <i>Lands Clauses Act</i> 7	317
—, Thorp v.	466	Hopkins' Trusts, in re, <i>Will Construction</i> H 19	669
—, Whitehead v.	119	Hopkinson, Smith v.	505
Hole v. Bradbury, <i>Contract</i> 26	182	Hopley, Rook v.	19
Holland, Grant v.	459, 597	Hopper, ex parte; in re Elliott, <i>Bankruptcy</i> L 6	69
Holloway, Camberwell and South London Building Society v.	602	—, Ashworth v.	404
—, Laing v.	575	— v. Burness, <i>Shipping Law</i> K 1	585

	PAGE		PAGE
Hopper, Hargreaves v. . . . .	404	Hubbard v. Alexander, <i>Will Formalities</i> 8	682
—, Wood v. . . . .	404	—, Clemson v. . . . .	361
Hopwood, Hall v. . . . .	119	Huckle v. Wilson, <i>Friendly Society</i> 10	269
Horbury Bridge Coal, Iron and Waggon Co., in re, <i>Company D</i> 46	145	Hudson v. Buck, <i>Specific Performance</i> 9	602
Horder v. Scott, <i>Adulteration of Food</i> 6	20	— v. —, <i>Vendor and Purchaser</i> 20	646
Hordern, Laker v. . . . .	665	—, Fletcher v. . . . .	512
Hore, Muir v. . . . .	309	—, Hartley v. . . . .	314, 516
Horlock, Sweetapple v. . . . .	205	— v. Hudson, <i>Divorce</i> 24	230
"Horlock," <i>The, Merchant Shipping Acts</i> 2	364	—, Shaw v. . . . .	483
—, <i>Mortgage</i> 27	381	— v. Tabor, <i>Crown</i> 3	212
Horne v. Ronquette, <i>Bill of Exchange</i> 18	84	— v. —, <i>Sea Wall</i> . . . . .	562
—, Woolf v. . . . .	37	— v. Tooth, <i>Church</i> 27	116
Horne Payne, Hussey v. . . . .	180, 196	Huggons v. Tweed, <i>Practice W</i> 72	473
Horner v. Horner, <i>Will Construction D</i> 1	660	Hughes, ex parte; in re Bulmer, <i>Bankruptcy F</i> 26	60
— v. Oyley, <i>Costs</i> 87	199	— v. Edwards, <i>Church</i> 15	114
—, Walker v. . . . .	277	—, Eyre v. . . . .	597
Hornsea Brick, &c. Co., Crawford v. . . . .	300, 457	— v. Metropolitan Railway Co., <i>Lease</i> 16	326
Horrocks v. Rigby, <i>Specific Performance</i> 22	605	— v. Pritchard, <i>Will Construction E</i> 1	662
Horsford, ex parte; in re Smith, <i>Bankruptcy M</i> 44	77	—, Reg. v. . . . .	425
Horsham Election Petition; Aldridge v. Hurst, <i>Parliament</i> 2	403	Hughes' Patent, in re, <i>Patent</i> 28	422
Hort's Case; in re European Assurance Society, <i>Company G</i> 4	157	Hugo, in the goods of, <i>Will Construction B</i> 1	660
Horwell v. London General Omnibus Co., <i>Practice W</i> 81	474	Hull v. Hill, <i>Legacy</i> 15	330
Hoskins' Trusts, in re, <i>Practice B</i> 13	440	— v. —, <i>Will Construction D</i> 13	662
—, <i>Trustee Relief Act</i> 1	638	Hull and County Bank, in re, <i>Company H</i> 95	170
Hough, Jones v. . . . .	578	—, Burgess's Case, <i>Company D</i> 79	151
— v. Manzanos, <i>Principal and Agent</i> 10	494	—, —, <i>Practice HH</i> 32	488
Houghton, Gadd v. . . . .	494	Hull Central Drapery Co., in re, <i>Company H</i> 100	171
—, West v. . . . .	217	Hull, Corporation of, Nissler v. . . . .	177
Houldsworth, Bennett v. . . . .	237	Humber Ironworks and Shipbuilding Co., in re; Williams' Case, <i>Company H</i> 51	165
— v. City of Glasgow Bank, <i>Company D</i> 75	151	Humble v. Bowman, <i>Power</i> 4	432
—, Thorp v. . . . .	466	— v. —, <i>Will Construction H</i> 18	669
Household Fire and Carriage Accident Insurance Co. v. Grant, <i>Contract</i> 21	181	Hume v. Lloyd, <i>Will Construction H</i> 20	669
Houseman v. Houseman, <i>Administration</i> 38, 43	10, 11	Humphreys v. Edwards, <i>Practice GG</i> 4	483
— v. —, <i>Practice EE</i> 1	481	— v. Cousins, <i>Negligence</i> 6	392
Houston, Ellis v. . . . .	668	— v. —, <i>Nuisance</i> 10	399
Howard, in re; ex parte Tennant, <i>Partnership</i> 4	412	Hunt, Chesworth v. . . . .	94, 382
—, in re; Padley v. Camphausen	480	— v. City of London Real Property Co., <i>Practice T</i> 2	458
— v. Bodington, <i>Church</i> 28	117	—, Grice v. . . . .	516
—, Robertson v. . . . .	488	— v. Hunt, <i>Divorce</i> 23	230
Howard Vaughan, Arcdeckne v. . . . .	498	—, Pinney v. . . . .	410, 501
Howarth, James v. . . . .	407	— v. South Eastern Railway Co., <i>Railway</i> 13	525
—, Sykes v. . . . .	422, 423	— v. Wimbledon Local Board, <i>Public Health Act</i> 9	513
Howell, Chandler v. . . . .	106	Hunt-Foulstone v. Furber, <i>Annuity</i> 3	27
— v. Coupland, <i>Sale of Goods</i> 5	549	Hunter, Danby v. . . . .	277
—, Lovell v. . . . .	361	—, Elmore v. . . . .	619
—, Mullins v. . . . .	453	—, Gledhill v. . . . .	456
Howells, Langdon v. . . . .	526	— v. Young, <i>Executor</i> 19	251
Howes v. Board of Inland Revenue, <i>Alleyhouse</i> 10	23	Huntingdon, Justices of, Reg. v. . . . .	310
— v. —, <i>Public Entertainment</i> 2	511	Huntley, Omoa and Cleland Iron Co. v. . . . .	578
— v. Stone, <i>Bankruptcy F</i> 22	59	Hurdman v. North Eastern Railway Co., <i>Negligence</i> 7	392
— v. Turner, <i>Municipal Corporation</i> 8	387	Hursley Union, Rawlence v. . . . .	535
— v. Young, <i>Bankruptcy F</i> 22	59	Hurst, Aldridge v. . . . .	403
Howling, Tully v. . . . .	184, 575	Hussey v. Horne-Payne, <i>Contract</i> 18	180
Hoyle, Bentham v. . . . .	526	— v. —, <i>Costs</i> 52	196
— v. Hitchman, <i>Adulteration of Food</i> 5	19	Hutchings and Romer, ex parte, <i>Copy-right</i> 13	188

	PAGE		PAGE
Hutchins, Reg. v. . . . .	517	International Financial Society v. City of	
Hutchinson v. Glover, <i>Production</i> 2 . . . .	506	Moscow Gas Co., <i>Practice</i> B 34 . . . .	442
—, Metcalfe v. . . . .	11	—, Hope v. . . . .	146
—, St. Werburgh, Derby, v. . . . .	532	International Life Assurance Society, in re,	
—, v. Ward; in re Smith, <i>District Registry</i> 3 . . . .	226	<i>Company</i> H 64, 65 . . . . .	167
Hutchinson and Tenant, in re, <i>Will Construction</i> H 16 . . . . .	668	International Pulp and Paper Co., in re,	
—, <i>Will Construction</i> I 8 . . . . .	672	<i>Company</i> D 15, H 83 . . . . .	139, 169
Hutley, in re; Deards v. Putt, <i>Practice</i> GG 10 . . . . .	484	Ipswich Union, Reg. v. . . . .	427
—, v. Grimstone, <i>Probate</i> 32 . . . . .	505	Irlam v. Irlam, <i>District Registry</i> 1 . . . .	225
Hutton v. Harper, <i>Scotch Law</i> 14 . . . . .	559	Irvine, Macdonald v. . . . .	330, 616, 630
—, Lort v. . . . .	310	—, v. Union Bank of Australia, <i>Company</i>	
Hux, in the goods of, <i>Will Formalities</i> 13 . . . .	682	D 25 . . . . .	141
Huxtable, ex parte; in re Conibeer, <i>Bankruptcy</i> F 36 . . . . .	61	—, v. Watson, <i>Principal and Agent</i> 6 . . . .	493
—, —, <i>Voluntary Settlement</i> 6 . . . . .	651	Irving, Burns v. . . . .	446
Hyde v. Warden, <i>Constructive Notice</i> . . . .	176	—, in re; ex parte Brett, <i>Bankruptcy</i>	
—, v. —, <i>Lease</i> 5, 7, 18, 19 . . . . .	324, 326	F 18 . . . . .	58
—, v. —, <i>Receiver</i> 8 . . . . .	537	Irwin, Gardner v. . . . .	507
—, v. —, <i>Specific Performance</i> 19 . . . . .	604	—, Hayton v. . . . .	583
— & Co.'s Trade Mark, in re, <i>Trade Mark</i> 13 . . . . .	622	Isaac v. Seeley, <i>Parliament</i> 6 . . . . .	404
Hydraulic Engineering Co. v. McHaffie, <i>Contract</i> 36 . . . . .	184	—, v. Wall, <i>Tenant for Life</i> 13 . . . . .	617
Hyland, Bowman v. . . . .	644	Isaacs, ex parte; in re Baum, <i>Bankruptcy</i>	
Ibbetson, ex parte; in re Moore, <i>Bankruptcy</i> F 17 . . . . .	58	M 21 . . . . .	75
Imperial Bank v. London and St. Katharine Docks Co., <i>Sale of Goods</i> 24 . . . .	553	—, v. Fiddeman, <i>Copyright</i> 4 . . . . .	187
Imperial Discount Bank, Meggy v. . . . .	61, 65	—, Marsh v. . . . .	487
Imperial Land Co. of Marseilles, in re; ex parte Larking, <i>Company</i> D 12 . . . . .	138	—, Rivers v. . . . .	213
Imperial Marine Insurance Co. v. Fire Insurance Co. (Lim.), <i>Marine Insurance</i> 26 . . . .	357	Israel, Brooks v. . . . .	191
—, Stribley v. . . . .	352	Ives, in re; Bailey v. Holmes, <i>Settled Estates Acts</i> 5 . . . . .	565
Imperial Ottoman Bank, in re, <i>Income Tax</i> 4 . . . . .	289	Ivory, in re; Hankin v. Turner, <i>Probate</i> 35 . . . .	505
—, Mirabita v. . . . .	551	Jack, Leigh v. . . . .	491
Im Thurn, Campbell v. . . . .	70	Jackson, ex parte; in re Bowes, <i>House of Lords</i> 3 . . . . .	278
Ince, in the goods of, <i>Will Formalities</i> 26 . . . .	685	—, —, <i>Mortgage</i> 2 . . . . .	377
India Rubber, Gutta Percha and Telegraph Works Co. (Lim.), Panama and South Pacific Telegraph Co. (Lim.) v. . . .	494	—, in re; ex parte Hall, <i>Bankruptcy</i>	
Industrial and General Life Assurance and Deposit Co., in re; in re European Assurance Society; Cocker's Case, <i>Company</i> G 8 . . . . .	153	B 12 . . . . .	44
Inett, Great Northern Committee v. . . . .	195	—, Allen v. . . . .	680
Ingall, Reg. v. . . . .	535	—, Austin v. . . . .	417
Ingamells, Ashdown v. . . . .	216	—, Harrison v. . . . .	330
Ingham, Rogers v. . . . .	375	—, Kronheim v. . . . .	628
Ingram, Marris v. . . . .	220	—, v. Mawby, <i>Debtors Act</i> 14 . . . . .	221
Inglis v. Buttery, <i>Contract</i> 28 . . . . .	182	—, v. Metropolitan Railway Co., <i>Carrier</i>	
Inland Revenue, Commissioners of, Grenfell v. . . . .	607	16 . . . . .	102
—, Hadgett v. . . . .	607	—, Monks v. . . . .	387
—, Howes v. . . . .	23, 511	—, v. North Eastern Railway Co., <i>Deed</i> 2 . . . .	223
—, Le Marchant v. . . . .	612	—, v. —, <i>Practice</i> U 34 . . . . .	464
—, Wale v. . . . .	606	—, Oppenheim v. . . . .	67
Insley v. Jones, <i>County Court</i> 11 . . . . .	202	—, Potter v. . . . .	417
Institution of Civil Engineers, Reg. v. . . . .	532	—, Trail v. . . . .	441, 617
		Jackson's Sale to Oakshott, in re; in re Vendor and Purchaser Act, 1874, <i>Vendor and Purchaser</i> 23 . . . . .	647
		—, Will, in re, <i>Settlement</i> 23 . . . . .	569
		—, <i>Power</i> 5 . . . . .	432
		Jacob, Eade v. . . . .	454
		"Jacob Landstrom," The, <i>Admiralty</i> 32 . . . .	16
		Jacobs, Jull v. . . . .	664, 674
		Jacson v. Governors of Queen Anne's Bounty; in re Harris, <i>Charity</i> 11 . . . .	106
		Jakeman v. Cook, <i>Bankruptcy</i> H 2 . . . . .	64
		James v. Crow, <i>Practice</i> C 6 . . . . .	446
		—, Daniel v. . . . .	349
		—, Harris v. . . . .	397
		—, v. Howarth, <i>Parliament</i> 23 . . . . .	407

	PAGE		PAGE
James, Johns v. . . . .	454, 652	Johns v. James, <i>Practice</i> P 8 . . . . .	454
—, Meyrick v. . . . .	438, 452	— v. —, <i>Voluntary Settlement</i> 14 . . . . .	652
—, Moss v. . . . .	327	Johnson, in re; Shearman v. Robinson, <i>Executor</i> 21 . . . . .	251
— v. Reg., <i>Forest of Dean</i> . . . . .	259	—, ex parte Wiggs, <i>Bankruptcy</i> M 19 . . . . .	75
— v. Rumsey, <i>Mortgage</i> 60 . . . . .	386	— v. Blumenthal; Johnson v. Credit Lyonnais Co., <i>Factors Acts</i> 1 . . . . .	253
— v. Shrimpton, <i>Will Formalities</i> 19 . . . . .	684	— v. Burges, <i>Practice</i> Q 1 ( <i>Action by Executor</i> ) . . . . .	456
—, Tamplin v. . . . .	604	— v. —, <i>Practice</i> W 38 ( <i>Pleading</i> ) . . . . .	469
Jameson, ex parte; in re Balbirnie, <i>Bankruptcy</i> L 18 . . . . .	71	— v. Crook, <i>Will Construction</i> L 12 . . . . .	675
— v. Brick and Stone Co., Limited, <i>Bankruptcy</i> H 16 . . . . .	66	— v. Emmins; Emmins v. Bradford, <i>Settlement</i> 14 . . . . .	568
Jamieson, Bailey v. . . . .	273	—, Hamilton v. . . . .	459
Janson, Cracknall v. . . . .	53, 199, 382, 478	— v. Lancashire and Yorkshire Railway Co., <i>Damages</i> 5 . . . . .	215
—, Turnbull v. . . . .	201	— v. Lyttle's Iron Agency, <i>Company</i> D 83 . . . . .	152
Jacques v. Millar, <i>Specific Performance</i> 2 . . . . .	601	—, Manners (Lord) v. . . . .	208, 299
Jarman, ex parte, <i>Solicitor</i> 33 . . . . .	598	— v. Mounsey; in re Alison, <i>Mortgage</i> 5 . . . . .	377
—, in re; Leavers v. Clayton, <i>Charity</i> 16 . . . . .	107	— v. Palmer, <i>County Court</i> 12 . . . . .	202
—, — v. —, <i>Legacy</i> 1 . . . . .	328	— v. Rankin, <i>Parliament</i> 6 . . . . .	404
—, — v. —, <i>Legacy Duty</i> . . . . .	331	Johnson's Patent, in re, <i>Patent</i> 13 . . . . .	420
Jarvis, ex parte; in re Spanton, <i>Bankruptcy</i> C 14 . . . . .	48	Johnsons, Infants, in re, <i>Infant</i> 6 . . . . .	291
Jay, ex parte; in re Harrison, <i>Bankruptcy</i> B 20 . . . . .	45	Johnston v. St. Andrew's, Montreal, <i>Privy Council</i> . . . . .	500
—, Leach v. . . . .	661	Johnstone's Settlement, in re, <i>Legacy</i> 21 . . . . .	330
Jeavons, ex parte; in re Burnett, <i>Bankruptcy</i> P 7 . . . . .	79	Jonas, Hirsch v. . . . .	624
Jeffery, Body v. . . . .	344	Jones, ex parte; in re Artisans and Labourers' Dwellings Improvement Act, 1875, <i>Lands Clauses Act</i> 40 . . . . .	322
Jefferys v. Fairs, <i>Mines</i> 16 . . . . .	373	—, ex parte; in re Grissell, <i>Bankruptcy</i> C 5 . . . . .	47
— v. —, <i>Specific Performance</i> 5 . . . . .	602	—, —, <i>Husband and Wife</i> 53 . . . . .	285
Jeffrey v. The "Franconia," <i>Shipping Law</i> E 1 . . . . .	578	—, in the goods of, <i>Will Formalities</i> 11 . . . . .	682
Jeffries v. Jeffries, <i>Divorce</i> 39 . . . . .	232	—, in re, <i>Costs</i> 46 . . . . .	196
Jegon, ex parte; in re South Llanharran Colliery Co., <i>Company</i> D 21, 36 . . . . .	140	—, <i>Trustee Acts</i> 19 . . . . .	638
Jenkins, in the goods of, <i>Probate</i> 16 . . . . .	503	—, in re; ex parte Fardon's Vinegar Co., <i>Practice</i> B 59 . . . . .	444
—, Bonnewell v. . . . .	181	—, in re; ex parte Thorne, <i>Bankruptcy</i> B 28 . . . . .	46
— v. Cook, <i>Church</i> 23 . . . . .	115	—, in re; Eyre v. Cox, <i>Practice</i> II 20 . . . . .	490
— v. Davies, <i>Practice</i> S 2 . . . . .	458	— v. Adamson, <i>Damages</i> 21 . . . . .	218
—, Davies v. . . . .	285	— v. —, <i>Shipping Law</i> G 1 . . . . .	584
— v. Morris, <i>Practice</i> T 5 . . . . .	459	— v. Baxter, <i>Practice</i> T 6 . . . . .	459
—, Price v. . . . .	651	— v. Caless; in re Jones, <i>Administration</i> 20 . . . . .	8
—, Rhodes v. . . . .	413	— v. Chennell; in re Chennell, <i>Practice</i> B 14 ( <i>Appeal</i> ) . . . . .	440
Jenner v. Finch, <i>Will Construction</i> G 11 . . . . .	666	— v. —, <i>Practice</i> K 21 ( <i>Evidence</i> ) . . . . .	451
— v. —, <i>Will Formalities</i> 23 . . . . .	684	— v. —, <i>Trust</i> B 2 . . . . .	631
Jenner's Case; in re Percy and Kelly Nickel, Cobalt and Iron Mining Co., <i>Company</i> D 7 . . . . .	137	— v. Clifford, <i>Vendor and Purchaser</i> 17 . . . . .	646
Jenney v. Bell, <i>Bankruptcy</i> A 12 . . . . .	42	— v. Cwmorthen Slate Co. Limited, <i>Income Tax</i> 5 . . . . .	289
Jennings, Mills v. . . . .	382, 383	— v. Dangerfield, <i>Church</i> 6 . . . . .	113
Jepson v. Gribble, <i>Inhabited House Duty</i> 2 . . . . .	295	— v. Davies, <i>Husband and Wife</i> 24 . . . . .	280
—, Parfitt v. . . . .	643	— v. —, <i>Trust</i> A 14 . . . . .	639
Jermyn, Dashwood v. . . . .	566	—, Dollman v. . . . .	452
Jerningham, ex parte; in re Jerningham, <i>Bankruptcy</i> K 1 . . . . .	66	— v. Emery; in re Emery's Estate, <i>Will Construction</i> H 8 . . . . .	668
Jersey, Earl of, v. Shaw, <i>Injunction</i> 14 . . . . .	298	— v. Evans, <i>Executor</i> 5 . . . . .	249
Jesse, Holt v. . . . .	201, 457	— v. —, <i>Will Construction</i> E 2 . . . . .	662
Jewesbury, Powell v. . . . .	470	— v. Gordon; in re Gomersall, <i>Bankruptcy</i> D 36 . . . . .	55
Jewitt v. Eckhardt, <i>Copyright</i> 18 . . . . .	189	— v. Heavens, <i>Covenant</i> 3 . . . . .	206
Jeyes v. Jeyes, <i>Principal and Agent</i> 19 . . . . .	495		
Jex, Hodgson v. . . . .	664		
Joachim, O'Shanassy v. . . . .	124		
Job v. Job, <i>Executor</i> 20 . . . . .	251		
Jobson, Agnew, Justices of, v. . . . .	5		
Jodrell, Wilkins v. . . . .	26		
Johnasson v. Benhote, <i>Practice</i> W 47 . . . . .	470		

	PAGE		PAGE
Jones, Hilton v. . . . .	7	Keane, Fisher v. . . . .	118
— v. Hough, <i>Shipping Law</i> D 16 . . . . .	578	Kearley and Clayton's Contract, in re, <i>Bankruptcy</i> L 22 . . . . .	72
—, Insley v. . . . .	202	Keay v. Fenwick, <i>Shipping Law</i> S . . . . .	590
— v. Jones, <i>Will Construction</i> O 7 . . . . .	680	—, Hooper v. . . . .	219
—, Lloyd v. . . . .	484	Keene v. Biscoe, <i>Mortgage</i> 6 . . . . .	378
— v. Monte Video Gas Co., <i>Production</i> 17 . . . . .	507	—, Greaves v. . . . .	254
—, Nobel's Explosive Company v. . . . .	422, 463	Keet v. Smith, <i>Church</i> 11 . . . . .	113
—, Pitt v. . . . .	410	Keighley, Gething v. . . . .	2
— v. Rimmer, <i>Vendor and Purchaser</i> 4 . . . . .	644	Keily, Taylor v. . . . .	564
— v. Robinson, <i>Will Construction</i> D 9 . . . . .	661	Keith v. Burrows, <i>Shipping Law</i> K 4 . . . . .	586
—, Rogers v. . . . .	200, 237	—, Commell v. . . . .	569
—, Saunders v. . . . .	454	Kelland v. Fulford, <i>Infant</i> 9 . . . . .	292
—, Taylor v. . . . .	345, 443	— v. —, <i>Lands Clauses Act</i> 17 . . . . .	319
— v. Victoria Graving Dock Co., <i>Arbitration</i> 17 . . . . .	32	Kelly, ex parte; in re Simmons, <i>Bankruptcy</i> A 16 . . . . .	42
— v. —, <i>Frauds, Statute of</i> , 15 . . . . .	264	—, ex parte; in re Smith, Fleming & Co., <i>Bankruptcy</i> B 3 . . . . .	43
— v. Williams, <i>Game</i> 2 . . . . .	270	—, —, <i>Fraudulent Conveyance</i> 4 . . . . .	267
Jones' Estate, in re; Hume v. Lloyd, <i>Will Construction</i> H 20 . . . . .	669	— v. Byles, <i>Copyright</i> 2 . . . . .	186
— Will, in re, <i>Settlement</i> 18 . . . . .	569	— v. Scotto, <i>Partnership</i> 6 . . . . .	413
Jones-Ford, Shaw v. . . . .	672	Kemp v. Bird, <i>Covenant</i> 8 . . . . .	206
"Jones Brothers," The, <i>Admiralty</i> 31 . . . . .	16	Kemp-Walch, Ball v. . . . .	412
Jordan, in re; ex parte Symmons, <i>Bill of Sale</i> 44 . . . . .	93	Kendall v. Hamilton, <i>Debtor and Creditor</i> 2 . . . . .	219
—, Williams v. . . . .	263	— v. —, <i>Judgment</i> 1 . . . . .	307
Joselyne, ex parte; in re Watt, <i>Attachment</i> 11 . . . . .	36	— v. —, <i>Partnership</i> 19 . . . . .	415
Joseph, in re; ex parte Cooper, <i>Bankruptcy</i> O 2 . . . . .	78	Kenlis v. Hodgson; in re Hodgson, <i>Trustee Acts</i> 9 . . . . .	637
Joseph Suche, in re, <i>Company</i> H 42 . . . . .	164	Kennaway v. Kennaway, <i>Probate</i> 28 . . . . .	504
Joyce, Cockle v. . . . .	446	Kenny, Reg v. . . . .	538
—, ex parte, <i>Solicitor</i> 5 . . . . .	595	Kenrick v. Overseers of Guilsfield, <i>Rates</i> 10 . . . . .	533
Jubb, Box v. . . . .	392	Kenshole, Hooper v. . . . .	359
Judd v. Green, <i>Costs</i> 76 . . . . .	198	Kent, Marsden v. . . . .	251
— v. —, <i>Practice</i> H 4 . . . . .	449	Kent Tramways Co., in re, <i>Company</i> A 10 . . . . .	133
— v. —, <i>Reversion</i> 2 . . . . .	544	Kenyon, West Cumberland Iron and Steel Co. v. . . . .	372, 654
Judkins, Appleford v. . . . .	345	Ker, in re; ex parte Bagshaw, <i>Bankruptcy</i> D 34 . . . . .	54
Juggins, Rainbow v. . . . .	54, 499	Ker's Case; in re City of Glasgow Bank, <i>Trustee</i> D 15 . . . . .	634
"Julia David," The, <i>Admiralty</i> 36 . . . . .	16	Kerr v. Preston Corporation, <i>Injunction</i> 3 . . . . .	297
"Julia Fisher," The, <i>Admiralty</i> 54 . . . . .	18	Kerr's Trusts, in re, <i>Poor</i> 18 . . . . .	434
Julian, Morteo v. . . . .	590	Kerr, Anderson & Co., Lang v. . . . .	559
Julius v. Lord Bishop of Oxford, <i>Church and Clergy</i> 25 . . . . .	116	Kershaw v. Kirkpatrick, <i>Colonial Law</i> 1 . . . . .	120
Jull v. Jacobs, <i>Will Construction</i> E 16 . . . . .	664	Kevan v. Crawford, <i>Fraudulent Conveyance</i> 2 . . . . .	266
— v. —, <i>Will Construction</i> L 1 . . . . .	674	— v. —, <i>Practice</i> K 3 ( <i>Evidence</i> ) . . . . .	450
Jullion, Crane v. . . . .	479	— v. —, <i>Practice</i> R 7 ( <i>Judgment</i> ) . . . . .	457
"Juno," The, <i>Admiralty</i> 51 . . . . .	18	Keynsham, Guardians of, v. Bedminster Union, <i>Poor Law</i> 6 . . . . .	428
—, <i>Shipping Law</i> R 2 . . . . .	590	Keyn, Reg. v. . . . .	104
Jupe, Allkins v. . . . .	351	"Khedive," The, <i>Admiralty</i> 25 . . . . .	15
—, Hall v. . . . .	355	Kidd, Straker v. . . . .	584
Jupp v. Cooper, <i>Sheriff</i> 2 . . . . .	571	Kiell, in re; ex parte Falk, <i>Sale of Goods</i> 32 . . . . .	555
Justice v. Mersey Steel and Iron Co., <i>House of Lords</i> 7 . . . . .	278	Kilburn, Hankin v. . . . .	664
		Kilby, Molloy v. . . . .	454
"Kathleen Mavourneen," in re the song, <i>Copyright</i> 13 . . . . .	188	Kilner, ex parte; in re Barker, <i>Bankruptcy</i> B 16 . . . . .	45
Kattenbach v. Mackenzie, <i>Marine Insurance</i> 18 . . . . .	355	Kimber, ex parte; in re Thrift, <i>Bankruptcy</i> F 2 . . . . .	56
Karet v. Kosher Meat Supply Association, <i>Bill of Sale</i> 15 . . . . .	90	King, ex parte; in re Davies, <i>Bankruptcy</i> M 39 . . . . .	77
Kattengell, in re; ex parte Mann, <i>Bankruptcy</i> D 28 . . . . .	53		
Kaufman, Doyle v. . . . .	490		



## TABLE OF CASES.

729

	PAGE		PAGE
King, ex parte; in re King, <i>Bankruptcy</i> B 9	44	Knightley, Yarrow v. . . . .	671
—, in re; Sewell v. King, <i>Equitable Assignment</i> 2	241	Knocker, Bottle v. . . . .	271
—, v. —, <i>Voluntary Settlement</i> 12	652	Knoop, Fowler v. . . . .	574
—, Catling v. . . . .	263, 470	Knott, Wooler v. . . . .	207
—, v. Corke, <i>Practice</i> W 28	468	Knotts, Governors of Magdalen Hospital v. . . . .	109, 277, 341
—, v. Davenport, <i>Practice</i> H 8	449	Knowles, in re; Roose v. Chalk, <i>Executor</i> 9	249
—, v. Foxwell, <i>Domicil</i> 1	233	—, v. McAdam, <i>Income Tax</i> 1	289
—, v. George, <i>Legacy</i> 12	329	Knowles' Mortgage; in re International Pulp and Paper Co., <i>Company</i> D 15	139
—, v. —, <i>Will Construction</i> E 14	664	Koe, Clifford v. . . . .	673
—, v. Hawkesworth, <i>Liverpool Passage Court</i>	343	Kosher Meat Supply Co., Karet v. . . . .	90
—, v. —, <i>Slander</i> 5	593	Kopitoff v. Wilson, <i>Carrier</i> 2	100
—, Holden v. . . . .	35	—, v. —, <i>Shipping Law</i> D 12	577
—, Sewell v. . . . .	241	Kottgen, Shepherd v. . . . .	587
—, v. Voss; in re Voss, <i>Husband and Wife</i> 46	284	Krebbs, British Dynamite Co. v. . . . .	278
Kingchurch v. People's Garden Co., <i>Company</i> H 81	169	Krehl v. Burrell, <i>Injunction</i> 22	299
—, v. —, <i>Injunction</i> 6	297	—, v. —, <i>Practice</i> B 35 ( <i>Appeal</i> )	442
Kingdon v. Castleman, <i>Trust</i> C 1	631	—, v. —, <i>Practice</i> HH 9 ( <i>Trial</i> )	485
Kingham, Chambers v. . . . .	365	Kronheim v. Johnson, <i>Trust</i> A 1	628
King's Lynn Steamship Co., Brocklebank v. . . . .	196	Krupp, Vavasseur v. . . . .	422, 448
Kinloch v. Secretary of State for India in Council, <i>Booby of War</i>	97	Kusel v. Watson, <i>Lease</i> 1	323
Kinnaird v. Webster, <i>Banker</i> 7	39	—, v. —, <i>Specific Performance</i> 1	601
—, v. —, <i>Bill of Exchange</i> 25	85	Kymer, Willes v. . . . .	630
Kino, Ecclesiastical Commissioners v. . . . .	337	Kynaston v. Mackinder, <i>Costs</i> 8	191
—, v. Budkin, <i>Light and Air</i> 7	338	La Banque d'Hochelaga, Goldring v. . . . .	120
—, v. —, <i>Practice</i> W 31 ( <i>Pleading</i> )	468	Lablanche, Hancock v. . . . .	285
—, v. —, <i>Practice</i> HH 24 ( <i>Trial</i> )	487	Labouchere, Allhusen v. . . . .	455
Kippling v. Allan; Kippling v. Todd, <i>Company</i> F 9	156	—, Gay v. . . . .	455
Kirby, Smith v. . . . .	582	—, v. Wharnccliffe, Earl of, <i>Club</i> 3	118
Kirk, ex parte; in re Bennett & Glave, <i>Legacy</i> 5	328	Lacey v. Hill, <i>Bankruptcy</i> D 18	52
—, v. Gregory, <i>Executor</i> 10	250	—, & Co., in re, <i>Company</i> H 11	160
Kirkdale Justices, Reg. v. . . . .	22	Lacroix, in the goods of, <i>Will Formalities</i> 3	681
Kirkpatrick v. Bedford; Bedford v. Kirkpatrick, <i>Scotch Law</i> 30	561	Lacy, Bramwell v. . . . .	206
—, Kershaw v. . . . .	120	Ladbrook v. Barrett, <i>Action</i> 4	4
Kirkstall Brewery Co., Limited and Reduced, in re, <i>Company</i> D 54	147	"Lady Downshire," The, <i>Shipping Law</i> E 14	580
Kirkwood, ex parte; in re Mason, <i>Bankruptcy</i> K 14	67	La Fontaine, Pitts v. . . . .	175
—, v. Webster, <i>Costs</i> 98	200	La Grange v. McAndrew, <i>Costs</i> 75	198
Kitchen v. Palmer, <i>Vendor and Purchaser</i> 19	646	—, v. —, <i>Practice</i> H 6	449
—, Young v. . . . .	471, 563	—, Standard Discount Co. v. . . . .	441
Kleinwort v. Cassa Maritima of Genoa, <i>Shipping Law</i> C 3	575	Laing v. Bishop Wearmouth, Overseers of, <i>Rates</i> 14	534
Knapman's Estate, in re; Knapman v. Wreford, <i>Administration</i> 29	9	—, v. Hollway, <i>Shipping Law</i> D 3	575
Knapp v. Knapp, <i>Divorce</i> 19	229	Lake v. Tozer, <i>Bastardy</i> 2	80
Knatchbull v. Fowle, <i>Infant</i> 26	294	Lakes, Gould v. . . . .	684
—, v. —, <i>Practice</i> K 7	450	Laker v. Hordern, <i>Will Construction</i> G 3	665
—, v. Hallett; in re Hallett's Estate, <i>Trust</i> C 7	632	Lamb v. Brewster, <i>Landlord and Tenant</i> 4	313
Knight, in re; ex parte Golding, Davis & Co., Limited, <i>Sale of Goods</i> 31	555	—, v. —, <i>Property Tax</i> 2	510
—, Chapman v. . . . .	88	—, v. Bruce, <i>Bill of Sale</i> 28	91
—, v. Fursell, <i>Costs</i> 92	200	—, v. Walker, <i>Damages</i> 13	216
—, v. —, <i>Metropolis</i> 3	366	Lambeth, Overseers of, St. Thomas's Hospital v. . . . .	532
—, Webb v. . . . .	19	Lambert, in re; ex parte Saffery, <i>Bankruptcy</i> M 11	74
		—, Taylor v. . . . .	331, 679
		—, Wright v. . . . .	617
		Lambkin v. South Eastern Railway Co., <i>Colonial Law</i> 6	121
		Lambton, ex parte; Pile v. Pile, <i>Lands Clauses Act</i> 9	318
		—, —, <i>Mortgage</i> 13	378

	PAGE		PAGE
Laming v. Gee, <i>Administration</i> 86	10	Lawrence, Brandt v.	548
Lamont, Preston v.	479	—, Durling v.	467
—, Rankin v.	560	—, Evenett v.	443
Lamotte, in re, <i>Lunatic</i> 2	346	— v. Fletcher, <i>Solicitor</i> 45	600
—, <i>Trustee Acts</i> 10	637	—, Siddons v.	191, 593
Lamplough, A. G. v.	609	Lawrie v. Lees, <i>Lease</i> 14	325
Lancashire and Yorkshire Railway Co. v.		Lawson, Babcock v.	426
Gidlow, <i>Railway</i> 25	528	—, Chatterton v.	58
—, Johnson v.	215	—, Dempsey v.	684
—, Sneesby v.	394	—, Secar v.	58
Lancaster, ex parte; in re Lancaster,		Lax v. Corporation of Darlington, <i>Negligence</i> 3	391
<i>Bankruptcy</i> L 8	70	Laxton, Richter v.	345
—, in re; ex parte Bailey, <i>Bankruptcy</i>		Layland v. Stewart, <i>Copyright</i> 7	187
L 8	70	Layton, Dolphin v.	36
—, in re; ex parte Wildsmith, <i>Bankruptcy</i> M 41	77	Lazarus v. Andrade, <i>Bill of Sale</i> 46	94
—, ex parte; in re Westby, <i>Bankruptcy</i>		Lea, British Waggon Co. v.	182
F 32	61	Leach v. Tay, <i>Will Construction</i> D 7	661
Lancaster Banking Co. v. Cooper, <i>Mortgage</i>		Leadbeater v. Cross, <i>Will Construction</i>	
55	385	O 10	680
Lancaster Lunatic Asylum, Liverpool Overseers v.	349	Leadbitter, in re, <i>Bankruptcy</i> P 11	79
Landore Siemens Steel Co., in re, <i>Company</i>		—, <i>Costs</i> 77	198
H 80	169	Learoyd, ex parte; in re Foulds, <i>Bankruptcy</i> C 8, M 5	47, 73
Lane, in re; Luard v. Lane, <i>Legacy</i> 22	330	—, ex parte; in re Luttmann, <i>Bankruptcy</i> C 6	47
Lang, ex parte; in re Lang, <i>Bankruptcy</i>		Leask v. Scott, <i>Sale of Goods</i> 33	555
L 11	70	Leatham v. Amor, <i>Bill of Sale</i> 45	93
Lang v. Kerr, Anderson & Co., <i>Scottish Law</i>		Leathers v. Leathers, <i>Tenant for Life</i> 1	615
10	559	Leavers v. Clayton; in re Jarman's Estate, <i>Charity</i> 16	107
Langdale, Whitfield v.	665	— v. —, <i>Legacy</i> 1	328
Langdon v. Howells, <i>Railway</i> 16	526	— v. —, <i>Legacy Duty</i>	331
Lange, Lempriere v.	292	Le Blanch v. London and North Western Railway Co., <i>Damages</i> 18	217
Langham Skating Rink Co., in re, <i>Company</i>		— v. Reuter's Telegram Co., <i>Lord Mayor's Court</i> 6	345
H 9	160	Lechmere, Parker v.	281
Langley, ex parte; in re Smith; in re Bishop, <i>Bankruptcy</i> N 6	78	Lee, in re; ex parte Good, <i>Bankruptcy</i> D 33	54
—, <i>Telegraph</i> 3	614	— v. Clutton, <i>Registration</i> 1	539
Langlois, Valin v.	122	— v. Gaskell, <i>Frauds, Statute of</i> , 3	263
Langridge v. Campbell, <i>Costs</i> 39	195	— v. Lee, <i>Settlement</i> 1	566
Langton, Regina v.	248	— v. Nuttall; in re Neville, <i>Lancaster Palatine Court</i> 2	311
Larking, ex parte; in re Imperial Land Co. of Marseilles, <i>Company</i> D 12	138	—, Reg. v.	274, 367
Lascelles, Agar Ellis v.	294	—, Wakefield Local Board of Health v.	516
— v. Butt, <i>Practice</i> Y 1	477	Lee Conservancy Board v. Button, <i>Lee Conservancy Board</i>	328
— v. Onslow, <i>Common</i> 4	129	— v. —, <i>Practice</i> W 13	467
Latham, Hogarth v.	84, 414	—, Forbes v.	545
—, in re; ex parte Latham, <i>Bankruptcy</i>		Leeder, Peters v.	250
M 43	77	Leeds and County Banking Co. v. Beatson, <i>Partnership</i> 16	414
Latimer v. Aylesbury and Buckingham Railway Co., <i>Railway</i> 29	529	Leeds Union, Reg. v.	427
—, Leyman v.	332	Leeming v. Lady Murray, <i>Bankruptcy</i> F 58	64
Laudry, Theberge v.	122	Lees, Laurie v.	325
"Lauretta," The, <i>Admiralty</i> 59	18	— v. Patterson, <i>Ne caveat Regno</i> 1	390
Lavell v. Howell, <i>Master and Servant</i> 6	361	— v. —, <i>Practice</i> W 60	472
Lavies, in re; ex parte Stephens, <i>Bankruptcy</i> F 40	62	Leete v. Leete, <i>Divorce</i> 26	230
—, <i>Fiatures</i> 4	256	Le Fever, Bryant v.	236
Law, in re; ex parte Hart, <i>Bankruptcy</i>		Le Fevre, in re; ex parte Astrup, <i>Bankruptcy</i> C 4	47
L 8	69	Lefevre, Honduras Inter-Oceanic Railway Co. v.	474
— v. Garrett, <i>Arbitration</i> 5	30		
Lawes v. Lawes, <i>Partnership</i> 11	414		
—, Pulbrook v.	178, 264		
Lawford v. Davies, <i>Divorce</i> 12	228		
Lawrence, in re; Evenett v. Lawrence, <i>Practice</i> B 49	448		

	PAGE		PAGE
Leftly v. Monnington, <i>Vestry</i> 1 . . . . .	649	Lewis, ex parte; in re Mayer, <i>Bankruptcy</i> L 16 . . . . .	71
Legg, Scott v. . . . .	366	—, in re; ex parte Harris, <i>Bankruptcy</i> M 26 . . . . .	75
Leggott v. Barrett, <i>Vendor and Purchaser</i> 14 . . . . .	645	—, —, <i>Receiver</i> 13 . . . . .	538
— v. Great Northern Railway Co., <i>Estoppel</i> 1 . . . . .	241	—, in re; ex parte Mauthner, <i>Bankruptcy</i> L 5, M 42 . . . . .	69, 77
Leicester Waterworks Co. v. Nuttall, <i>Rates</i> 23 . . . . .	536	—, in re; ex parte Munro, <i>Solicitor</i> 20 . . . . .	597
Leigh, in re; Rowcliffe v. Leigh, <i>Practice</i> Y 4 . . . . .	477	— v. Brass, <i>Contract</i> 17 . . . . .	180
—, — v. —, <i>Production</i> 31 . . . . .	509	— v. Cardiff Union, <i>Public Health</i> 21 . . . . .	515
— v. Brooks, <i>Practice</i> Y 5 . . . . .	477	— v. Carr, <i>Municipal Corporation</i> 1 . . . . .	386
— v. Jack, <i>Presumption</i> 6 . . . . .	491	—, Conybeare v. . . . .	448
Leman, ex parte; in re Barnard, <i>Bill of Sale</i> 17 . . . . .	90	—, Emma Silver Mining Co. v. 131, 445, 458 . . . . .	364
Le Marchant v. Commissioners of Inland Revenue, <i>Succession Duty</i> 3 . . . . .	612	— v. Gray, <i>Merchant Shipping Acts</i> 1 . . . . .	364
— v. Le Marchant, <i>Divorce</i> 36 . . . . .	232	— v. Great Western Railway Co., <i>Carrier</i> 11 . . . . .	101
Lempriere v. Lange, <i>Infant</i> 15 . . . . .	292	— v. —, <i>Railway</i> 24 . . . . .	528
Lenanton, Union Bank of London v. . . . .	552, 573	— v. Leonard, <i>Bankruptcy</i> H 4 . . . . .	64
Leney v. Hill, <i>Bankruptcy</i> D 18 . . . . .	52	—, Lloyd v. . . . .	33
Lennay, ex parte; in re Chidley, <i>Bankruptcy</i> L 19 . . . . .	71	— v. Nobbs, <i>Infant</i> 27 . . . . .	294
Lenzberg's Policy, in re, <i>Bankruptcy</i> B 2 . . . . .	43	— v. —, <i>Trust</i> B 5 . . . . .	631
—, <i>Composition Deed</i> 1 . . . . .	172	—, Thomas v. . . . .	592
Leon van Tienhoven & Co., Byrne & Co. v. . . . .	181	Lewis, Munro & Co., in re; ex parte Republic of Paraguay, <i>Practice</i> B 9 . . . . .	439
Leonard v. Alloways, <i>Parliament</i> 20 . . . . .	406	—, —, <i>Practice</i> I 1 . . . . .	449
—, Lewis v. . . . .	64	Ley, Hall v. . . . .	571
Leonino v. Leonino, <i>Mortgage</i> 18 . . . . .	379	Leyland v. Stewart, <i>Copyright</i> 7 . . . . .	187
Les Éclésiastiques de Séminaire de St. Sulpice de Montréal, Dorion v. . . . .	120	Leyman v. Latimer, <i>Libel</i> 2 . . . . .	332
Leslie v. Fitzpatrick, <i>Infant</i> 12 . . . . .	292	Liberator, &c. Benefit Building Society, General Finance, &c. Co. v. . . . .	242
— v. —, <i>Master and Servant</i> 1 . . . . .	361	Liberia, Republic of, v. Roye, <i>Production</i> 20 . . . . .	508
Leslie's Case; in re Gaudet Frères (Lim.), <i>Company</i> H 49 . . . . .	164	Lichfield Brewery Company, Hall v. . . . .	214, 338
Leslie's Settlement Trusts, <i>Lands Clauses Act</i> 23 . . . . .	320	Liddiard, in re, <i>Trustee Acts</i> 5 . . . . .	637
—, <i>Settled Estates Acts</i> 8 . . . . .	565	Lillington v. Pares; in re Pares, <i>Lunacy</i> 16 . . . . .	347
Les Sœurs Dames Hospitalières de St. Joseph de l'Hôtel Dieu de Montréal v. Middlemiss, <i>Colonial Law</i> 16 . . . . .	122	"Limerick," The, <i>Shipping Law</i> O 1 . . . . .	589
Lester, Steel v. . . . .	395	Lindsay, Ambler v. . . . .	250
— v. Torrens, <i>Alehouse</i> 23 . . . . .	25	— v. Cundy, <i>Fraud</i> 10 . . . . .	261
Le Sueur v. Le Sueur, <i>Divorce</i> 1, 9 . . . . .	227, 228	— v. —, <i>Sale of Goods</i> 15 . . . . .	551
Le Tailleur v. South Eastern Railway Co., <i>Lord Mayor's Court</i> 2 . . . . .	345	— v. Ellicott, <i>Settlement</i> 15 . . . . .	568
Letchford, in re, <i>Infant</i> 11 . . . . .	292	—, Skeat v. . . . .	342
— v. Oldham, <i>Marine Insurance</i> 11 . . . . .	354	Linoleum Manufacturing Co. v. Nairn, <i>Trade Mark</i> 19 . . . . .	623
Lever, Dunkirk Colliery Co. v. . . . .	216, 477	Lintell, Stacey v. . . . .	80
Leveson, in re; ex parte Arrowsmith, <i>Church</i> 18 . . . . .	114	Linton v. Linton, <i>Practice</i> W 18 . . . . .	467
—, — <i>Pew</i> . . . . .	426	Lisbon Steam Tramways Co., in re, <i>Company</i> H 91 . . . . .	170
Levi v. Ayers, <i>Colonial Law</i> 43 . . . . .	126	Liscomb, in re; in re Railway Passengers Co., <i>Arbitration</i> 7 . . . . .	31
Levison, Morris v. . . . .	575	Lister, in re; ex parte Pike, <i>Bankruptcy</i> D 9 . . . . .	50
Levy v. Lovell, <i>Attachment</i> 14 . . . . .	36	—, in re; ex parte Simmons, <i>Bankruptcy</i> M 16 . . . . .	74
— v. —, <i>Bankruptcy</i> D 22 . . . . .	52	— v. Van Haansbergen, <i>Shipping Law</i> D 7 . . . . .	576
—, Phillips v. . . . .	617	Lithgow, ex parte; in re Fenton, <i>Bankruptcy</i> F 25 . . . . .	60
— v. Walker, <i>Partnership</i> 13 . . . . .	414	Little's Case; in re West Jewell Tin Mining Co., <i>Practice</i> B 20 . . . . .	440
Lewer, in re; ex parte Garrard, <i>Bankruptcy</i> M 17 . . . . .	74	Littleboy, Duke v. . . . .	625
—, in re; ex parte Wilkes; ex parte Garrard, <i>Trust</i> C 9 . . . . .	632	Littler, Greenough v. . . . .	385
Lewes, Earl of, v. Barnett, <i>Debtors Act</i> 13 . . . . .	221	Litton v. Litton, <i>Practice</i> W 18 ( <i>nom.</i> Linton v. Linton). . . . .	467
Lewin, ex parte; in re Robertson, <i>Bill of Sale</i> 13 . . . . .	90	Liverpool Brewery Company, Nelson v. . . . .	394
		Liverpool Commercial Investment Co., Rhodes v. . . . .	203

	PAGE		PAGE
Liverpool Corporation, Prison Commissioners v.	539	London and Provincial Bank v. Bogle, <i>Husband and Wife</i> 49	285
Liverpool, Overseers of, Barton Regis Union v.	348, 429	London and Provincial Consolidated Coal Co., in re, <i>Company</i> D 73	150
—, Clifton Union v.	429	London and Provincial Marine Insurance Co. v. Davies, <i>Principal and Surety</i> 1	497
—, v. Lancaster Lunatic Asylum, <i>Lunatic</i> 24	349	London and Provincial Supply Association, Pharmaceutical Society v.	426
Livingstone v. Rawyards Coal Co., <i>Mines</i> 13	372	London and St. Katharine's Dock Co., Attborough v.	305
Llanelli Railway Co. v. London and North Western Railway Co., <i>Railway</i> 12	524	—, Imperial Bank v.	553
Llanidloes, Overseers of, Van Mining Co. v.	875, 532	—, Nitro-Phosphate and Odams' Chemical Manure Co. v.	393
Llanover, Lady, v. Homfray, <i>Evidence</i> 81	247	London and South Western Bank v. Wentworth, <i>Bill of Exchange</i> 6	82
Lloyd, Allen v.	537	London and South Western Railway Co. v. Flower, <i>Statute</i> 5	608
— v. David Lloyd & Co.; in re David Lloyd & Co., <i>Company</i> H 86	169	—, Phillips v.	217, 459
— v. Dimmack, <i>Practice</i> U 4	460	London and Westminster Discount Co., Bolero v.	267
—, Flower v.	422, 439	London Assurance Co. v. Mansel, <i>Insurance</i> 2	302
— v. Harper, <i>Principal and Surety</i> 5	497	London, Brighton and South Coast Railway Co., Ashendon v.	528
—, Hume v.	669	—, Cooper v.	183, 526
— v. Jones, <i>Practice</i> HH 1	484	—, Hirschfield v.	261
— v. Lewis, <i>Arbitration</i> 22	38	—, Reg. v.	369
—, in re; Allen v. Lloyd, <i>Receiver</i> 7	537	— v. St. Giles', Camberwell, <i>Metropolis</i> 6	367
Lloyds, Millicich v.	333	— v. Watson, <i>Railway</i> 17	526
Lloyd's Banking Co. v. Ogle, <i>Practice</i> II 9	489	London Chartered Bank of Australia v. White and Blackwood, <i>Banking Company</i> 6	39
Loach, Barnes v.	235	— v. —, <i>Privy Council</i> 2	500
Locke, Collins v.	127	London, Chatham and Dover Railway Co., Friend v.	507
—, Palmer v.	435	—, Lovell v.	101
Lockyer v. Ferryman, <i>Scotch Law</i> 16	559	—, Sevenoaks, &c. Railway Co. v.	524
Loe, Frearson v.	420, 421, 422	—, Toomer v.	530
Loftus, Rose v.	624	London, Clerk of the Peace for the City of, Overseers of Great Yarmouth v.	428
Lohre v. Aitchison, <i>Marine Insurance</i> 17	355	London, Corporation of, Chilton v.	128
Loibl, Paraire v.	464	—, London Joint Stock Bank v.	36
London v. Roffey, <i>Practice</i> T 12	469	— v. Low, <i>Market</i> 5	359
London and Brighton Railway Co., Ashendon v.	528	—, v. Riggs, <i>Way</i> 2	656
—, Cooper v.	183	—, Thorn v.	184
London and Caledonian Marine Insurance Co., in re, <i>Company</i> H 103	171	London Deposit Bank, Cousens v.	203
London and County Banking Co. v. Dover, <i>Mortgage</i> 45	384	London Financial Association, Gibbons v.	444
—, Matthiessen v.	82	London General Cab Co., Cockshott v.	446
London and Edinburgh Shipping Co., General Steam Navigation Co. v.	195	London General Omnibus Co., Horwell v.	474
London and Manchester Industrial Association, in re, <i>Company</i> H 17, 22	161	—, Wright v.	4, 363
London and North Western Railway Co., A. G. v.	530	London Guarantee Co. v. Fearnley, <i>Condition</i> 1	174
—, Chapman v.	101	London Joint Stock Bank v. Corporation of London, <i>Attachment</i> 13	36
—, Colley v.	523	London, Liverpool and Globe Insurance Co., North British and Mercantile Insurance Co. v.	304
—, Evershed v.	527	London School Board, ex parte; in re Murphy, <i>Elementary Education Acts</i> 7	238
—, Hiort v.	215	—, Bolton v.	649
—, Le Blanch v.	217	— v. Faulconer, <i>Charity</i> 27	109
—, Llanelli Railway Co. v.	524	— v. Harvey, <i>Elementary Education Acts</i> 6	238
—, Metropolitan Board of Works v.	368	— v. St. Mary, Islington, Vestry of, <i>Metropolis</i> 7	367
—, Norton v.	440, 522		
—, Badley v.	396		
—, Reg. v.	389		
—, Sharrock v.	203		
—, Simpson v.	102, 215		
—, Walker v.	184		
—, Walsall, Mayor of, v.	536		
—, Williamson v.	475		
—, Woodward v.	100		
—, Wright v.	394		

	PAGE		PAGE
London Small Arms Co., Dixon v. . . . .	422	Lowndes v. Norton, <i>Waste</i> 3 . . . . .	654
—, Roden v. . . . .	243	Lowrey v. Barker, <i>Bankruptcy</i> F 48 . . . . .	62
London Syndicate v. Lord, <i>Practice</i> V 5 . . . . .	465	Lows, ex parte; in re Lows, <i>Bankruptcy</i> M 20 . . . . .	75
London, Tilbury and Southend Railway Co., Wells v. . . . .	523	— v. Telford, <i>Malicious Prosecution</i> 2 . . . . .	349
London Tramways Co. v. Bailey, <i>Contract</i> 16 . . . . .	180	Lowther, Edward v. . . . .	463
—, Val de Travers Asphalte Co. v. . . . .	463	—, Vance v. . . . .	81
—, Walker v. . . . .	137	Luard v. Lane; in re Lane, <i>Legacy</i> 22 . . . . .	330
Londonderry, Marquis of, Eaglesfield v. . . . .	140	Lucas, Aveland, Lord, v. . . . .	344
Loneragan, in re; ex parte Shiel, <i>Mort- gage</i> 7 . . . . .	378	— v. Cooke, <i>Copyright</i> 17 . . . . .	189
Long v. Crossley, <i>Practice</i> U 25 . . . . .	463	— v. Dicker, <i>Bankruptcy</i> B 26 . . . . .	46
— v. Millar, <i>Frauds, Statute of</i> , 16 . . . . .	264	—, Gardner v. . . . .	559
Longbottom, ex parte; in re Ellershaw, <i>Justice of the Peace</i> 7 . . . . .	310	Lucena v. Lucena, <i>Will Construction</i> N 10 . . . . .	678
Longbourne, Disney v. . . . .	455	Lucraft v. Pridham, <i>Administration</i> 21 . . . . .	8
— v. Fisher, <i>Practice</i> U 11 . . . . .	461	— v. —, <i>Administration</i> 44 . . . . .	11
Longendale Cotton Spinning Co., in re, <i>Lancaster Palatine Court</i> 1 . . . . .	311	— v. —, <i>Charity</i> 21 . . . . .	108
Longman v. East, <i>Practice</i> Y 2 . . . . .	477	Ludbrook v. Barrett, <i>Action</i> 4 . . . . .	4
Longrigg, Hetherington v. . . . .	465, 663	Luke v. South Kensington Hotel Co., <i>Mortgage</i> 41 . . . . .	383
Lonsdale, Lord, Sheward v. . . . .	455	— v. —, <i>Practice</i> U 12 . . . . .	461
Loog, Singer Manufacturing Co. v. . . . .	486	Luker v. Dennis, <i>Covenant</i> 15 . . . . .	207
Loomes and Whiting, in re, <i>Stamp</i> 3 . . . . .	607	Lush, Sharp v. . . . .	11, 250
Lopes, Porter v. . . . .	410, 411	Lushington, Pender v. . . . .	145, 155
Lopez, ex parte; in re Lopez, <i>Bankruptcy</i> N 4 . . . . .	78	Lutscher, in re; ex parte Waddell, <i>Witness</i> 685 . . . . .	685
Lord, London Syndicate v. . . . .	465	— v. Comptoir d'Escompte de Paris, <i>Bill of Exchange</i> 22 . . . . .	85
—, Mulkern v. . . . .	269	Luttman, in re; ex parte Learoyd, <i>Bank- ruptcy</i> C 6 . . . . .	47
—, Porrett v. . . . .	408	Lydall v. Martinson, <i>Costs</i> 94 . . . . .	200
Lord Advocate v. Blantyre, <i>Freshore</i> 2 . . . . .	258	Lynall's Trusts, in re, <i>Charity</i> 5 . . . . .	106
— v. Lord Lovat, <i>Salmon Fishery</i> 5 . . . . .	556	Lynch, ex parte; in re Lynch, <i>Bankruptcy</i> B 26 . . . . .	46
—, Lord Provost of Edinburgh v. . . . .	110	—, <i>Infant</i> 14 . . . . .	292
—, Mackintosh v. . . . .	278, 557	Lyon v. Fishmongers' Co., <i>River</i> 4 . . . . .	545
—, Zetland, Earl of, v. . . . .	612	— v. —, <i>Thames</i> 1 . . . . .	619
Lort v. Hutton, <i>Justice of the Peace</i> 12 . . . . .	310	— v. Tweddell, <i>Practice</i> P 9 . . . . .	454
Louth and East Coast Railway Co., in re; ex parte Rector of Grimoldby, <i>Lands Clauses Act</i> 27 . . . . .	320	Lyon's Trusts, in re, <i>Will Construction</i> G 6 . . . . .	665
—, Sharpley v. . . . .	151	Lyons v. Elliott, <i>Auction and Auctioneer</i> 2 . . . . .	37
—, Shelford v. . . . .	490	— v. —, <i>Landlord and Tenant</i> 10 . . . . .	314
Lovat, Lord, Lord Advocate v. . . . .	556	Lyons, Mayor of, v. Advocate-General of Bengal, <i>Charity</i> 14 . . . . .	107
Love, in re; ex parte Watson, <i>Sale of Goods</i> 27 . . . . .	554	Lysaght v. Edwards, <i>Will Construction</i> E 9 . . . . .	663
—, in re; Green v. Tribe, <i>Will Formalities</i> 21 . . . . .	684	Lythgow, ex parte; in re Fenton, <i>Bank- ruptcy</i> F 25 . . . . .	60
Lovejoy, Cheese v. . . . .	683	Lyttle's Iron Agency, Johnson v. . . . .	152
— v. Mulkern, <i>Friendly Society</i> 3 . . . . .	268	Lyttleton v. Blackburne, <i>Club</i> 1 . . . . .	118
Lovell v. Howell, <i>Master and Servant</i> 6 . . . . .	361		
—, Levy v. . . . .	36, 52	M —, in re, <i>Debtors Act</i> 12 . . . . .	221
— v. London, Chatham and Dover Rail- way Co., <i>Carrier</i> 10 . . . . .	101	Maas, Francis v. . . . .	20
— v. Newton, <i>Husband and Wife</i> 44 . . . . .	284	Maatschappy Nederland v. Peninsular and Oriental Steamship Co., <i>Shipping Law</i> E 10 . . . . .	579
Loveman, in re; Watson v. Watson, <i>Legacy</i> 19 . . . . .	330	McAdam, Knowles v. . . . .	289
Lovesy v. Smith, <i>Settlement</i> 32 . . . . .	570	MacAllister v. Bishop of Rochester, <i>Church and Clergy</i> 2 . . . . .	112
Lovett, in re; Ambler v. Lindsay, <i>Execu- tor</i> 15 . . . . .	250	— v. —, <i>Production</i> 26 . . . . .	508
Low, Benbow & Sons v. . . . .	476	McAndrew v. Barker, <i>Practice</i> B 31 . . . . .	441
—, Corporation of London v. . . . .	359	—, La Grange v. . . . .	198, 449
—, Leyton Local Board, Flower v. . . . .	518	McBryde, ex parte; in re Metropolitan Building Act, <i>Metropolis</i> 2 . . . . .	366
Lowe v. Lowe, <i>Practice</i> B 36 . . . . .	442	McCarthy, Real and Personal Advance Co. v. . . . .	468
Lowestoft, Yarmouth and Southwold Tram- way Co., in re, <i>Parliamentary Deposit</i> 2 . . . . .	408	McCollin v. Gilpin, <i>Company</i> D 22 . . . . .	140
—, <i>Tramways</i> 1 . . . . .	626		

	PAGE		PAGE
Maccord v. Osborne, <i>Infant</i> 16	292	Maddison, Alderson v.	265
McCulloch, in re; ex parte McCulloch, v. <i>Bankruptcy</i> A 2	41	Maddy v. Hale, <i>Tenant for Life</i> 11	616
M'Corquodale v. Bell, <i>Production</i> 4	506	Maden v. Taylor, <i>Will Construction</i> N 8	678
Macdonald v. Carrington, <i>Practice</i> W 71	473	Magdalen Hospital, Governors of, v. Knotta, <i>Charity</i> 24	109
—, Cooper v.	284	— v. —, <i>Hospital</i> 2	277
— v. Foster, <i>District Registry</i> 2	225	— v. —, <i>Limitations, Statute of</i> , 15	341
— v. Irvine, <i>Legacy</i> 18	330	Magrath, Tombs v.	653
— v. —, <i>Tenant for Life</i> 10	616	Mahood, Gee v.	27
— v. —, <i>Trust</i> B 1	630	Maldstone Union, Reg. v.	429
— v. McDonald, <i>Scotch Law</i> 9	558	Malcolmson, Plimpton v.	419
Mac Dougall v. Gardiner, <i>Company</i> E 1	155	Malmesbury Railway Co. v. Budd, <i>Arbitration</i> 14	32
McDowell, Dean v.	413	Malton Board of Health v. Malton Manure Co., <i>Nuisance</i> 17	400
M'Elroy, Tharsis Sulphur and Copper Co. v.	183	Manby v. Manby, <i>Limitations, Statute of</i> , 24	343
McEwan, in re; ex parte Blake, <i>Bankruptcy</i> D 7	50	—, Union Bank of London v.	508
M'Haffie, Hydraulic Engineering Co. v.	184	Manchester and County Bank, in re; ex parte Collie, <i>Bankruptcy</i> D 26	53
M'Hattie, ex parte; in re Wood, <i>Bill of Sale</i> 23	91	Manchester and Leeds Railway Co., in re; ex parte Gaskell, <i>Lands Clauses Act</i> 37	321
Machon, Phillimore v.	117	Manchester and Milford Railway Co., Forster v.	316
McHole v. Davies, <i>Market</i> 1	359	—, in re; ex parte Cambrian Railway Co., <i>Railway</i> 30	529
McInnes, Wood v.	481	Manchester Bank, ex parte; in re Mellor, <i>Bankruptcy</i> D 19	52
McKay's Case; in re Morvah Consols Tin Mining Co., <i>Company</i> D 31	142	—, —, <i>Partnership</i> 26	417
—, <i>Principal and Agent</i> 16	495	Manchester Bonded Warehouse Co. v. Carr, <i>Landlord and Tenant</i> 9	314
McKeand, Taylor v.	92	Manchester Carriage Co., Ellis v.	337
Mackenzie v. Bankes, <i>Scotch Law</i> 21	560	Manchester, Overseers of, v. St. Pancras Guardians, <i>Poor Law</i> 10	428
—, Cave v.	264	Manchester, Sheffield and Lincolnshire Railway Co. v. Brooks, <i>Practice</i> W 58	472
— v. Hesketh, <i>Specific Performance</i> 20	605	—, Fleming v.	192
—, Kaltenbach v.	355	Mander, Wakefield Sanitary Authority v.	515
— v. Whitworth, <i>Marine Insurance</i> 3	352	Manning, Cole v.	80
McKewan's Case; in re Maria Anna and Steinbank Coal and Coke Co., <i>Company</i> H 52	165	—, Murphy v.	26
McKinlay, Steel v.	83	Mann, ex parte; in re Kattengell, <i>Bankruptcy</i> D 28	53
McKinnon v. Armstrong, <i>Scotch Law</i> 2	557	—, Martano v.	197
—, Arthur v.	329	Mann's Claim; in re the Westbourne Grove Drapery Co., <i>Company</i> H 33	162
Mackintosh v. Lord Advocate, <i>House of Lords</i> 2	278	Manners, Lord, v. Johnson, <i>Covenant</i> 16	208
— v. —, <i>Scotch Law</i> 1	557	— v. —, <i>Injunction</i> 23	299
Mackley v. Chillingworth, <i>Costs</i> 101	201	Manoel dos Santos Casaca, Regina v.	126
Mackley's Case; in re Tal-y-drws Slate Co., <i>Company</i> H 56	166	Mansel, in re; Rhodes v. Jenkins, <i>Practice</i> B 50	443
Mackonochie, Martin v.	117	— v. Attorney-General, <i>Legitimacy Declaration Act</i> 1, 2	331
Mackrell, Barber v.	457	—, London Assurance Co. v.	302
MacLachlan, Willis v.	408	—, Webb v.	196
Maclaren, Rolfe v.	438, 473, 475	Mansfield v. Childerhouse, <i>Practice</i> P 4	453
McLaren, in re; ex parte Cooper, <i>Sale of Goods</i> 30	555	— v. —, <i>Specific Performance</i> 25	605
McLean, Stevenson, Jaques & Co. v.	181	Manson v. Thacker, <i>Vendor and Purchaser</i> 8	644
McLean, Trotter v.	245, 373	Manvers, Earl, v. Bartholomew, <i>Highway</i> 9	274
"MacLeod," The, <i>Shipping Law</i> W 1	592	Manzanos, Hough v.	494
McLister, Garden Gully United Quartz Mining Co. v.	152	Mapleback, in re; ex parte Butt, <i>Bankruptcy</i> B 11	44
McNeile v. Chambers; in re Edwards, <i>Lancaster Palatine Court</i> 3	312	—, <i>Bill of Sale</i> 49	94
— v. —, <i>Infant</i> 25	294	—, in re; ex parte Caldecott, <i>Bankruptcy</i> B 11	4
McPhail, ex parte, <i>Practice</i> BB 13	480		
Macpherson, Borough of Bathurst v.	124		
—, Urquhart v.	261		
McPherson v. Watt, <i>Solicitor</i> 18	596		
McStephens v. Carnegie, <i>Practice</i> BB 24	481		
McVeagh, Davies v.	584		
Maddick v. Marks; in re Clark's Estate, <i>Power</i> 18	433		

	PAGE		PAGE
Mapleson v. Massini, <i>Costs</i> 65 . . . . .	197	Mason, in re; ex parte Kirkwood, <i>Bankruptcy</i>	
Mar Peerage, The; Claim of the Earl of		K 14 . . . . .	67
Kellie, <i>Evidence</i> 29 . . . . .	247	— v. Brentini, <i>Costs</i> 93 . . . . .	200
—, <i>Peerage</i> 1 . . . . .	423	— v. Harris, <i>Company</i> E 4 . . . . .	155
"Marathon," The, <i>Shipping Law</i> R 6 . . . . .	590	— v. Mason; in re Mason, <i>Trustee Acts</i> 16 . . . . .	638
Marbella Iron Co. v. Allen, <i>House of Lords</i>		— v. Robinson; in re Mason, <i>Annuity</i> 6 . . . . .	27
10 . . . . .	278	— Trestrail v. . . . .	7
Marchant, Emmott v. . . . .	90	— v. Wirral Highway Board, <i>County</i>	
Marescaux v. Armstrong, <i>Will Construc-</i>		<i>Court</i> 22 . . . . .	203
tion D 8 . . . . .	661	— v. Wood, <i>Bill of Sale</i> 21 . . . . .	91
"Margaret," The, <i>Shipping Law</i> E 26 . . . . .	582	Mason and Taylor, in re, <i>Solicitor</i> 31 . . . . .	538
Maria Anna and Steinbank Coal and Coke		Masper v. Brown, <i>Assault</i> 1 . . . . .	34
Co., in re; McKewan's Case, <i>Company</i>		Massam v. Thorley's Food for Cattle, <i>Trade</i>	
H 52 . . . . .	165	<i>Mark</i> 27 . . . . .	625
Mariner, Gleaves v. . . . .	113	—, Thorley's Cattle Food Co. v. . . . .	297, 333
Marks, Maddick v. . . . .	433	Massey v. Allen, <i>Company</i> H 90 . . . . .	170
—, Stallard v. . . . .	24	— v. —, <i>Costs</i> 73 . . . . .	198
Markwick v. Hardingham, <i>Limitations,</i>		— v. —, <i>Evidence</i> 8 . . . . .	244
<i>Statute of</i> , 23 . . . . .	342	Massini, Mapleson v. . . . .	197
Marman's Trusts, in re, <i>Lunatic</i> 24 . . . . .	348	Master in Equity, Bell v. . . . .	127
Marriage, Pickard v. . . . .	91, 3	Master v. Hansard, <i>Covenant</i> 19 . . . . .	208
Marriner, Gleaves v. . . . .	113	Masters, ex parte; in re Winson, <i>Bank-</i>	
Marriott, in re; Moors v. Marriott, <i>Friendly</i>		<i>ruptcy</i> P 2 . . . . .	79
<i>Society</i> 11 . . . . .	269	— v. Durst, <i>Church</i> 21 . . . . .	115
—, Moors v. . . . .	269	— v. Pontypool Local Government Board,	
Marris v. Ingram, <i>Debtors Act</i> 4 . . . . .	220	<i>Public Health Act</i> 7 . . . . .	513
—, Heap v. . . . .	466	Mather v. Brown, <i>Municipal Corporation</i> 4 . . . . .	387
Marsden, ex parte; in re Marsden, <i>Bank-</i>		Mathews, Picken v. . . . .	540
<i>ruptcy</i> I . . . . .	66	Matson v. Baird, <i>Railway</i> 28 . . . . .	529
—, Ballard v. . . . .	249	Matthew v. Northern Assurance Co., <i>Trus-</i>	
— v. Kent, <i>Executor</i> 17 . . . . .	251	<i>tee Relief Act</i> 3 . . . . .	639
— v. Saville Street Foundry and En-		"Matthew Cay," The, <i>Admiralty</i> 39 . . . . .	17
<i>gineering Co., Patent</i> 4 . . . . .	419	Matthews, in re; ex parte Powell, <i>Bank-</i>	
Marsh v. Isaacs, <i>Practice</i> HH 31 . . . . .	487	<i>ruptcy</i> F 9 . . . . .	57
— v. Marsh, <i>Divorce</i> 31 . . . . .	231	— v. Antrobus, <i>Mortgage</i> 46 . . . . .	384
Marshall, ex parte; in re Marshall, <i>Bank-</i>		— v. Matthews, <i>Mortgage</i> 48 . . . . .	384
<i>ruptcy</i> M 33 . . . . .	76	—, Picken v. . . . .	540
—, Budd v. . . . .	314	— v. Whittle, <i>Husband and Wife</i> 50 . . . . .	285
— v. Crowther, <i>Tenant for Life</i> 5 . . . . .	615	Matthiessen v. London and County Bank,	
—, Fairclough v. . . . .	207, 462	<i>Bill of Exchange</i> 4 . . . . .	82
— v. Green, <i>Frauds, Statute of</i> , 4 . . . . .	263	Maudslay v. Maudslay, <i>Divorce</i> 28 . . . . .	230
— v. Marshall, <i>Divorce</i> 20 . . . . .	229	Maughan, ex parte, <i>Alehouse</i> 1 . . . . .	22
Marsland, Nichols v. . . . .	392	Mauthner, ex parte; in re Lewis, <i>Bank-</i>	
Marson v. Cox, <i>Friendly Society</i> 5 . . . . .	268	<i>ruptcy</i> L 5, M 42 . . . . .	69, 77
Martano v. Mann, <i>Costs</i> 66 . . . . .	197	Mawby, Jackson v. . . . .	221
Martin and College of Christ, Brecknock,		Maxwell v. Cartwright, <i>Administration</i> 30 . . . . .	9
in re, <i>Arbitration</i> 20 . . . . .	32	— Henderson v. . . . .	186, 187
Martin, ex parte, <i>County Court</i> 5 . . . . .	202	May, Buckton v. . . . .	541
—, Albion Steel and Wire Co. v. . . . .	144	—, Croxton v. . . . .	491
— v. Bannister, <i>County Court</i> 5 . . . . .	202	—, Hatton v. . . . .	27
—, Christ's Hospital, Brecknock, v. . . . .	33	—, Hicks v. . . . .	6
—, Crisp v. . . . .	114	—, Reg. v. . . . .	31
— v. Gale, <i>Infant</i> 13 . . . . .	292	Maychell, in the goods of, <i>Probate</i> 5 . . . . .	501
—, Great Australian Gold Mining Co. v. . . . .	479	Mayd v. Field, <i>Husband and Wife</i> 29 . . . . .	282
— v. Mackonochie, <i>Church</i> 30 . . . . .	117	—, <i>Portions</i> 1 . . . . .	430
—, Reg. v. . . . .	260	Mayer, in re; ex parte Lewis, <i>Bankruptcy</i>	
— v. Trimmer; in re Davidson, <i>Trust</i> E		L 16 . . . . .	71
7 . . . . .	636	— v. Farmer, <i>Arbitration</i> 18 . . . . .	32
Martineau v. Briggs, <i>Will Construction</i> Q . . . . .	681	— v. Murray, <i>Mortgage</i> 9 . . . . .	378
Martinson, Lydall v. . . . .	200	Mayhew, Hillman v. . . . .	483
"Mary," The, <i>Shipping Law</i> R 4 . . . . .	590	—, in re; Rowles v. Mayhew, <i>Adminis-</i>	
"Mary Hounsell," The, <i>Shipping Law</i> E		<i>tration</i> 51 . . . . .	12
15 . . . . .	580	Mead, Gaslight and Coke Co. v. . . . .	271
Mason, ex parte; in re White, <i>Bankruptcy</i>		Mead, in re; Austin v. Mead, <i>Donatio</i>	
M 8 . . . . .	74	<i>Mortis Causa</i> 2 . . . . .	234

	PAGE		PAGE
Meade, in re; ex parte Harold, <i>Bankruptcy</i>		Merry, Nickalls v.	153
K 6	66	Mersey Steel and Iron Co., <i>Justice</i> v.	278
—, <i>Injunction</i> 11	298	Mesquita, <i>Runnacles</i> v.	489
Meads, ex parte; in re Harrison, <i>Bank-</i>		Messenger, in re; ex parte Calvert, <i>Sol-</i>	
<i>ruptcy</i> B 20	45	<i>citor</i> 29	598
Meares, in re, <i>Lunatic</i> 10	347	Metcalfe, in re; Hicks v. May, <i>Adminis-</i>	
"Mecca, City of," The, <i>Admiralty</i> 5, 7	14	<i>tration</i> 7	6
"Medina," The, <i>Shipping Law</i> T 1	590	— v. Britannia Ironworks Co., <i>Shipping</i>	
Medwin, Foster v.	405	<i>Law</i> K 2	585
Meek v. Devenish, <i>Trust</i> E 6	636	— v. Hutchinson, <i>Administration</i> 40	11
Mees, Gretton v.	492	—, Minton v.	446
Megevand, in re; ex parte Delhasse, <i>Part-</i>		Metcalfe's Case; in re Diamond Fuel Co.,	
<i>nership</i> 2	412	<i>Debtors Act</i> 6	220
Meggy v. Imperial Discount Bank, <i>Bank-</i>		Metropolitan Asylum District v. Hill, <i>Costs</i>	
<i>ruptcy</i> F 35, H 13	61, 65	100	201
Megson v. Hurdle, <i>Will Construction</i> H 14	668	—, <i>Nuisance</i> 7	398
Meikle, in re; ex parte Castle, <i>Bankruptcy</i>		—, <i>Practice</i> B 17	440
P 5	79	Metropolitan Bank, in re, <i>Company</i> H 30	162
Meikle's Trade Mark, in re, <i>Trade Mark</i> 15	622	—, in re; Heiron's Case, <i>Company</i> H 106	172
Meiklereid v. West, <i>Merchant Shipping</i>		— v. Heiron, <i>Limitations, Statute</i> of, 14	341
<i>Acts</i> 6	365	—, Rumball v.	561
— v. —, <i>Shipping Law</i> W 2	592	Metropolitan Board of Works, Carr v.	34
Melbourne Banking Corporation v. Broug-		— v. London and North Western Rail-	
ham, <i>Colonial Law</i> 52	127	way Co., <i>Metropolis</i> 16	368
Melhado v. Watson, <i>Bankruptcy</i> L 13	70	—, De Morgan v.	369
Mellin v. Monico, <i>Practice</i> Y 2	477	— v. New River Co., <i>Practice</i> HH 7	485
Mellon, Debenham v.	279	—, Rees v.	385
Mellor, in re; ex parte Butcher, <i>Bankruptcy</i>		Metropolitan Building Act, in re; ex parte	
D 19	52	McBryde, <i>Metropolis</i> 2	366
—, in re; ex parte Manchester Bank,		Metropolitan District Railway Co., A. G. v.;	
<i>Bankruptcy</i> D 19	52	Foulkes v.	102
—, <i>Partnership</i> 26	417	— v. Sharpe, <i>Lands Clauses Act</i> 16	319
— v. Denham, <i>Elementary Education Acts</i>		— v. —, <i>Statute</i> 12	610
5, 9	238	—, Woodley v.	395
— v. Sidebottom, <i>Practice</i> W 16	467	— and Cosh, in re, <i>Lands Clauses Act</i>	
—, Stead v.	630	45	322
Mellor's Policy Trusts, <i>Husband and Wife</i>		Metropolitan Inner Circle Co. v. Metropo-	
47	285	litan Railway Company, <i>Practice</i> HH 3	484
Meltham Local Board, Taylor v.	276	Metropolitan Railway Company, A. G. v.	450
Meluish v. Milton, <i>Fraud</i> 9	262	—, Brogden v.	182
— v. —, <i>Probate</i> 2	501	— v. Defries, <i>Vendor and Purchaser</i> 11	645
Mendel, Odessa Tramways Co. v., <i>Company</i>		—, Hughes v.	326
D 18	139	— v. Jackson, <i>Carrier</i> 16	103
— v. —, <i>Fraud</i> 4	261	—, Woodley v.	395
Mentrop, in re; ex parte Weil, <i>Bankruptcy</i>		Metropolitan Street Improvements Act,	
L 24	72	1877, in re; ex parte Chamberlain, <i>Lands</i>	
Mephram, Green v.	407	<i>Clauses Act</i> 33	321
Mercantile Bank of River Plate, Yglesias v.	86	Metzler v. Wood, <i>Practice</i> HH 26	487
Mercer and Moore, in re, <i>Mortgage</i> 37	383	— v. —, <i>Trade Mark</i> 24	624
Merceron, Davies v.	367, 675	Mew, in re; ex parte Pearce, <i>Bankruptcy</i>	
Merceron's Trusts, in re; Davies v. Merce-		P 8	79
ron, <i>Metropolis</i> 12	367	Meyer v. Ralli, <i>Foreign Judgment</i> 1	257
—, <i>Will Construction</i> L 15	675	— v. —, <i>Marine Insurance</i> 15	354
Mercers' Company, ex parte, <i>Costs</i> 20	192	—, Reg. v.	309
Merchant Banking Co. of London v. Mer-		Meyerhoff v. Froehlich, <i>Limitations, Statute</i>	
chants' Joint Stock Bank, <i>Company</i> D 4	137	of, 21	342
— v. Phoenix Bessemer Steel Co., <i>Sale of</i>		Meyern v. Meyern, <i>Divorce</i> 18	229
<i>Goods</i> 23	553	Meyrick v. James, <i>Practice</i> A 4	438
Mercier v. Cotton, <i>Practice</i> P 14	455	— v. —, <i>Practice</i> K 24	452
Meredith, in re; ex parte Chick, <i>Seques-</i>		Michael's Trusts, <i>Remoteness</i> 12	541
<i>tration</i>	562	Michell's Trusts, in re, <i>Settlement</i> 20	569
— v. Treffry, <i>Court Fees</i>	205	—, <i>Practice</i> B 39	442
— v. —, <i>Practice</i> A 6	438	Micklethwaite, Astley v.	177
— v. —, <i>Will Construction</i> H 1	667	Middlemis, Hospice de St. Joseph de Mon-	
Meredith's Trusts, in re, <i>Power</i> 19	434	<i>treal</i> v.	122



	PAGE		PAGE
Middlesborough Assembly Rooms Co., in re, <i>Company H</i> 7 . . . . .	159	Mitcalfe, ex parte; in re Diamond Fuel Co., <i>Debtors Act</i> 5 . . . . .	220
Middlesex, Justices of, Reg. v. . . . .	350	—, Sullivan v. . . . .	134
—, Sheriff of, ex parte; in re Buck, <i>Bankruptcy A</i> 6 . . . . .	41	Mitchell v. Henry, <i>Trade Mark</i> 16 . . . . .	623
Middleton v. Brown, <i>Contract</i> 4 . . . . .	179	—, Rayner v. . . . .	362
— v. Pollock; ex parte Elliott, <i>Administration</i> 5 . . . . .	6	Mitchell's Case; in re City of Glasgow Bank, <i>Company D</i> 95 . . . . .	154
— v. —, <i>Fraudulent Conveyance</i> 1 . . . . .	266	—, <i>Trustee D</i> 13 . . . . .	634
— v. Pollock; ex parte Wetherall, <i>Solicitor</i> 12 . . . . .	595	Mitchell's Trade Mark, in re, <i>Trade Mark</i> 2 . . . . .	621
— v. Simpson, <i>Municipal Corporation</i> 3 . . . . .	387	Mitson, Brand v. . . . .	501
Midgley v. Coppock, <i>Landlord and Tenant</i> 5 . . . . .	313	"M. Moxham," <i>The, Admiralty</i> 28 . . . . .	15
— v. —, <i>Vendor and Purchaser</i> 10 . . . . .	645	—, <i>Conflict of Laws</i> 1 . . . . .	174
Midland Railway Co., Chapman v. . . . .	199	—, <i>Shipping Law E</i> 20 . . . . .	580
—, Doolan v. . . . .	528	Moase v. White, <i>Will Construction D</i> 6 . . . . .	661
—, Mulliner v. . . . .	522	Mobbs, Harris v. . . . .	399
—, Pontifex v. . . . .	192	Mochi, Hodson v. . . . .	473
Midland Waggon Co., Northampton Coal, Iron and Waggon Co. v. . . . .	197, 439	Mockett, Breton v. . . . .	615, 672
Migotti v. Colville, <i>False Imprisonment</i> 1 . . . . .	253	Moet v. Pickering, <i>Trade Mark</i> 29 . . . . .	625
— v. —, <i>Imprisonment</i> . . . . .	288	Moffatt v. Farquhar, <i>Company D</i> 92 . . . . .	154
Mildmay v. Quicke, <i>Costs</i> 29 . . . . .	194	Moggridge v. Hall, <i>Evidence</i> 31 . . . . .	247
— v. —, <i>Partition</i> 21 . . . . .	411	Molineaux, Asquith v. . . . .	485
Mile End, Vestry of, v. Whitechapel Union, <i>Metropolis</i> 9 . . . . .	367	Molleson, Phosphate Sewage Co. v. . . . .	560
Miles, De la Warr, Earl, v. . . . .	129	Molloy v. Kilby, <i>Practice P</i> 10 . . . . .	454
— v. Harford, <i>Remoteness</i> 16 . . . . .	541	Molyneux, Clark v. . . . .	334
Milissich v. Lloyds, <i>Libel</i> 8 . . . . .	333	Monarch Investment Building Society, Wright v. . . . .	268
Military and General Tailoring Co., in re, <i>Company H</i> 98 . . . . .	171	Monck v. Hilton, <i>Rogue and Vagabond</i> 2 . . . . .	545
Millar, Jacques v. . . . .	601	—, Reg. v. . . . .	205
—, Long v. . . . .	264	Monico, Mellin v. . . . .	477
—, Roxburghe, Duke of, v. . . . .	557	Monk, Harbord v. . . . .	455
Milledge, Reg. v. . . . .	310	—, Reg. v. . . . .	389
Miller, in re; ex parte Wardley, <i>Bankruptcy D</i> 3 . . . . .	49	Monkhouse, ex parte; in re Dale, <i>Bankruptcy L</i> 28 . . . . .	72
—, Morton v. . . . .	445, 458	Monks v. Jackson, <i>Municipal Corporation</i> 7 . . . . .	387
—, Rawlinson v. . . . .	411	Monmouthshire Canal Co., Fowler v. . . . .	595
—, Rossiter v. . . . .	263, 602	Monnington, Leftley v. . . . .	649
—, Shanklin Local Board v. . . . .	515	—, Pryce v. . . . .	278, 526
Miller's Case; in re Australian Direct Steam Navigation Co., <i>Company D</i> 9 . . . . .	138	Monro, ex parte; in re Lewis, <i>Solicitor</i> 20 . . . . .	597
—, in re European Assurance Society, <i>Company G</i> 9 . . . . .	159	Montagu, ex parte; in re O'Brien, <i>Equitable Assignment</i> 1 . . . . .	240
Mills v. Griffiths, <i>Lease</i> 17 . . . . .	326	Monte Video Gas Co., Jones v. . . . .	507
— v. Haywood, <i>Specific Performance</i> 17 . . . . .	604	Montreal, Bank of, v. Cameron, <i>Practice II</i> 6 . . . . .	488
— v. Jennings, <i>Mortgage</i> 31, 42 . . . . .	382, 383	Montreal, Compagnie de Chemin de Fer de, Bourgoin v. . . . .	122
Milner, Murray v. . . . .	245	Montreal, Corporation of, v. Brown, <i>Colonial Law</i> 8 . . . . .	121
—, Patrick v. . . . .	646	— v. Drummond, <i>Colonial Law</i> 10 . . . . .	121
Milnes, in re, <i>Lands Clauses Act</i> 18 . . . . .	319	—, Morrison v. . . . .	121
Milson, Brand v. . . . .	501	— v. Stevens, <i>Colonial Law</i> 11 . . . . .	121
Milton, Meluish v. . . . .	262, 501	Moody v. Steggle, <i>Easement</i> 2 . . . . .	235
Milward, Holmes v. . . . .	663	— v. —, <i>Prescription</i> . . . . .	490
Minet, Hatfield v. . . . .	20	Moojen, in re; ex parte Bouchard, <i>Bankruptcy M</i> 34 . . . . .	76
Minett, Morgan v. . . . .	596	Moor, ex parte; in re Florence Land and Public Works Co., <i>Company D</i> 48 . . . . .	146
Minors v. Battison, <i>Power</i> 1 . . . . .	431	— v. Anglo-Italian Bank, <i>Company H</i> 41 . . . . .	164
— v. —, <i>Trust A</i> 6 . . . . .	629	Moore, ex parte; in re Stokoe, <i>Bankruptcy F</i> 46 . . . . .	62
Minton v. Metcalf, <i>Practice C</i> 3 . . . . .	445	—, in re; ex parte Ibbetson, <i>Bankruptcy F</i> 17 . . . . .	58
Mirabita v. Imperial Ottoman Bank, <i>Sale of Goods</i> 17 . . . . .	551	—, A. G. v. . . . .	389
Mirehouse v. Barnett, <i>Practice HH</i> 20 . . . . .	486	—, Bennett v. . . . .	452
Mitcham and Wimbledon Gaslight Co., Wells v. . . . .	201	— v. Clench, <i>Charity</i> 23 . . . . .	108
Misa v. Currie, <i>Bill of Exchange</i> 7 . . . . .	82	— v. Davies, <i>Partnership</i> 5 . . . . .	413

	PAGE		PAGE
Moore v. Dixon, <i>Costs</i> 91 . . . . .	200	Mostyn, Evans v. . . . .	374
— v. Hall, <i>Damages</i> 14 . . . . .	216	— v. West Mostyn Coal and Iron Co.,	
— v. —, <i>Light and Air</i> 9 . . . . .	338	<i>Mines</i> 17 . . . . .	373
— v. Harris, <i>Shipping Law</i> B 3 . . . . .	574	— v. —, <i>Practice</i> W 57 . . . . .	472
— v. Robinson, <i>Husband and Wife</i> 54 . . . . .	286	Mounsey, Johnson v. . . . .	377
Moore and Robinson's Banking Co., ex		" M. Moxham," <i>The, Admiralty</i> 28 . . . . .	15
parte; in re Armytage, <i>Bill of Sale</i> 11 . . . . .	89	—, <i>Conflict of Laws</i> 1 . . . . .	174
Moors v. Marriott, <i>Friendly Society</i> 11 . . . . .	269	—, <i>Shipping Law</i> E 20 . . . . .	580
Morant v. Taylor, <i>Justice of the Peace</i> 9 . . . . .	310	Moyce v. Newington, <i>Sale of Goods</i> 16 . . . . .	551
Morewood, Wayne's Merthyr Steel, &c., Co. v. . . . .	551	Mozeley v. Cowie, <i>Practice</i> W 29 . . . . .	468
Morgan, ex parte; in re Simpson, <i>Bank-</i>		Mudford's Claim; in re Government Security	
<i>ruptcy</i> M 36 . . . . .	76	Fire Insurance Co., <i>Company</i> D 72 . . . . .	150
—, Cannot v. . . . .	483	Muir v. City of Glasgow Bank, <i>Trustees</i> D 12 . . . . .	634
— v. Davies, <i>Landlord and Tenant</i> 16 . . . . .	315	— v. Hore, <i>Justice of the Peace</i> 1 . . . . .	309
— v. Elford, <i>House of Lords</i> 8 . . . . .	278	Muir's Case; in re City of Glasgow Bank,	
— v. —, <i>Principal and Agent</i> 18 . . . . .	495	<i>Trust</i> D 12 . . . . .	634
—, Gatenby v. . . . .	671	Muirhead, ex parte; in re Muirhead, <i>Bank-</i>	
—, Hawkins v. . . . .	484	<i>ruptcy</i> C 2 . . . . .	47
— v. Minett, <i>Solicitor</i> 17 . . . . .	596	Mulcaster, in re, <i>Debtors Act</i> 7 . . . . .	290
—, Smith v. . . . .	6	—, <i>Practice</i> BB 4 . . . . .	479
— v. Swansea Urban Sanitary Authority,		Mulkern, Harris v. . . . .	236
<i>Trust</i> D 21 . . . . .	635	— v. Lord, <i>Friendly Society</i> 9 . . . . .	269
— v. Thomas, <i>Legacy</i> 16 . . . . .	330	—, Lovejoy v. . . . .	268
Morgan's Settled Estates, in re, <i>Settled</i>		Muller, <i>Chattock</i> v. . . . .	602
<i>Estates Acts</i> 1 . . . . .	564	Müller, in re; ex parte Buxton, <i>Bankruptcy</i>	
Morice v. Anderson, <i>Marine Insurance</i> 4 . . . . .	353	F 51 . . . . .	63
Morier, ex parte; in re Willis, Percival &		Mulliner v. Florence, <i>Innkeeper</i> 4 . . . . .	301
Co., <i>Bankruptcy</i> E 3 . . . . .	56	— v. Midland Railway Co., <i>Railway</i> 3 . . . . .	522
Morland, Fryer v. . . . .	611	Mullins v. Howell, <i>Practice</i> O 3 . . . . .	453
Morley v. Croxon; in re Hedgman, <i>Charity</i>		— v. Treasurer of Surrey, <i>Prison</i> 2 . . . . .	500
3 . . . . .	106	Mullis, Coxhead v. . . . .	293
—, Wilson v. . . . .	329	Mundy v. Asprey, <i>Frauds, Statute of</i> , 11 . . . . .	264
Morrell v. Cowan, <i>Principal and Surety</i> 3 . . . . .	497	Munn, Ashworth v. . . . .	106
Morrice v. Aylmer, <i>Legacy</i> 14 . . . . .	330	Munro, ex parte; in re Lewis, <i>Solicitor</i> 20 . . . . .	597
Morris v. Bradburn; Bradburn v. Morris,		Munton, Broad v. . . . .	643
<i>Way</i> 9 . . . . .	657	Murdoch, Budding v. . . . .	468
— v. Debenham, <i>Vendor and Purchaser</i>		— v. Warner, <i>Practice</i> HH 30 . . . . .	487
25 . . . . .	647	Murphy, in re; ex parte School Board for	
—, Evans v.; Wadling v. Oliphant . . . . .	63	London, <i>Elementary Education Acts</i> 7 . . . . .	238
— v. Freeman, <i>Probate</i> 36 . . . . .	505	— v. Manning, <i>Animals</i> 1 . . . . .	26
—, Jenkins v. . . . .	459	Murray, Lady, Leeming v. . . . .	64
— v. Levison, <i>Shipping Law</i> D 1 . . . . .	575	—, Mayer v. . . . .	378
—, Taunton v. . . . .	281	— v. Milner, <i>Evidence</i> 18 . . . . .	245
Morris's Settlement, in re, <i>Lands Clauses</i>		Murton, Wood v. . . . .	379
<i>Act</i> 20 . . . . .	320	Musgrave, ex parte; in re Wood, <i>Bank-</i>	
Morrison v. Montreal, Corporation of, <i>Colo-</i>		<i>ruptcy</i> A 5 . . . . .	41
<i>nial Law</i> 9 . . . . .	121	— v. Pulido, <i>Colonial Law</i> 26 . . . . .	123
Morritt v. North Eastern Railway Co.,		—, Smith v. . . . .	372
<i>Carrier</i> 4 . . . . .	100	—, Watney v. . . . .	289
Morteo v. Julian, <i>Shipping Law</i> R 8 . . . . .	590	Muskett v. Eaton, <i>Will Construction</i> L 3 . . . . .	674
Mortimore v. Cragg, <i>Sheriff</i> 8 . . . . .	572	Mutch, Rogers v. . . . .	667
— v. Mortimore, <i>Will Construction</i> H 22 . . . . .	669	Mutlow v. Biggs, <i>Trust</i> E 5 . . . . .	636
— v. Slater, <i>Will Construction</i> H 22 . . . . .	669	Mutlow's Estate, in re, <i>Lands Clauses Act</i> 42 . . . . .	322
Mortlock v. Farrer, <i>Parliament</i> 22 . . . . .	407	Mutual Society, Wallingford v. . . . .	346, 377, 444,
Morton v. Miller, <i>Practice</i> C 1 . . . . .	445		471, 489
— v. —, <i>Practice</i> S 7 . . . . .	458	Mutual Tontine Westminster Chambers As-	
Morton and Hallett, in re, <i>Trust</i> D 4 . . . . .	633	sociation, A. G. v. . . . .	295
Morvah Consols Tin Mining Co., in re;		Mycock v. Beatson, <i>Fraud</i> 7, 11 . . . . .	261, 262
McKay's Case, <i>Company</i> D 31 . . . . .	142	— v. —, <i>Partnership</i> 22 . . . . .	416
—, <i>Principal and Agent</i> 16 . . . . .	495	Myer, in re; ex parte Pascal, <i>Bankruptcy</i>	
Moseley, Pearks v., <i>Remoteness</i> 10 . . . . .	541	A 1, M 24 . . . . .	41, 75
Moss v. James, <i>Lease</i> 21 . . . . .	327	Myers v. Defries, <i>Costs</i> 3, 9 . . . . .	190, 191
—, ex parte; ex parte Taylor; in re Am-		— v. —, <i>Slander</i> 4 . . . . .	593
brose Lake Tin & Copper Mining Co.,		— v. Hodgson, <i>Copyholds</i> 4 . . . . .	186
<i>Company</i> D 23 . . . . .	140	Nylchreest, A. G. for Isle of Man v. . . . .	123

	PAGE		PAGE
Nagle-Gillman v. Christopher, <i>Practice</i> HH 29	487	New British Mutual Investment Co. v. Peed, <i>Production</i> 28	509
Nagle's Trusts, in re, <i>Confirmation of Sale Act</i>	174	New Buxton Lime Co., in re; Duke's Case, <i>Company</i> H 57	166
Nairn, Linoleum Manufacturing Co. v.	623	New Gas Co., in re, <i>Company</i> H 94	170
Nairne, Gott v.	636	—, <i>Costs</i> 51	196
Naish, Eden v.	174, 447	—, Allen v.	362
Nanson, Dalston v.	220, 479	New Gas Generator Co., in re, <i>Company</i> H 3	159
— v. Gordon, <i>Bankruptcy</i> D 13	50	New River Co., Metropolitan Board of Works v.	485
Nant-y-glo and Blaina Ironworks Co. v. Grove, <i>Company</i> D 20	140	New Sombbrero Phosphate Co. v. Erlanger, <i>Company</i> A 6	132
Napier, Chamberlain v.	174, 432	New South Wales, Bank of, Barclay v.	471
Nash v. Pease, <i>Attachment</i> 5	36	— v. Owston, <i>Banker</i> 3	38
Nassau Phosphate Co., in re, <i>Company</i> C 1	134	— v. —, <i>Colonial Law</i> 31	124
Nathan, in re; ex parte Stapleton, <i>Sale of Goods</i> 21	552	New Westminster Brewery Co. v. Hannah, <i>Practice</i> K 5	450
National and Provincial Plate Glass Insurance Co. v. Prudential Assurance Co., <i>Light and Air</i> 2	337	New Windsor, Borough of, Reg. v.; Reg. v. Monck	205
National Bank of Australasia v. United Hand in Hand Band of Hope Co., <i>Colonial Law</i> 45	128	New Zealand, Government of, Sloman v.	479
— v. —, <i>Mortgage</i> 62	386	New Zealand and Australian Land Co. v. Ruston, <i>Principal and Agent</i> 5	492
National Bolivian Navigation Co. v. Wilson, <i>Foreign Government</i> 2	257	Newark Union v. Glanford Brigg, <i>Poor Law</i> 14	429
National Funds Assurance Co., in re, <i>Company</i> D 29, H 75	142, 168	Newcastle Steamship, &c. Association, Adamson v.	575
—, <i>Practice</i> B 61	445	Newbery, Burton v.	685
National Guardian Assurance Co., ex parte; in re Francis, <i>Bill of Sale</i> 40	93	Newberry's Trusts, in re, <i>Trust</i> E 1	635
National Mercantile Bank, ex parte; in re Haynes, <i>Bill of Sale</i> 32	91	Newbiggin-by-the-Sea Gas Co. v. Armstrong, <i>Solicitor</i> 8	595
— v. Hampson, <i>Bill of Sale</i> 34	92	Newbold, Arkwright v.	134, 216
National Provincial Bank of England, ex parte; in re Boulter, <i>Mortgage</i> 35	383	Newby v. Sharpe, <i>Covenant</i> 13	207
—, Newell v.	563	Newcastle and Gateshead Waterworks Co., Atkinson v.	3
Native Iron Ore Co., in re, <i>Company</i> D 14	139	Newcastle Steamship Freight Insurance Co., Adamson v.	575
Naylor v. Goodall, <i>Specific Performance</i> 7	602	Newcastle-upon-Tyne Abattoir Co., Holmes v.	146
"Nears," The, <i>Admiralty</i> 62	19	Newcomen v. Coulson, <i>Inclosure</i> 2	288
Neal, ex parte; in re Batey, <i>Bankruptcy</i> D 6	49	— v. —, <i>Practice</i> G 1	448
Neale v. Clarke, <i>Costs</i> 18	192	— v. —, <i>Way</i> 6	657
Neath and Brecon Railway Co., ex parte, <i>Lands Clauses Act</i> 41	322	Newell v. National Provincial Bank of England, <i>Set-off</i> 5	563
Neave, Sir Thomas, in re, <i>Power</i> 27	436	Newgass, French v.	577
Needham v. Rivers Protection and Manure Co., <i>Injunction</i> 9	297	Newington, Moyce v.	551
"Nelly Schneider," The, <i>Admiralty</i> 12	14	Newington Local Board v. Cottingham Local Board, <i>Public Health</i> 32	517
Nelson, ex parte; in re Hoare, <i>Bankruptcy</i> D 25, F 20	53, 59	— v. Eldridge, <i>Solicitor</i> 34	599
— v. Dahl, <i>Shipping Law</i> G 5	584	Newland, ex parte; in re Clarke, <i>Solicitor</i> 37	599
— v. Liverpool Brewery Co., <i>Negligence</i> 15	394	Newman, in re; ex parte Brooke, <i>Bankruptcy</i> D 8	60
Nelson Mitchell v. City of Glasgow Bank, <i>Company</i> D 95	154	—, in re; ex parte Capper, <i>Contract</i> 37	184
Nene Valley Drainage Co. v. Dunkley, <i>Specific Performance</i> 13	603	—, Batson v.	180
Neptune Marine Insurance Co., Pellas v.	358, 471	— v. Piercy, <i>Will Construction</i> G 7	665
Netherclift, Seaman v.	333, 593	Newmarch v. Storr; in re Newmarch, <i>Administration</i> 15	8
Neustadt, Von Heyden v.	421	Newson, Ranall v.	459
Nevill v. Snelling, <i>Unconscionable Bargain</i> 1	641	Newport and Abercarn Coal Co., Yorkshire Railway Co. v.	194
Neville, in re; Lee v. Nuttall, <i>Lancaster Palatine Court</i> 2	311	Newton, Harris v.	669
—, Taylor v.	187	—, Lovell v.	284
		—, Reg. v.	135
		— v. Sherry, <i>Executor</i> 16	250
		Niboyet v. Niboyet, <i>Divorce</i> 3	227

	PAGE		PAGE
Nicholas v. Dracachis, <i>Probate</i> 3	501	North Eastern Railway Co., Swainson v.	361
Nicholl, Rumsey v.	112	North Kent Bank, ex parte; in re Houldsworth, <i>Bankruptcy</i> M 40	77
Nicholl's Case; in re British Farmers' Pure Linseed Co., <i>Company</i> D 61	148	North London Railway Co. v. Attorney-General, <i>Railway</i> 81	529
Nicholls, Burkinshaw v.	148	North Metropolitan Tramways Co., Vestry of St. Luke's v.	626
—, Taylor v.	510	North Staffordshire Railway Co. and Sandbach Charity Trustees, in re, <i>Lands Clauses Act</i> 15	319
Nichols v. Marsland, <i>Negligence</i> 8	392	North Staffordshire Railway Co., Bell v.	443
Nicholson, ex parte; in re Willson, <i>Bankruptcy</i> M 35	76	—, Bidder v.	481, 656
—, Calcutta Jute Mills v.	289	North Wales Mutual Insurance Co., Forwood v.	356
—, Cesena Sulphur Co. v.	289	North Yorkshire Iron Co., in re; ex parte Richardson, <i>Company</i> H 35	163
— v. Drury Buildings Estate Co., <i>Husband and Wife</i> 12	280	Northampton Coal, Iron and Waggon Co. v. Midland Waggon Co., <i>Costs</i> 67	197
Nickalls v. Merry, <i>Company</i> D 89	153	— v. —, <i>Practices</i> B 10	439
Nickolls, West of England, &c. Bank v.	386	Northcote v. Doughty, <i>Infant</i> 19	293
Nicolle, in re, <i>Colonial Law</i> 28	124	Northern Assurance Co., Matthew v.	639
Nicolls, Burkinshaw v.	148	Northern Railway of Buenos Ayres, Buenos Ayres and Ensenada Port Railway Co. v.	470
Nissler v. Corporation of Hull, <i>Contagious Diseases Act</i> 2	177	Northumberland, Duke of, A. G. v.	107
Nitro-Phosphate and Odam's Chemical Manure Co. v. London and St. Katharine's Dock Co., <i>Negligence</i> 11	393	— v. Todd, <i>Practice</i> K 2	449
Nives v. Nives, <i>Specific Performance</i> 27	606	Norton, in re; Grant v. Holland, <i>Solicitor</i> 26	597
— v. —, <i>Vendor and Purchaser</i> 33	649	— v. Florence Land and Public Works Co., <i>Bond</i> 4	97
Noakes v. Noakes, <i>Divorce</i> 34	231	— v. —, <i>Foreign Law</i> 2	259
Nobbs, Lewis v.	294, 631	— v. London and North Western Railway Co., <i>Practices</i> B 22	440
Nobel's Explosive Co. v. Jones & Co., <i>Patent</i> 21	422	— v. —, <i>Railway</i> 4	523
— v. —, <i>Practice</i> U 28	463	—, Lowndes v.	654
Noble v. Edwards; Edwards v. Noble, <i>Vendor and Purchaser</i> 16	646	Norton Iron Co., in re, <i>Company</i> H 12	160
Noel v. Noel, <i>Practice</i> U 10	461	Norwich and Norfolk Provident Permanent Benefit Building Society, in re; ex parte Rackham, <i>Friendly Society</i> 1	267
Noonan, Hollyman v.	125	Norwich Provident Insurance Society, in re; Bath's Case, <i>Company</i> H 60, 61.	166
Norden Steamship Co. v. Dempsey, <i>Evidence</i> 3	243	—, <i>Insurance</i> 11	304
Norfolk, Duke of, v. Arbutnot, <i>Church</i> 4	113	—, in re; Hesketh's Case, <i>Company</i> H 27, 62	162, 167
— v. —, <i>Evidence</i> 28	247	—, <i>Insurance</i> 12	304
Norman, Eglington v.	272	Nothard v. Proctor, <i>Receiver</i> 2	537
— v. Villars, <i>Divorce</i> 15	228	Nottingham, Hall v.	213
Norrington, in re; Brindley v. Partridge, <i>Administration</i> 26	9	—, Guardians of, v. Tomkinson, <i>Evidence</i> 17	245
Norris v. Beasley, <i>Bill of Exchange</i> 29	86	Nowell, Burns v.	311
— v. —, <i>Practice</i> U 19 ( <i>Parties</i> )	462	Noyes v. Crawley, <i>Limitations, Statute of</i> 13	341
— v. —, <i>Practice</i> W 80, 83 ( <i>Pleading</i> )	474, 475	Nugent v. Smith, <i>Carrier</i> 1	100
—, Clements v.	327, 415	Nunn, Byrd v.	467
—, Sickles v.	450	—, Drew v.	279, 348, 494
North v. Bilton, <i>Slander</i> 4	593	Nurse v. Durnford, <i>Solicitor</i> 9	595
North and South Wales Bank, Duncan, Fox & Co. v.	498	Nuttall, Lee v.	811
North and South Woolwich Subway Co., Anstey v.	455	—, Leicester Waterworks v.	536
North British and Mercantile Insurance Co. v. London, Liverpool and Globe Insurance Co., <i>Insurance</i> 14	304	Nutter v. Accrington Local Board, <i>Highway</i> 11	275
North China Insurance Co., Williams v.	353, 354		
North Eastern Railway Co., Ecclesiastical Commissioners v.	371	Oakes, Baker v.	192
—, Gray v.	319	Oakwell Collieries, in re, <i>Costs</i> 54	196
—, Hurdman v.	392	Oastler v. Henderson, <i>Lease</i> 19	327
—, Jackson v.	223, 464	— v. —, <i>Practice</i> T 1	458
—, Mowett v.	100		
—, Robson v.	103		
—, Rose v.	103		

	PAGE		PAGE
O'Brien, in re; ex parte Montagu, <i>Equitable Assignment</i> 1 . . . . .	240	Osborne, Maccord v. . . . .	292
O'Callaghan, Benyon v. . . . .	230	Osborne to Rowlett, <i>Power</i> 26 . . . . .	435
Ocean Marine Insurance Co., Gambler v. . . . .	353	O'Shannassy v. Joachim, <i>Colonial Law</i> 34 . . . . .	124
—, Stone v. . . . .	353	Ottaway v. Hamilton, <i>Husband and Wife</i> 3 . . . . .	279
"Ocean," The, <i>Shipping Law</i> E 9 . . . . .	579	Ousey v. Ousey, <i>Divorce</i> 16 . . . . .	229
Odell, ex parte; in re Walden, <i>Bill of Sale</i> 4 . . . . .	88	Outram, Ashworth v. . . . .	282, 440
Odessa Tramways Co. v. Mendel, <i>Company</i> D 18 . . . . .	139	Ovenden, Tassell v. . . . .	24
— v. —, <i>Fraud</i> 4 . . . . .	261	Ovington, Christie v. . . . .	635
Oger v. Bradnum, <i>Bill of Exchange</i> 31 . . . . .	86	Owen, in re, <i>Cestui que vie</i> . . . . .	105
— v. —, <i>District Registry</i> 6 . . . . .	226	—, Fisher v. . . . .	454
Ogg v. Shuter, <i>Sale of Goods</i> 22 . . . . .	552	— v. Henshaw, <i>District Registry</i> 7 . . . . .	226
Ogle, Lloyd's Banking Co. v. . . . .	489	— v. —, <i>Solicitor</i> 47 . . . . .	600
Old Talargoch Lead Mining Co., Hall v. . . . .	169	— v. Great Western Railway Company, <i>Carrier</i> 19 . . . . .	103
Oldham, Letchford v. . . . .	354	— v. Wynn, <i>Production</i> 27 . . . . .	509
Oldham, Corporation of, Taylor v. . . . .	517, 609	Owston, Bank of New South Wales v. . . . .	38, 124
Oliphant, Wadling v. . . . .	63	Oxford, Bishop of, Reg. v. and Julius v. . . . .	116
Olivant v. Wright, <i>Costs</i> 48 . . . . .	196	—, Willis v. . . . .	117
— v. —, <i>Settlement</i> 9, 10 . . . . .	567	Oyler, Horner v. . . . .	199
— v. —, <i>Will Construction</i> L 18 . . . . .	676		
Oliver v. Oliver, <i>Husband and Wife</i> 22 . . . . .	281	Pacific Steam Navigation Co., Sangui-	
—, Taylor v. . . . .	507	netti v. . . . .	576
Oliver-Massey, Dawson v. . . . .	674	Packman and Moss, in re, <i>Will Construction</i> E 8 . . . . .	668
Omoa and Cleland Coal and Iron Co. v. . . . .		Padbury, Reg. v. . . . .	80
— Huntley, <i>Shipping Law</i> D 17 . . . . .	578	Paddington Vestry, Collins v. . . . .	369, 442, 444
O'Neil v. Clason, <i>Practice</i> BB 2 . . . . .	478	Padley v. Camphausen; in re Howard, <i>Practice</i> BB 16 . . . . .	480
O'Neill, Button v. . . . .	91	Padwick, Bubb v. . . . .	675
Onslow, Lord, Lascelles v. . . . .	129	— v. Scott; in re Scott's Estate; Scott v. Padwick, <i>Practice</i> W 70 . . . . .	473
Oppenheimer, Anderson v. . . . .	208	Page, Roberts v. . . . .	268
— v. British and Foreign Exchange and Investment Bank, <i>Company</i> H 32 . . . . .	162	—, in re; ex parte Page, <i>Bankruptcy</i> L 1 . . . . .	69
— v. Jackson, <i>Bankruptcy</i> L 14 . . . . .	71	Paget, Griffith v. . . . .	159
Oppert, Vale v. . . . .	198, 448	Pagham Harbour Reclamation Co., Caldwell v. . . . .	468
Oram v. Breary, <i>Salford Hundred Court</i> . . . . .	555	—, Overseers of, Grant v. . . . .	405
Ord, in re; Dickinson v. Dickinson, <i>Annuity</i> 1 . . . . .	26	Pagin and Gill's Case; in re Church and Empire Fire Insurance Co., <i>Company</i> D 63 . . . . .	148
—, —, <i>Will Construction</i> D 5 . . . . .	660	Paine, Heritage v. . . . .	153
Oriental Bank, Hoare v. . . . .	124	Palin v. Brooks, <i>Legacy</i> 9 . . . . .	329
—, Prince v. . . . .	39	Palmer, Johnson v. . . . .	202
— v. Wright, <i>Colonial Law</i> 19 . . . . .	122	—, Kitchen v. . . . .	646
Oriental Financial Corporation, ex parte; in re European Central Railway Co., <i>Company</i> H 39 . . . . .	163	— v. Locke, <i>Power</i> 22 . . . . .	435
Original Hartlepool Collieries Co. v. Gibb, <i>Practice</i> W 59 . . . . .	472	— v. Thatcher, <i>Alehouse</i> 8 . . . . .	23
— v. —, <i>River</i> 3 . . . . .	545	Panama and South Pacific Telegraph Co. v. India-rubber, Gutta Percha and Telegraph Works Co., <i>Principal and Agent</i> 15 . . . . .	494
Ormandy, ex parte; in re Gourlay, <i>Bankruptcy</i> D 23 . . . . .	53	Panell, ex parte; in re England, <i>Bankruptcy</i> A 11 . . . . .	42
Ormsby, Fearnley v. . . . .	277	—, in re; ex parte Bates, <i>Bankruptcy</i> D 4 . . . . .	49
Ormston, in re; ex parte Dodd, <i>Bankruptcy</i> M 31 . . . . .	76	Panet, Hamel v. . . . .	121
O'Rorke v. Bollingbroke, <i>Reversion</i> 1 . . . . .	544	"Papa de Rossie," The, <i>Admiralty</i> 61 . . . . .	19
Orr v. Diaper, <i>Practice</i> P 3 . . . . .	453	"Parana," The, <i>Damages</i> 6 . . . . .	215
— v. —, <i>Trade Mark</i> 28 . . . . .	625	—, <i>Shipping Law</i> E 27 . . . . .	582
—, West v. . . . .	677	Paraguay, Republic of, ex parte; in re Lewis, Munro & Co., <i>Practice</i> B 9 . . . . .	439
Orr Ewing v. Colquhoun, <i>River</i> 5 . . . . .	545	—, —, <i>Practice</i> I 1 . . . . .	449
— v. Registrar of Trade Marks, <i>Trade Mark</i> 12 . . . . .	622	Paraire v. Loibl, <i>Practice</i> V 3 . . . . .	464
Orrell Colliery and Firebrick Co., in re, <i>Company</i> H 48 . . . . .	164	Pares, in re, <i>Lunatio</i> 14 . . . . .	347
Ortigosa v. Brown, <i>Company</i> D 88 . . . . .	153	—, in re; Lillingston v. Pares, <i>Lunatio</i> 16 . . . . .	347
— v. —, <i>Mortgage</i> 23 . . . . .	380		
Osborne v. Homburg, <i>County Court</i> 9 . . . . .	202		

	PAGE		PAGE
Parfitt v. Jepson, <i>Vendor and Purchaser</i> 1	643	Payne, Elwes v. . . . .	300, 359
Paris Skating Rink Co., in re, <i>Champerty</i> 2	105	—, Heritage v. . . . .	153
—, <i>Mandamus</i> 2 . . . . .	350	—, Hussey v. . . . .	180, 196
—, Spiller v. . . . .	131	Peacock, in re, <i>Trustee Acts</i> 17 . . . . .	638
Park, Fairer v. . . . .	329	— v. Harper, <i>Practice</i> K 17 . . . . .	451
Parker, in re; Bentham v. Wilson, <i>Will Construction</i> H 31 . . . . .	670	Peacock's Pension Fund, in re, <i>Husband and Wife</i> 26 . . . . .	282
—, in re; Cash v. Parker, <i>Receiver</i> 10	538	—, <i>Pension</i> . . . . .	424
—, Cash v. . . . .	464, 538	Peake, ex parte; in re Dutton, <i>Remoteness</i> 1	540
—, Cresswell v. . . . .	480	—, Boulnois v. . . . .	623
—, Foster v. . . . .	81, 385	Pearce, ex parte; in re Grieves, <i>Bankruptcy</i> K 18 . . . . .	68
— v. Lechmere, <i>Husband and Wife</i> 15 . . . . .	281	—, ex parte; in re Mew, <i>Bankruptcy</i> P 8 . . . . .	79
— v. South Eastern Railway Co., <i>Carrier</i> 9 . . . . .	101	—, Reg. v. . . . .	427
—, Witt v. . . . .	305	—, Rolls v. . . . .	231
"Parlement Belge," The, <i>Admiralty</i> 4 . . . . .	14	Pearks v. Moseley, <i>Remoteness</i> 10 . . . . .	541
Parnell v. Parnell, <i>Trust</i> A 12 . . . . .	630	Pearn, in the goods of, <i>Will Formalities</i> 10	682
Parnham's Trusts, in re, <i>Forfeiture</i> 1 . . . . .	259	Pearson, in re, <i>Trustee Acts</i> 1 . . . . .	637
Parrot v. Watts, <i>Evidence</i> 7 . . . . .	244	—, in re; ex parte Stephens, <i>Voluntary Settlement</i> 9 . . . . .	652
Parry, in re, <i>Bankruptcy</i> F 1 . . . . .	56	— v. Commercial Union Assurance Co., <i>Marine Insurance</i> 7 . . . . .	353
— v. Smith, <i>Negligence</i> 13 . . . . .	393	— v. Cox, <i>Negligence</i> 20 . . . . .	395
Parsons v. Harris, <i>Practice</i> S 5 . . . . .	458	—, Hanley v. . . . .	570
— v. Tindling, <i>Costs</i> 6 . . . . .	191	— v. Scott, <i>Stock Exchange</i> 3 . . . . .	611
Partridge, Brindley v.; in re Norrington . . . . .	9	— v. Spence, <i>Colonial Law</i> 36 . . . . .	124
Pascal, ex parte; in re Myer, <i>Bankruptcy</i> A 1, M 24 . . . . .	41, 75	—, Strelley v. . . . .	194, 324, 453
Pashler v. Vincent, <i>Bankruptcy</i> L 7 . . . . .	69	Pearson's Case; in re Caerphilly Colliery Co., <i>Company</i> D 33 . . . . .	142
"Pasitheas," The, <i>Admiralty</i> 33 . . . . .	16	Pease v. Fletcher, <i>Receiver</i> 3 . . . . .	537
Patching v. Barnett, <i>Annuity</i> 8 . . . . .	27	—, Nash v. . . . .	36
— v. —, <i>Remoteness</i> 5 . . . . .	540	Peate, Bower v. . . . .	362, 492
Patent Cocoa Fibre Co., in re, <i>Company</i> H 93 . . . . .	170	"Peckforton Castle," The, <i>Shipping Law</i> E 8 . . . . .	579
Patent Safety Gun Cotton Co. v. Wilson, <i>Bill of Exchange</i> 5 . . . . .	82	Peel, British Mutual Investment Co. v. . . . .	509
Patent Steam Engine Co., in re, <i>Company</i> H 8 . . . . .	160	Peek v. Trimsaran Iron Co., <i>Company</i> H 31 . . . . .	162
Patent Ventilating Granary Co., in re, <i>Company</i> D 55 . . . . .	147	— v. —, <i>Receiver</i> 5 . . . . .	537
Paterson, Registrar of Titles of Victoria v. . . . .	126	Pellas v. Neptune Marine Insurance Co., <i>Marine Insurance</i> 28 . . . . .	358
Paterson, ex parte; in re Throckmorton, <i>Bankruptcy</i> F 47 . . . . .	62	— v. —, <i>Practice</i> W 49 . . . . .	471
Patey v. Flint, <i>Mortgage</i> 43 . . . . .	384	Pellew, in re; ex parte Furber, <i>Bill of Sale</i> 38 . . . . .	92
Patrick v. Milner, <i>Vendor and Purchaser</i> 16 . . . . .	646	Pelling v. Goddard, <i>Trustee Relief Act</i> 7 . . . . .	639
Patscheider v. Great Western Railway Co., <i>Carrier</i> 14 . . . . .	102	Pemberton, Reg. v. . . . .	430
Patterson v. Gaslight and Coke Co., <i>Patent</i> 1 . . . . .	418	—, Walsh v. . . . .	316
—, Lees v. . . . .	390, 472	—, Woolf v. . . . .	460
— v. Wooler, <i>Costs</i> 41 . . . . .	195	Pembroke, Allkins v. . . . .	351
— v. —, <i>Practice</i> K 8 . . . . .	450	—, Dudgeon v. . . . .	357
Pattison v. Wooler, <i>Practice</i> K 6 . . . . .	450	Pender v. Lushington, <i>Company</i> D 44, E 2 . . . . .	145, 155
Pattison's Devised Estates, in re; in re Pattison's Settled Estates, <i>Lands Clauses Act</i> 36 . . . . .	321	Pendlebury v. Greenhalgh, <i>Highway</i> 18 . . . . .	276
Paul v. Gray, <i>Practice</i> E 1 . . . . .	447	Peninsular and Oriental Steam Navigation Co., The Stoomvaart Maatschappij Nederland v. . . . .	580
— v. Paul, <i>Settlement</i> 6 . . . . .	566	Pennell, ex parte; in re England, <i>Bankruptcy</i> A 11 . . . . .	42
— v. Summerhayes, <i>Trespass</i> 2 . . . . .	627	Pennington v. Brinsop Hall Coal Co., <i>Injunction</i> 19 . . . . .	299
Paveley, Hawes v. . . . .	510	— v. —, <i>River</i> 2 . . . . .	545
Pavey's Patent Felted Fabric Co., in re, <i>Company</i> D 43 . . . . .	145	Penny v. Penny, <i>Administration</i> 53 . . . . .	12
—, <i>Principal and Agent</i> 25 . . . . .	496	Penrhyn, Lord, Dawkins v. . . . .	470
Pawson v. Brown, <i>Settlement</i> 5 . . . . .	566	Penryn, Mayor of, v. Best, <i>Market</i> 4 . . . . .	359
Payne, ex parte; in re Cross, <i>Bill of Sale</i> 37 . . . . .	92	— v. Holm, <i>Cornwall, Duchy of</i> , 2 . . . . .	189
		— v. —, <i>Foreshore</i> 1 . . . . .	258

	PAGE		PAGE
Pen-y-van Colliery Co., <i>Company</i> H 104	171	Pickersgill v. Rodger, <i>Election</i> 1	237
People's Garden Co., in re, <i>Company</i> H 81	169	Pickett, Rownd v.	675
—, <i>Injunction</i> 7	297	Pickles, Wadsworth v.	64
—, Kingchurch v.	297	Pickup v. Thames and Mersey Marine In-	
Pepper, Whiteley v.	363	—, <i>Insurance Co., Marine Insurance</i> 24	357
Peppitt's Estate, in re; Chester v. Phillips,		Piercey, Newman v.	665
—, <i>Administration</i> 32	10	— v. Young, <i>Arbitration</i> 3	30
Percy and Kelly Nickel, Cobalt and Chrome		— v. —, <i>Practice</i> HH 11	485
—, Iron Mining Co., in re, <i>Costs</i> 63	197	Pierpoint v. Cartwright, <i>County Court</i> 27	204
—, in re; Hamley's Case, <i>Company</i> D 7	137	Piers, ex parte; in re Shaw, <i>Company</i> D 82	152
—, in re; Jenner's Case, <i>Company</i> D 7	137	Pierson v. Scott, <i>Stock Exchange</i> 3	611
Perkins Beach Lead Mining Co., in re, <i>Com-</i>		Pigg v. Clarke, <i>Will Construction</i> H 17	668
—, <i>pany</i> H 87	169	Pike, ex parte; in re Lister, <i>Bankruptcy</i>	
Perkins and Homer v. The Owners of the		—, D 9	50
—, "Condor," <i>Admiralty</i> 58	18	— v. Fitzgibbon, <i>Husband and Wife</i> 35	283
— v. —, <i>Shipping Law</i> E 13	580	—, Rossiter v.	556
Perkins v. Slater, <i>Practice</i> K 15	450	Pilcher, in re; Pilcher v. Hinds, <i>Practice</i>	
Perrett, Read v.	310	—, Q 4	456
Perth and Melfort, Earl of, v. Elphinstone,		— v. Arden; in re Brook, <i>Solicitor</i> 40	599
—, Lord, <i>Scotch Law</i> 8	558	Pile v. Pile; ex parte Lambton, <i>Lands</i>	
Peter v. Stirling, <i>Colonial Law</i> 50	127	—, <i>Clauses Act</i> 9	318
"Peter der Grosse," The, <i>Shipping Law</i> B 2	573	— v. —, <i>Mortgage</i> 13	378
Peters v. Cowie, <i>Vagrancy Act</i>	643	Pilgrim, Smith v.	45, 452
— v. Leeder, <i>Executor</i> 14	250	Pilley v. Baylis, <i>Practice</i> HH 18	486
Petherick, Harris v.	191	—, Ward v.	477
Pettit's Estate, in re, <i>Bankruptcy</i> F 34	61	Pinedi's Settlement, in re, <i>Power</i> 8	432
Petre, Webster v.	499	Pinfold v. Shillingford, <i>Tenant for Life</i> 12	617
Pharmaceutical Society v. London Supply		Pinkett, Bobbett v.	82
—, Association, <i>Pharmacy Act</i>	426	Pinney v. Hunt, <i>Partition</i> 6	410
Pheysey v. Pheysey, <i>Practice</i> B 40	442	— v. —, <i>Probate</i> 1	501
Phillimore v. Machon, <i>Church</i> 29	117	Pinto Silver Mining Co., in re, <i>Company</i>	
Phillips, ex parte; in re Eslick, ex parte		—, H 107	172
—, Alexander, <i>Bankruptcy</i> F 12	58	Piper, Bailey v.	6
—, in re, <i>Practice</i> S 6	458	— v. Piper, <i>Administration</i> 4	6
— v. Barnett, <i>Husband and Wife</i> 1	279	—, Wise v.	630
—, Chester v.	10, 410	Pitman and Edwards, ex parte; in re Ha-	
—, Craig v.	134, 443	—, milton's Windsor Ironworks Co., <i>Com-</i>	
— v. Henson, <i>Landlord and Tenant</i> 12	315	—, <i>pany</i> D 50	146
— v. —, <i>Lodgers' Goods Protection Act</i> 344		Pitt v. Jones, <i>Partition</i> 10	410
— v. Levy; in re Phillips, <i>Tenant for Life</i>		— v. Lord Dacre, <i>Limitations, Statute of</i> , 4	339
—, 18	617	Pitts v. La Fontaine, <i>Constantinople</i>	175
— v. Llanover, Lady, <i>Evidence</i> 31	247	Pixell, Caldow v.	113
— v. London and South Western Railway		"Pladda," The, <i>Shipping Law</i> E 3	579
—, Co., <i>Damages</i> , 15	217	Platt v. Attorney-General of New South	
— v. —, <i>Campbell's Act</i>	99	—, Wales, <i>Colonial Law</i> 33	124
— v. —, <i>Practice</i> T 15	459	— v. —, <i>Domicil</i> 3	233
— v. Phillips, <i>Costs</i> 80	199	Platts, Reg. v.	275
— v. —, <i>Practice</i> W 37	469	Plevins v. Downing, <i>Sale of Goods</i> 20	552
— v. Salmon, <i>Parliament</i> 10	404	Plimpton v. Malcolmson, <i>Patent</i> 3	419
Phoenix Bessemer Steel Co., in re; ex parte		— v. Spiller, <i>Patent</i> 2, 10, 34	418, 419, 423
—, Carnforth Hematite Iron Co., <i>Company</i>		Plumbly, in re; ex parte Grant, <i>Stock Ex-</i>	
—, H 43	164	—, <i>change</i> 2	610
—, <i>Sale of Goods</i> 13	550	Pocock v. Attorney-General, <i>Charity</i> 15	107
—, Merchant Banking Co. of London v.	553	—, Chandler v.	433
Phosphate Sewage Co., Begbie v.	4	Pointing, Clutton Union v.	513
— v. Hartmont, <i>Company</i> A 4	132	Polak v. Everett, <i>Principal and Surety</i> 15	499
— v. —, <i>Costs</i> 71	197	Polini v. Gray, <i>Evidence</i> 12	245
— v. —, <i>Fraud</i> 8	261	— v. —; <i>Injunction</i> 28	300
— v. Molleson, <i>Scotch Law</i> 20	560	Pollard, in re; ex parte Deakin, <i>Bankruptcy</i>	
Piingos, Empirikos v.	14	—, A 4	41
Picard v. Baylis, <i>Parliament</i> 27	407	Pollock v. Campbell Brothers, <i>Bill of Ex-</i>	
Pickard v. Marriage, <i>Bill of Sale</i> 22, 39	91, 93	—, <i>change</i> 28	86
Picken v. Matthews, <i>Remoteness</i> 4	540	— v. —, <i>Practice</i> BB 1	478
Pickering, Moet v.	625	—, Middleton v.; ex parte Elliott	6, 266
—, Wedderburn v.	487	—, Middleton v.; ex parte Wetherall	595

	PAGE		PAGE
"Polymede," The, <i>Admiralty</i> 21 . . . . .	15	Pratt's Case; in re European Assurance Society, <i>Company G</i> 5 . . . . .	158
"Pommerania," The, <i>Admiralty</i> 27 . . . . .	15	Preece v. Pulley, <i>Parliament</i> 3 . . . . .	403
Pontifex v. Midland Railway Co., <i>Costs</i> 15 . . . . .	192	Preston v. Lamont, <i>Practice</i> BB 10 . . . . .	479
— v. Severn, <i>Practice</i> Y 2 . . . . .	477	— v. Neele, <i>Insurance</i> 7 . . . . .	303
Pontypool Local Board of Health, <i>Masters</i> v. . . . .	513	—, Rayner v. . . . .	646
Poole, Greer v. . . . .	354	— v. Seddon; Aspden v. Seddon, <i>Mines</i> 6 . . . . .	371
—, Jackson and Whyte's Case; in re Wyncham Shipbuilding, Boiler and Salt Co., <i>Company D</i> 24 . . . . .	141	Preston, Corporation of, <i>Kerr</i> v. . . . .	297
Poole's Estate, in re; Thompson v. Bennett, <i>Executor</i> 6 . . . . .	249	Price, Batt v. . . . .	204
—, <i>Husband and Wife</i> 45 . . . . .	284	— v. Jenkins, <i>Voluntary Settlement</i> 1, 4 . . . . .	651
Pooley, in re; ex parte Rabbidge, <i>Bankruptcy</i> F 16 . . . . .	58	— v. Price; in re Price, <i>Husband and Wife</i> 13 . . . . .	281
— v. Bosanquet, <i>Lis Pendens</i> . . . . .	343	— v. —, <i>Production</i> 21 . . . . .	508
— v. Driver, <i>Bill of Exchange</i> 30 . . . . .	86	— Reg. v. . . . .	536
— v. —, <i>Costs</i> 88 . . . . .	199	—, Robinson v. . . . .	587
— v. —, <i>Partnership</i> 1 . . . . .	412	—, Ross v. . . . .	259, 396
— v. —, <i>Practice</i> HH 6 . . . . .	485	—, Thomas v. . . . .	283
— v. Whetham, <i>Extradition</i> 3 . . . . .	253	—, Watkins v. . . . .	270
Poplar and Blackwall Free School, in re, <i>Charity</i> 31 . . . . .	110	Price's Patent Candle Co., <i>Hampson</i> v. . . . .	141
Porrett v. Lord, <i>Parliament</i> 28 . . . . .	408	Prideaux, <i>Sweeting</i> v. . . . .	673
Port's Case; Harrison v. Carter, <i>Parliament</i> 19 . . . . .	406	Pridham, <i>Luckcraft</i> v. . . . .	8, 11, 108
Portal v. Emmens, <i>Company</i> F 8 . . . . .	156	Priestly, ex parte; in re Stanlake & Son, <i>Debtors Act</i> 19 . . . . .	222
— v. —, <i>Railway</i> 1 . . . . .	521	Priest, <i>Rotherham</i> v. . . . .	489
Porter v. Baddeley, <i>Tenant for Life</i> 9 . . . . .	616	Prince v. Oriental Bank Corporation, <i>Banking Company</i> 4 . . . . .	39
— v. Drew, <i>Covenant</i> 26 . . . . .	209	Prince Edward of Saxe Weimar, <i>Dawkins</i> v. . . . .	384, 482
— v. —, <i>Fixtures</i> 5 . . . . .	257	Prince Henry the 69th of Reuss Köstritz, in the goods of, <i>Probate</i> 22 . . . . .	504
— v. Lopes, <i>Partition</i> 7, 18 . . . . .	410, 411	"Princeton," The, <i>Shipping Law</i> R 7 . . . . .	590
Porteus v. Watney, <i>Shipping Law</i> G 2 . . . . .	584	Pringle v. Glog, <i>Set-off</i> 1 . . . . .	563
Portland, Duke of, <i>Bentinck</i> v. . . . .	451	Printing and Numerical Registering Co., in re, <i>Company</i> H 46 . . . . .	164
Portsmouth, Mayor of, <i>Baker</i> v. . . . .	513	Prison Commissioners v. Corporation of Liverpool, <i>Reformatory</i> . . . . .	539
Positive Government Security Life Assurance Co., <i>Eley</i> v. . . . .	145, 265	Pritchard, <i>Hughes</i> v. . . . .	662
Postlethwaite v. Freeland, <i>Shipping Law</i> F 2 . . . . .	582	Pritchett, <i>Hall</i> v. . . . .	35
Postmaster-General, ex parte; in re Bonham and M'Donnell, <i>Crown</i> 4 . . . . .	212	Proctor, <i>Nothard</i> v. . . . .	537
—, Reg. v. . . . .	614	Protector Endowment Loan Co. v. Grice, <i>Bond</i> 3 . . . . .	96
Potter, <i>Anson</i> v. . . . .	633	Prouse v. Spurway, <i>Marriage</i> 1 . . . . .	360
—, <i>Bibbens</i> v. . . . .	672	Provident Permanent Building Society v. Greenhill, <i>Friendly Society</i> 4 . . . . .	268
— v. Chambers, <i>Costs</i> 17, 31 . . . . .	192, 194	— v. —, <i>Practice</i> S 1 . . . . .	457
— v. Cotton, <i>Practice</i> T 8 . . . . .	459	Prudential Assurance Co. v. Edmonds, <i>Presumption</i> 1 . . . . .	491
—, <i>Gregson</i> v. . . . .	426	—, National Provincial Plate Glass Insurance Co. v. . . . .	337
— v. Jackson, <i>Partnership</i> 29 . . . . .	417	Pryce, in re; ex parte Rensburg, <i>Bankruptcy</i> F 15 . . . . .	58
Potter and Brown's Case; in re the British Farmers' Pure Linseed Oil Cake Co. (Lim.), <i>Company</i> D 66 . . . . .	149	— v. Monmouthshire Railway and Canal Co., <i>House of Lords</i> 5 . . . . .	278
Pottinger, ex parte; in re Stewart, <i>Bankruptcy</i> D 40 . . . . .	55	— v. —, <i>Railway</i> 20 . . . . .	526
Poussard v. Spiers and Pond, <i>Contract</i> 30 . . . . .	183	Pryer, <i>Worraker</i> v. . . . .	10
Powell, ex parte; in re Matthews, <i>Bankruptcy</i> F 9 . . . . .	57	Pryke, <i>Cobbold</i> v. . . . .	202
— v. Fall, <i>Locomotive</i> 5 . . . . .	344	Pugh v. Golden Valley Railway Co., <i>Practice</i> B 5 . . . . .	439
— v. Head, <i>Copyright</i> 10 . . . . .	187	— v. —, <i>Railway</i> 8 . . . . .	533
— v. Jewesbury, <i>Practice</i> W 42 . . . . .	470	—, Sprunt v. . . . .	478, 538
— v. Williams, <i>Practice</i> HH 12 . . . . .	485	Pulbrook v. Lawes, <i>Contract</i> 1 . . . . .	178
Powers v. Bathurst, <i>Highway</i> 2 . . . . .	273	— v. —, <i>Frauds, Statute of</i> , 17 . . . . .	264
Prager, in re; ex parte Société Cockrill, <i>Bankruptcy</i> F 59 . . . . .	64	— v. Richmond Consolidated Mining Co., <i>Company</i> D 11 . . . . .	138
Pratt, in re; ex parte Gush, <i>Bankruptcy</i> L 2 . . . . .	69		
—, Green v. . . . .	464		



	PAGE		PAGE
Pulido, Musgrave v. . . . .	123	Rameshur Pershad Naranj Singh v. Koonj	
Pullen v. Snelus, <i>Frauds, Statute of</i> , 23 . . . . .	266	Behari Pattuk, <i>Water</i> 3 . . . . .	655
Pulley, Preece v. . . . .	403	Ramsay v. Blair, <i>Scotch Law</i> 17 . . . . .	559
Pulsford, in re; ex parte Hayman, <i>Bankruptcy</i> F 5 . . . . .	57	Ramsay's Case; in re European Assurance Co., <i>Company</i> H 59 . . . . .	166
Pumfrey, in re; ex parte Hillman, <i>Bankruptcy</i> F 38 . . . . .	61	Ranby, ex parte; in re Ranby, <i>Bankruptcy</i> P 12 . . . . .	80
—, <i>Voluntary Settlement</i> 7 . . . . .	651	Randall v. Newsome, <i>Sale of Goods</i> 7 . . . . .	549
Purcell v. Sowler, <i>Libel</i> 6 . . . . .	333	Randell, Saunders & Co. v. Thompson, <i>Arbitration</i> 4 . . . . .	30
Purnell v. Great Western Railway Co., <i>Practice</i> T 10 . . . . .	459	Ranken v. Alfaro, <i>Bill of Exchange</i> 24 . . . . .	85
Pursell, Knight v. . . . .	200, 366	Rankin, Johnson v. . . . .	404
Putney Overseers, Dryden v. . . . .	367	— v. Lamont, <i>Scotch Law</i> 22 . . . . .	560
Putt, Deards v. . . . .	484	Rapier v. Wright, <i>Attachment</i> 8 . . . . .	36
Puttall's Trusts, in re, <i>Trustee Relief Act</i> 6 . . . . .	639	Rashleigh, ex parte; in re Dalzell, <i>Bankruptcy</i> C 1 . . . . .	47
Pyke, ex parte; in re Lister, <i>Bankruptcy</i> D 7 . . . . .	50	Rathbone, in re, <i>Trustee Acts</i> 12 . . . . .	637
Quebec Corporation, Bell v. . . . .	122	Rawlence v. Hursley Union, Guardians of, <i>Rates</i> 18 . . . . .	535
Queen Anne's Bounty, Governors of, Jackson v. . . . .	106	Rawley v. Rawley, <i>Infant</i> 17 . . . . .	292
Queen Insurance Co., A. G. for Quebec v. . . . .	607	— v. —, <i>Set-off</i> 6 . . . . .	563
Queen's Proctor v. Fry, <i>Evidence</i> 19 . . . . .	245	Rawlins v. Biggs, <i>Covenant</i> 5 . . . . .	206
Quick, Aird v. . . . .	21	— v. —, <i>Lease</i> 15 . . . . .	325
— Southwark and Vauxhall Water Co. v. . . . .	506	—, Tennant v. . . . .	203
Quicke, Mildmay v. . . . .	194, 411	Rawlins, in the goods of, <i>Will Formalities</i> 20 . . . . .	684
Quincey v. Sharpe, <i>Limitations, Statute of</i> , 19 . . . . .	342	Rawlinson v. Miller, <i>Partition</i> 19 . . . . .	411
Quirk, Swansea v. . . . .	453	— v. Rawlinson, <i>Will Construction</i> D 11 . . . . .	661
R., W. falsely called R. v. . . . .	228	Rawyards Coal Co., Livingstone v. . . . .	372
Rabbidge, ex parte; in re Pooley, <i>Bankruptcy</i> F 16 . . . . .	58	Ray v. Barker, <i>Practice</i> II 10 . . . . .	489
Rabbits v. Cox, <i>Hospital</i> 1 . . . . .	277	Rayner, ex parte, <i>Public Health Act</i> 16 . . . . .	515
—, Cox v. . . . .	312	— v. Mitchell, <i>Master and Servant</i> 12 . . . . .	362
Rackham, ex parte; in re The Norwich and Norfolk Provident Building Society, <i>Friendly Society</i> 1 . . . . .	267	— v. Preston, <i>Vendor and Purchaser</i> 18 . . . . .	646
Radcliffe, in re; European Assurance Society v. Radcliffe, <i>Executor</i> 11 . . . . .	250	—, Saffron Walden Building Society v. . . . .	381
—, Day v. . . . .	567	Read v. Bailey, <i>Bankruptcy</i> D 18 . . . . .	52
Radley v. London and North Western Railway Co., <i>Negligence</i> 23 . . . . .	396	— v. Perry, <i>Justice of the Peace</i> 10 . . . . .	310
"Radnorshire," The, <i>Admiralty</i> 37 . . . . .	17	—, Reg. v. . . . .	239
Raffles, Reg. v. . . . .	23	—, Riley v. . . . .	296
Raggett, Williams v. . . . .	218	—, Sargent v. . . . .	537
Railway Commissioners, South Eastern Railway Co. v. . . . .	531	Reade, Rumsey v. . . . .	437
— Steel and Plant Co., ex parte; in re Taylor; in re Williams, <i>Company</i> H 47 . . . . .	164	Real and Personal Advance Co. v. McCarthy, <i>Practice</i> W 24 . . . . .	468
Railway Passengers' Assurance Co.'s Act, in re; in re Liscomb, <i>Arbitration</i> 7 . . . . .	31	Real Property Trust, Chapman v. . . . .	484
Rainbow v. Juggins, <i>Bankruptcy</i> D 32 . . . . .	54	Receiver of Land Revenue, Bell v. . . . .	125
— v. —, <i>Principal and Surety</i> 13 . . . . .	499	Rector of Gamston, ex parte, <i>Lands Clauses Act</i> 26 . . . . .	320
Rainforth, in re; Gwynn v. Gwynn, <i>Debtor and Creditor</i> 4 . . . . .	219	Rector of Grimoldby, ex parte, <i>Lands Clauses Act</i> 27 . . . . .	320
— v. —, <i>Limitations, Statute of</i> , 11 . . . . .	340	Rector and Churchwardens of St. George's in the East, in re, <i>Burial</i> 3 . . . . .	99
Rains v. Buxton, <i>Limitations, Statute of</i> , 2 . . . . .	339	Reddish, ex parte; in re Walton, <i>Practice</i> B 19 . . . . .	440
Ralli, Meyer v. . . . .	257, 354	— v. Hitchinor, <i>Justice of the Peace</i> 14 . . . . .	311
Ralph v. Carrick, <i>Will Construction</i> I 15 . . . . .	673	Redfern, in re; Redfern v. Bryning, <i>Will Construction</i> G 1 . . . . .	664
Ram Cooman Coondoo v. Chunder Canto Mookerjee, <i>Champerty</i> 1 . . . . .	105	— v. White; Reg. v. White, <i>Public Health Act</i> 40 . . . . .	519
		Redgate v. Haynes, <i>Alehouse</i> 17 . . . . .	25
		— v. —, <i>Gaming</i> 2 . . . . .	270
		Redgrave, Wright v. . . . .	297
		Bedhead, Wilcox v. . . . .	181, 602
		Redman, Gery v. . . . .	244
		—, Swire v. . . . .	500
		Redondo v. Chaytor, <i>Costs</i> 61 . . . . .	197

	PAGE		PAGE
Reed, in re; ex parte Barnett, <i>Bankruptcy</i>		Reg. v. Essex, Justices of, <i>Bastardy</i> 6	81
H 11	65	— v. Flattery, <i>Rape</i>	531
—, in re; ex parte Brown, <i>Bill of Sale</i>		— v. Fletcher, <i>Criminal Law</i> 1	210
10	89	— v. Foster, <i>False Pretences</i> 1	254
—, in re; ex parte Cox, <i>Bankruptcy</i>		— v. French, <i>Highway</i> 7	274
F 3	56	— v. —, <i>Turnpike</i> 2	640
— v. Harvey, <i>Bankruptcy</i> F 49	62	— v. Gale, <i>Embezzlement</i> 4	239
—, Reg. v.	238	— v. Gaskarth, <i>Public Health Act</i> 5	512
Rees v. George; in re Rees, <i>Administration</i>		— v. Government Stock Investment Co.,	
41	11	<i>Company</i> D 45	145
— v. Metropolitan Board of Works, <i>Mort-</i>		— v. Great Northern Railway Co., <i>Lands</i>	
<i>gage</i> 53	385	<i>Clauses Act</i> 12	318
—, Symons v.	201	—, Green v.	608
Reeve's Trusts, in re, <i>Administration</i> 45	11	— v. Greenhow, Inhabitants of, <i>Highway</i>	
—, <i>Legacy</i> 3	328	4	273
Reg. v. Adamson, <i>Justice of the Peace</i> 11	310	— v. Greenlaw Road Trustees, <i>Turn-</i>	
— v. —, <i>Mandamus</i> 5	351	<i>pike</i> 1	640
— v. All Saints, Wigan, Churchwardens		— v. Harrington, <i>County Court</i> 5	202
of, <i>Church Rates</i>	118	— v. Hermann, <i>Coining</i>	119
— v. —, <i>Mandamus</i> 3	350	— v. Hertford College, <i>University</i>	641
— v. Ardsley, Inhabitants of, <i>Highway</i> 6	274	— v. Holbrook, <i>Libel</i> 19, 20	335
— v. Aspinall, <i>Conspiracy</i>	175	— v. Hughes, <i>Perjury</i> 1	425
— v. Barnet Rural Sanitary Authority,		— v. Huntingdon, Justices of, <i>Justice of</i>	
<i>Public Health Act</i> 36	518	<i>the Peace</i> 6	310
— v. Beardsall, <i>Municipal Corporation</i> 9	388	— v. Hutchins, <i>Public Health Act</i> 28	517
— v. Bedminster Union, Assessment Com-		— v. Ingall, <i>Rates</i> 19	535
mittee of, <i>Rates</i> 9	532	— v. Institution of Civil Engineers,	
— v. Berkshire, Justices of, <i>Alehouse</i> 3	22	<i>Rates</i> 4	532
— v. Berry, <i>Trial</i>	627	— v. Ipswich Union, <i>Poor Law</i> 3	427
— v. Bishop, <i>Lunatic</i> 26	349	—, James v.	259
— v. Bishop Wearmouth, Burial Board of,		— v. Kenny, <i>Receiving Stolen Goods</i>	538
<i>Burial</i> 2	98	— v. Keyn, <i>Central Criminal Court</i>	104
— v. Bradlaugh, <i>Obscene Publication</i> 2	401	— v. Kirkdale, Justices of, <i>Alehouse</i> 1	22
— v. Brampton Union, <i>Poor Law</i> 5	428	— v. Langton, <i>Evidence</i> 36	248
— v. Bristol, Justices of, <i>Alehouse</i> 8	23	— v. Lee, <i>Highway</i> 5	274
— v. Burah, <i>Colonial Law</i> 23	123	— v. —, <i>Metropolis</i> 5	367
— v. Carden, <i>Libel</i> 22	336	— v. Leeds Union, <i>Poor Law</i> 4	427
— v. Carter, <i>Coroner</i>	189	— v. London and Brighton Railway Co.,	
— v. Casaca, <i>Colonial Law</i> 42	125	<i>Metropolis</i> 17	369
— v. Castro, <i>Criminal Law</i> 3	210	— v. London and North Western Railway	
— v. Central Wingland, Inhabitants of,		Co., <i>Municipal Corporation</i> 19	389
<i>Highway</i> 3	273	— v. Maidstone Union, <i>Poor Law</i> 16	429
— v. Chertsey Division of Surrey, Justices		— v. Manoel dos Santos Casaca, <i>Colonial</i>	
of, <i>Alehouse</i> 5	23	<i>Law</i> 42	125
— v. Chorlton upon Medlock, Overseers		— v. Martin, <i>Forgery</i>	260
of, <i>Poor Law</i> 2	427	— v. May, <i>Bastardy</i> 6	81
— v. —, <i>Rates</i> 21	535	— v. Meyer, <i>Justice of the Peace</i> 3	309
— v. Clifton Union, <i>Poor Law</i> 13	429	— v. Middlesex, Justices of, Slade's Case,	
— v. Clutton Union, <i>Public Health Act</i>		<i>Mandamus</i> 1	350
10	513	— v. Milledge, <i>Justice of the Peace</i> 5	310
— v. Coleridge, <i>Railway</i> 21	527	— v. Monck, <i>County Rate</i>	205
— v. Collins, <i>Quo Warranto</i> 2	520	— v. Monk, <i>Municipal Corporation</i> 17	389
— v. Cooper, <i>Evidence</i> 35	248	— v. New River Co., <i>Rates</i> 20	535
— v. —, <i>False Pretences</i> 2	254	— v. New Windsor, Borough of; Reg. v.	
—, Cooper v.	425	Monck, <i>County Rate</i>	205
— v. Cramp, <i>Abortion</i>	1	— v. Newton, <i>Company</i> C 3	135
— v. Cresswell, <i>Bigamy</i>	81	— v. Oxenham, <i>Larceny</i>	323
— v. Cumberlege, <i>Rates</i> 22	535	— v. Oxford, Bishop of, <i>Church</i> 25	116
— v. Cumpston, <i>Justice of the Peace</i> 13	310	— v. Padbury, <i>Bastardy</i> 5	80
—, Davenport v.	125	— v. Pearce, <i>Poor Law</i> 1	427
— v. Deane, <i>False Pretences</i> 3	254	— v. Pemberton, <i>Poor Law</i> 17	430
— v. De Rutzen, <i>Alehouse</i> 2	22	— v. Platts, <i>Highway</i> 13	275
— v. Downes, <i>Manslaughter</i>	351	— v. Postmaster-General, <i>Telegraph</i> 2	614
— v. Drayton in Hales Highway Board,		— v. Price, <i>Rates</i> 24	536
<i>Highway</i> 10	275	— v. Raffles, <i>Alehouse</i> 9	23

	PAGE		PAGE
Reg. v. Read, <i>Embezzlement</i> 3	239	Registrar of Trade Marks, Orr Ewing v.	622
— v. Reed, <i>Elementary Education Acts</i> 4	238	Reiner v. Salisbury, Marquis of, <i>Foreign Law</i> 1	258
— v. Richards, <i>Accessory</i>	2	Reinhardt v. Spalding, <i>Trade Mark</i> 8	621
— v. Rippon, <i>Public Health Act</i> 1	512	Renals v. Cowlshaw, <i>Covenant</i> 20	208
— v. Roadley, <i>Assault</i> 3	35	Renny, Hills v.	306
— v. Rogers, <i>Embezzlement</i> 1	239	Rensburg, ex parte; in re Pryce, <i>Bankruptcy</i> F 15	58
—, Rustomjee v.	212, 425	Renshaw v. Renshaw, <i>Practice</i> C 11	446
— v. Rymer, <i>Innkeeper</i> 1	301	Republic of Costa Rica v. Erlanger, <i>Contempt of Court</i> 5	177
— v. St. Mary, Islington, <i>Rates</i> 20	534	— v. —, <i>Costs</i> 58, 62	196
— v. St. Pancras Assessment Committee, <i>Rates</i> 1	532	— v. Strousberg, <i>Production</i> 24	508
— v. Sankey, <i>Elementary Education Acts</i> 1	238	Republic of Liberia v. Royce, <i>Production</i> 20	508
— v. Saunders, <i>Nuisance</i> 16	400	Republic of Paraguay, ex parte; in re Lewis, Munns & Co., <i>Practice</i> I 1	449
— v. Scott, <i>Perjury</i> 2	425	Reuss Köstritz, Prince Henry the 69th, in the goods of, <i>Probate</i> 21	504
— v. Sheward, <i>Certiorari</i>	104	Reuter v. Sala, <i>Sale of Goods</i> 3	548
— Shropshire Union Railway and Canal Co. v.	383	Reuter's Telegraph Co., Dickson v.	214, 614
— v. Smith, <i>Alehouse</i> 7	23	—, Le Blanch v.	345
— v. —; Reg. v. Pemberton, <i>Poor Law</i> 17	430	Revett, Richards v.	207, 298
—, Smith v.	125	Reya, ex parte; in re Salinger, <i>Bankruptcy</i> B 22	46
— v. Spon Lane Co., <i>Coal Mines</i> 2	119	Reynolds, in re, <i>Lands Clauses Act</i> 34	321
— v. Steel, <i>Criminal Information</i>	210	— v. Bullock, <i>Partnership</i> 12	414
— v. —, <i>Criminal Law</i> 2	210	— v. Reynolds, <i>Divorce</i> 11	228
— v. —, <i>Libel</i> 22, 23	335	Rhodes v. Airedale Drainage Commissioners, <i>Arbitration</i> 11	31
— v. Surrey, Justices of, <i>Prison</i> 1	500	— v. —, <i>Lands Clauses Act</i> 8	318
— v. —, <i>Alehouse</i> 5	25	— v. Forwood, <i>Principal and Agent</i> 1	492
— v. Swindon Local Board, <i>Public Health Act</i> 22, 37	316, 318	— v. Jenkins; in re Mansel, <i>Practice</i> B 50	443
— v. Sykes, <i>Alehouse</i> 4	22	— v. Liverpool Commercial Investment Co., <i>County Court</i> 24	203
— v. Tatlock, <i>Embezzlement</i> 5	239	—, Wilson v	632
—, Tomline v.	425	Rhyl Improvement Commissioners, Fielding v.	513
— v. Tottenham, Vicar of, <i>Vestry</i> 3	650	Rica Gold Washing Company, in re, <i>Company</i> H 5	159
— v. Treadgold, <i>Embezzlement</i> 2	239	Richards, ex parte, <i>Public Health Act</i> 6	512
— v. Truelove, <i>Obscene Publication</i> 3	401	—, —, <i>Quo Warranto</i> 1	520
— v. Tucker, <i>Public Entertainment</i> 1	511	—, in re; Hilton v. Jones, <i>Administration</i> 10	7
— v. Turmine, <i>Elementary Education Acts</i> 2	238	—, Reg. v.	2
— v. Verrall, <i>Rates</i> 12	534	— v. Revett, <i>Covenant</i> 12	207
— v. Wallace, <i>Highway</i> 12	275	— v. —, <i>Injunction</i> 13	298
— v. Walsall, Overseers of, <i>Public Health Act</i> 14	514	— v. Swansea Improvements and Tramways Co., <i>Lands Clauses Act</i> 2	316
— v. Welch, <i>Cattle</i>	104	Richards & Co., in re, <i>Company</i> I 1	172
— v. —, <i>Malicious Injury</i> 3	349	Richardson, ex parte; in re Yorkshire Iron Co., <i>Company</i> H 35	163
— v. Wellings, <i>Evidence</i> 34	248	—, Allen v.	604
— v. West Riding of Yorkshire, Justices of, <i>Public Health Act</i> 13	514	— v. Elmit, <i>Attachment</i> 2	35
— v. Weymouth, Justices of, <i>Justice of the Peace</i> 5	310	— v. Gray, <i>Salmon Fishery</i> 3	556
— v. White, <i>Public Health Act</i> 40	519	—, Grice v.	553
— v. Wilson, <i>Debtors Act</i> 9	221	— v. Richardson; in re Richardson, <i>Costs</i> 95	200
— v. —, <i>Extradition</i> 2	252	—, Smith v.	460
— v. Wiltshire, Justices of, <i>Rates</i> 26	536	—, Stanton v.	578
Regent United Service Stores, in re, <i>Company</i> H 72	168	Riches, Abud v.	195
—, in re; ex parte Bentley, <i>Company</i> D 69	149	—, Bradley v.	382
—, in re; ex parte Burke, <i>Company</i> H 36	163	Richmond v. White, <i>Executor</i> 4	249
Regent's Canal Co. v. St. Pancras Assessment Committee, <i>Rates</i> 13	534	Richmond Consolidated Mining Co., Fulbrook v., <i>Company</i> D 11	
Regent's Canal Ironworks Co., in re; ex parte Grissell, <i>Company</i> H 40	163		
Registrar of Titles v. Paterson, <i>Colonial Law</i> 47	126		

	PAGE		PAGE
Richmond Waterworks Co. and the South- wark and Vauxhall Waterworks Co. v. Richmond (Surrey), Vestry of, <i>Water</i> <i>Company</i> . . . . .	655	Robinson, in re; ex parte Burrell, <i>Bank-</i> <i>ruptcy</i> L 23 . . . . .	73
Richter v. Laxton, <i>Lord Mayor's Court</i> 7 . . . . .	345	— v. Chadwick, <i>Practice</i> G 2 . . . . .	448
Riding v. Smith, <i>Slander</i> 1 . . . . .	592	— v. Clark, <i>Will Formalities</i> 5 . . . . .	681
Ridley, in re; Buckton v. Hay, <i>Remoteness</i> 11 . . . . .	541	— v. Cliff, <i>Bread</i> . . . . .	97
Ridsdale v. Clifton, <i>Church</i> 19, 20, 22, 35 . . . . .	114, 115, 116	— v. Davies, <i>Evidence</i> 33 . . . . .	247
Rigby v. Connol, <i>Trades Unions</i> 2 . . . . .	625	— v. Duleep Singh, <i>Warren</i> . . . . .	653
—, Horrocks v. . . . .	605	— v. Findlay; Ward v. Robinson, <i>Trade</i> <i>Mark</i> 17 . . . . .	623
Riggs, London, Corporation of, v. . . . .	656	—, Jones v. . . . .	661
Riley v. Read, <i>Inhabited House Duty</i> 5 . . . . .	296	—, Mason v. . . . .	27
Rimington v. Hartley, <i>Partition</i> 13 . . . . .	410	—, Moore v. . . . .	286
Rimmer, Jones v. . . . .	644	— v. Price, <i>Shipping Law</i> L 3 . . . . .	587
Rio Grande do Sul Steamship Co., in re, <i>Shipping Law</i> M 1 . . . . .	588	— v. Robinson, <i>Divorce</i> 37 . . . . .	232
Rippon, Reg. v. . . . .	512	— v. —; in re Robinson's Settled Es- tates, <i>Husband and Wife</i> 19 . . . . .	281
Rishton v. Whatmore, <i>Frauds, Statute of</i> , 9 . . . . .	263	—, Shearman v. . . . .	251
Ritso's Case; in re Universal Non-Tariff Fire Insurance Co., <i>Company</i> D 81 . . . . .	152	—, Smith v. . . . .	644
River Wear Commissioners v. Adamson, <i>Harbours, Docks and Piers Clauses Act</i> 3 . . . . .	272	Robotham v. Dunnett, <i>Charity</i> 19 . . . . .	108
Rivers v. Adams; Rivers v. Ferrett; Rivers v. Isaacs, <i>Custom</i> 1 . . . . .	213	Robson, Buck v. . . . .	607
Rivers Protection and Manure Co., in re, <i>Company</i> H 81 . . . . .	169	— v. North Eastern Railway Co., <i>Carrier</i> 17 . . . . .	103
—, <i>Injunction</i> 9 . . . . .	297	Rochdale Property and General Finance Co., in re, <i>Company</i> H 21 . . . . .	161
Rivington's Case; in re European Assur- ance Society, <i>Company</i> G 2 . . . . .	157	Roche, Clarke v. . . . .	198, 606
Roach v. Trood, <i>Power</i> 21 . . . . .	435	Rochester, Bishop of, M'Allister v. . . . .	112, 508
Roadley, Reg. v. . . . .	35	Rochfort v. Atherley, <i>Public Health Act</i> 3 . . . . .	512
Robarts v. Buée, <i>Administration</i> 52 . . . . .	12	—, Sperling v. . . . .	433
— v. —, <i>Set-off</i> 2 . . . . .	563	Roden v. London Small Arms Co., <i>Eri-</i> <i>dence</i> 1 . . . . .	243
—, Goodwin v. . . . .	561	—, Underhill v. . . . .	675
"Robert Dixon," The, <i>Shipping Law</i> V 3 . . . . .	592	Rodd, Sargent v. . . . .	407
Robertson, Bailey v. . . . .	419	Roderick v. Aston Local Board, <i>Public</i> <i>Health Act</i> 31 . . . . .	517
Roberts, in re; ex parte Brook, <i>Bank-</i> <i>ruptcy</i> F 44 . . . . .	62	Rodger, Pickersgill v. . . . .	237
—, —, <i>Lease</i> 20 . . . . .	327	Rođocanachi, Burnand v. . . . .	354
—, in re; ex parte Foster, <i>Bankruptcy</i> F 41 . . . . .	62	Rodwell, Watson v. . . . .	198, 247, 466
—, in re; ex parte Hill, <i>Bankruptcy</i> D 38 . . . . .	55	Roe v. Davies, <i>Practice</i> W 19 . . . . .	467
—, —, <i>Landlord and Tenant</i> 13 . . . . .	315	— v. Hammond, <i>Sheriff</i> 6 . . . . .	572
—, in re; ex parte Watson, <i>Bankruptcy</i> H 3 . . . . .	64	Roffey, London v. . . . .	459
—, in re; Goodchap v. Roberts, <i>Interest</i> 1 . . . . .	305	Rogers, ex parte; in re Rogers, <i>Bankruptcy</i> M 32 . . . . .	76
—, Bent v. . . . .	295	—, —, <i>Broker</i> 3 . . . . .	98
— v. Evans, <i>Practice</i> U 8 . . . . .	461	—, Ancona v. . . . .	93
—, Goodchap v. . . . .	305	—, Corpus Christi College v. . . . .	341
— v. Gordon; in re Gordon, <i>Trust</i> E 4 . . . . .	635	— v. Ingham, <i>Mistake</i> 1 . . . . .	375
— v. Page, <i>Friendly Society</i> 6 . . . . .	268	— v. Jones, <i>Costs</i> 90 . . . . .	200
— v. Watkins, <i>Husband and Wife</i> 30 . . . . .	283	— v. —, <i>Election</i> 4 . . . . .	237
— v. Youle, <i>Will Construction</i> G 12 . . . . .	666	— v. Mutch, <i>Will Construction</i> H 5 . . . . .	667
Robertson, in re; ex parte Crawcour, <i>Bill</i> <i>of Sale</i> 13 . . . . .	90	—, Reg. v. . . . .	239
—, in re; ex parte Lewin, <i>Bill of Sale</i> 13 . . . . .	90	Rokeby, Lord, Dawkins v. . . . .	332
— v. Day, <i>Colonial Law</i> 30 . . . . .	124	— v. Elliot, <i>Mines</i> 18 . . . . .	373
—, Holste v. . . . .	422	Rolfe v. Maclaren, <i>Practice</i> A 3 . . . . .	438
— v. Howard, <i>Practice</i> II 5 . . . . .	488	— v. —, <i>Practice</i> W 73 ( <i>Pleading</i> ) . . . . .	473
—, Turnbull v. . . . .	36	— v. —, <i>Practice</i> W 81 ( <i>Pleading</i> ) . . . . .	475
Robins, Ballard v. . . . .	407	Rolls v. Pearce, <i>Donatis Mortis Causa</i> 1 . . . . .	234
—, Dawson v. . . . .	404	— v. St. George's, Southwark, Vestry of, <i>Metropolis</i> 13 . . . . .	367
		Romer and Hutchins, ex parte, <i>Copyright</i> 13 . . . . .	188
		Rook v. Hopley, <i>Adulteration of Food</i> 4 . . . . .	19
		Rooke, Brooke v. . . . .	9
		Rooney, Burke v. . . . .	444
		Roose v. Chalk; in re Knowles, <i>Executor</i> 9 . . . . .	249
		Roper v. Roper, <i>Annuity</i> 9 . . . . .	27

	PAGE		PAGE
Roper v. Roper, <i>Dower</i> . . . . .	234	Company Life Assurance Society, in re; Hort's Case; Grain's Case, <i>Company G 4</i> . . . . .	157
Roper's Trusts, in re, <i>Infant 7</i> . . . . .	291	Royal Netherland Steam Navigation Co., Chapman v. . . . .	581
"Rosalie," The, <i>Shipping Law E 5</i> . . . . .	579	Royal Wax Candle Co., Scott v. . . . .	456, 480
"Rosario," The, <i>Shipping Law T 6</i> . . . . .	591	Royds, Garling v. . . . .	452
Rose v. Evans, <i>Trade Mark 5</i> . . . . .	621	Roye, Republic of Liberia v. . . . .	508
— & Co. v. Gardden Lodge Coal and Coke Co., <i>Company H 85</i> . . . . .	169	Royle, ex parte; in re Scholes, <i>Bankruptcy A 9</i> . . . . .	41
— v. Loftus, <i>Trade Mark 25</i> . . . . .	624	—; in re Britnor, <i>Bankruptcy F 52</i> . . . . .	63
— v. North Eastern Railway Co., <i>Carrier 18</i> . . . . .	103	Royle, in re; Fryer v. Royle, <i>Administration 35</i> . . . . .	10
Rosevear China Clay Co., ex parte; in re Cock, <i>Sale of Goods 29</i> . . . . .	554	—, Burliner v. . . . .	71
Ross, in the goods of, <i>Probate 23</i> . . . . .	504	Rudkin, Kino v. . . . .	338, 468, 487
— v. Grant; Grant v. Holland, <i>Solicitor 26</i> . . . . .	597	Rugge-Price, Ross v. . . . .	258
— v. Price, <i>Forest of Dean 1</i> . . . . .	258	Rule, in the goods of, <i>Probate 20</i> . . . . .	503
— v. —, <i>Negligence 25</i> . . . . .	396	Rumball v. Metropolitan Bank, <i>Script Certificate 1</i> . . . . .	561
—, Sutherland, Duke of, v. . . . .	556	Rumford, Halse v. . . . .	108, 329
Rossiter, Britain v. . . . .	266	Rummens v. Hare, <i>Detinue 4</i> . . . . .	224
— v. Miller, <i>Frauds, Statute of, 7</i> . . . . .	263	— v. —, <i>Gift 2</i> . . . . .	272
— v. —, <i>Specific Performance 10</i> . . . . .	602	Rumsay, James v. . . . .	386
— v. Pike, <i>Salmon Fishery 1</i> . . . . .	556	Rumsey v. Nicholl, <i>Church and Clergy 3</i> . . . . .	112
— v. Rossiter, in re Rossiter, <i>Administration 16</i> . . . . .	8	— v. Reade, <i>Practice A 1</i> . . . . .	437
Rosslyn, Walrond v. . . . .	185, 307	Runnacles v. Mesquita, <i>Practice II 8</i> . . . . .	489
Rotherham v. Priest, <i>Practice II 11</i> . . . . .	489	Runts v. Shepherd, <i>Practice B 44</i> . . . . .	443
Rotherham and Kimberworth Local Board, Bentley v. . . . .	514, 608	Runtz v. Sheffield, <i>Practice B 44</i> . . . . .	443
Rotherham's Trade Mark, in re, <i>Trade Mark, 6</i> . . . . .	621	Russ, in re; ex parte Davis, <i>Bankruptcy K 2</i> . . . . .	66
Rothwell, Campbell v. . . . .	498	Russell, ex parte; in re Winn, <i>Bankruptcy L 21</i> . . . . .	72
Roughton v. Gibson, <i>Partition 16</i> . . . . .	411	— Bowden v. . . . .	177
Rouquette, Horne v. . . . .	84	— Crowle v. . . . .	384, 482
Rourke v. White Moss Colliery Co., <i>Master and Servant 7</i> . . . . .	362	— v. Russell, <i>Arbitration 6</i> . . . . .	30
Roussillon v. Roussillon, <i>Contract 6</i> . . . . .	179	— v. St. Aubyn, <i>Portions 3</i> . . . . .	430
— v. —, <i>Covenant 4</i> . . . . .	206	Rustomjee v. Reg., <i>Crown 6</i> . . . . .	212
— v. —, <i>Foreign Judgment</i> . . . . .	257	— v. —, <i>Petition of Right 3</i> . . . . .	425
Row, Wells v. . . . .	8	Ruston, New Zealand and Australian Land Co. v. . . . .	492
Rowbotham v. Dunnett, <i>Charity 19</i> . . . . .	108	— v. Tobin, <i>Practice W 34 (Pleading)</i> . . . . .	468
Rowcliffe v. Leigh; in re Leigh, <i>Practice Y 4</i> . . . . .	477	— v. —, <i>Practice HH 14 (Trial)</i> . . . . .	486
— v. —, <i>Production 31</i> . . . . .	509	Ruther v. Harris, <i>Salmon Fishery 2</i> . . . . .	556
Rowe, Ecclesiastical Commissioners v. . . . .	338	Rutherford, in re; Brown v. Rutherford, <i>Limitations, Statute of, 17</i> . . . . .	341
— v. Gray, <i>Partition 15</i> . . . . .	411	Rutherford's Case; in re City of Glasgow Bank, <i>Trust D 13</i> . . . . .	634
Rowe's Claim; in re Brentwood Brick and Coal Co., <i>Vendor and Purchaser 32</i> . . . . .	649	Rutter v. Harris, <i>Salmon Fishery 2</i> . . . . .	556
Rowell, Tottenham Local Board of Health v. . . . .	516	— v. Tregent, <i>Practice W 23, 33</i> . . . . .	468
—, ex parte; in re Whitting, <i>Bankruptcy F 57</i> . . . . .	63	Rylands, ex parte; in re Chesters, <i>Bankruptcy O 1</i> . . . . .	78
Rowles v. Mayhew, in re Mayhew, <i>Administration 51</i> . . . . .	12	Rymer, Reg. v. . . . .	301
Rowlett, Osborne to, <i>Power 26</i> . . . . .	435	S—, in re, <i>Lunatio 11</i> . . . . .	347
Rownd v. Pickett, <i>Will Construction L 10</i> . . . . .	675	S. v. A. <i>Divorce 10</i> . . . . .	228
Roxburghe, Duke of, v. Millar, <i>Scotch Law 3</i> . . . . .	557	Sabin, Browning v. . . . .	221, 452
Roy, ex parte; in re Sillence, <i>Bankruptcy F 6</i> . . . . .	57	Sadler, ex parte; in re Whelan, <i>Bankruptcy C 13, M 6</i> . . . . .	48, 73
Royal Aquarium Society, Altman v. . . . .	207	Safety Lighting Co., Hinks v. . . . .	419
Royal Exchange Assurance Corporation, Collingridge v. . . . .	304	Saffery, ex parte; in re Cooke; Tomkins v. Saffery, <i>Bankruptcy B 1</i> . . . . .	42
Royal Mail Steam Packet Co. v. Braham, <i>Colonial Law 25</i> . . . . .	123	— <i>Stock Exchange 1</i> . . . . .	610
— v. —, <i>Practice BB 5</i> . . . . .	479	— ex parte; in re Lambert, <i>Bankruptcy M 11</i> . . . . .	74
Royal Mail Steamship Co., Schmidt v. . . . .	586	Saffron Walden Building Soc. v. Rayner, <i>Mortgage 26</i> . . . . .	381
Royal Naval and Military and East India			

	PAGE		PAGE
Saillard, Broder v. . . . .	298, 398	Saltash, Mayor and Burgesses of, v. Goodman, <i>Custom</i> 4 . . . . .	213
St. Albans, Bishop of, v. Battersby, <i>Coronant</i> 6 . . . . .	206	— v. —, <i>Fishery</i> 2 . . . . .	255
St. Andrew's, Montreal, Johnston v. . . . .	500	Sampson, Turner v. . . . .	84
St. Aubyn, Russell v. . . . .	430	— Stevens v. . . . .	333
St. Augustine's, Haggerstone, in re, <i>Church</i> 12 . . . . .	114	Samuel, Crom v. . . . .	443
St. George's, Hanover Square, Burial Board v. Hall, <i>Church</i> 10 . . . . .	113	— v. Samuel, <i>Forfeiture</i> 3 . . . . .	259
St. George's-in-the-East, Rector and Churchwardens of, in re, <i>Burial</i> 3 . . . . .	99	— v. —, <i>Practice</i> U 14 . . . . .	462
St. George's, Southwark, Vestry of, Rolls v. . . . .	367	Sandback Charity Trustees and North Staffordshire Railway Co., in re, <i>Lands</i> <i>Clauses Act</i> 15 . . . . .	319
St. Giles, Camberwell, London, Brighton and South Coast Railway Co. v. . . . .	367	Sanders v. Stuart, <i>Damages</i> 17 . . . . .	217
St. Helens Chemical Co. v. St. Helens, Corporation of, <i>Nuisance</i> 12 . . . . .	399	Sanders' Trusts, in re, <i>Voluntary Settlement</i> 15 . . . . .	653
St. Helens, Corporation of, Taylor v. . . . .	222	Sanderson, in re, <i>Costs</i> 89 . . . . .	199
St. James's, Westminster, Vestry of, Vernon v. . . . .	399, 451	Sandwich, Earl of, Adnam v. . . . .	340
St. James's Bank, in re; Colville's Case, <i>Company</i> D 85 . . . . .	152	— v. Great Northern Railway Co., <i>Water</i> 4 . . . . .	655
St. John's Hospital, A. G. v. . . . .	110	Sandys v. Florence, <i>Innkeeper</i> 2 . . . . .	301
St. Joseph de l'Hôtel Dieu de Montréal (Hospitales de) v. Middlemiss, <i>Colonial Law</i> 17 . . . . .	122	— v. Small, <i>Adulteration of Food</i> 3 . . . . .	19
"St. Lawrence," The, <i>Shipping Law</i> C 2 . . . . .	575	Saner v. Bilton, <i>Costs</i> 33 . . . . .	194
St. Lawrence, Pittington, in re, <i>Church</i> 16 . . . . .	114	— v. —, <i>Landlord and Tenant</i> 8 . . . . .	314
St. Leonards, Lord, Sugden v. . . . .	246, 505	— v. —, <i>Practice</i> W 74 . . . . .	473
St. Leonard's, Shoreditch, Guardians of, v. Franklin, <i>Penalty</i> 1 . . . . .	424	Sanguinetti v. Pacific Steam Navigation Co., <i>Shipping Law</i> D 8 . . . . .	576
— Vestry of, Holborn Union v. . . . .	369	Sankey, Regina v. . . . .	238
St. Luke, Vestry of, v. North Metropolitan Tramways Co. <i>Tramways</i> 3 . . . . .	626	Sansom v. Sansom, <i>Divorce</i> 40 . . . . .	233
St. Mary, Islington, School Board for London v. . . . .	367	Santo Teodoro v. Santo Teodoro, <i>Divorce</i> 4 . . . . .	227
St. Mary, Islington, Assessment Committee, Reg. v. . . . .	535	"Sarah," The, <i>Shipping Law</i> T 9 . . . . .	591
—, Guardians of, v. Tenterden Union . . . . .	428	Sargent v. Read, <i>Receiver</i> 1 . . . . .	537
St. Matthew, Bethnal Green, Hansard v. . . . .	113	Sargent, Bunting v. . . . .	109
St. Nazaire Co., in re, <i>Practice</i> B 1 . . . . .	438	— v. Rodd, <i>Parliament</i> 24 . . . . .	407
"St. Olaf," The, <i>Admiralty</i> 52 . . . . .	18	"Sarpedon," cargo ex, The, <i>Shipping Law</i> T 5 . . . . .	591
St. Pancras Union (Assessment Committee), Reg. v. . . . .	532	Saunders v. Dunman, <i>Mortgage</i> 8 . . . . .	378
— Manchester Overseers v. . . . .	428	— v. Jones, <i>Practice</i> P 6 . . . . .	454
— Regent's Canal Co. v. . . . .	534	— Reg. v. . . . .	400
— Woodstock Union v. . . . .	429	— v. South Eastern Railway Co., <i>Railway</i> 18 . . . . .	526
St. Sepulchre, Vicar of, v. Churchwardens of Same, <i>Parish</i> . . . . .	402	Saunion, Wilkes v. . . . .	385
St. Sulpice de Montréal, Dorion v. . . . .	120	Savage, in re, <i>Practice</i> V 7 . . . . .	465
St. Thomas Dock Co., in re, <i>Company</i> H 1 . . . . .	159	—, Weston v. . . . .	647
St. Thomas' Hospital v. Overseers of Lambeth, <i>Rates</i> 3 . . . . .	532	"Savernake," The, <i>Admiralty</i> 48 . . . . .	17
St. Werburgh, Derby, Overseers of, v. Hutchinson, <i>Rates</i> 2 . . . . .	532	Saville Street Foundry and Engineering Co., Marsden v. . . . .	419
Sala & Co., Reuter Hufeland & Co. v. . . . .	548	Sawers, in re; ex parte Blain, <i>Bankruptcy</i> A 3, B 19 . . . . .	41, 45
Salinger, in re; ex parte Reya, <i>Bankruptcy</i> B 22 . . . . .	46	—, <i>Practice</i> U 6 . . . . .	460
Salisbury and Dorset Junction Railway Co., Fryer v. . . . .	320	—, <i>Statute</i> 4 . . . . .	608
Salisbury, Marquis of, and the Ecclesiastical Commissioners, in re, <i>Places of Worship Sites Act</i> . . . . .	426	—, in re; ex parte Chalmers, <i>Bankruptcy</i> O 3 . . . . .	78
— Reiner v. . . . .	258	Sawyer v. Goodwin, <i>Solicitor</i> 13 . . . . .	596
Salmon, Phillips v. . . . .	404	—, ex parte; in re Bowden, <i>Bankruptcy</i> P 10 . . . . .	79
		Saxby v. Easterbrook, <i>Libel</i> 14 . . . . .	334
		Saxe Weimar, Prince Edward of, Dawkins v. . . . .	334, 482
		Saxton v. Bartley, <i>Partition</i> 17 . . . . .	411
		— v. —, <i>Will Construction</i> D 4 . . . . .	660
		Scaltock v. Harston, <i>Ejectment</i> 1 . . . . .	236
		Scaramanga v. Stamp, <i>Shipping Law</i> D 10 . . . . .	577
		Scarborough, Corporation of, v. Rural Sanitary Authority of Scarborough, <i>Nuisance</i> 15 . . . . .	400
		Scarth, in re, <i>Settled Estates Acts</i> 3 . . . . .	565

	PAGE		PAGE
"Schiller," cargo ex, <i>The, Shipping Law</i>		Co. v. London, Chatham and Dover Rail-	
T 4 . . . . .	591	way Co., <i>Railway</i> 11 . . . . .	524
Schmidt v. Royal Mail Steamship Co.,		Severn, Pontifex v. . . . .	477
<i>Shipping Law</i> L 1 . . . . .	586	Sevin, Green v. . . . . 451, 452, 467, 606	
Schofield, ex parte; in re Frith, <i>Bank-</i>		Seward, Field v. . . . .	21
<i>ruptcy</i> D 31, M 45 . . . . .	54, 77	Sewell v. King; in re King, <i>Equitable As-</i>	
—, Sykes v. . . . .	410	<i>signment</i> 2 . . . . .	241
Scholes, in re; ex parte Royle, <i>Bank-</i>		— v. —, <i>Voluntary Settlement</i> 12 . . . . .	652
<i>ruptcy</i> A 9 . . . . .	41	—, in re; ex parte Sewell, <i>Bankruptcy</i>	
School Board for London, ex parte; in re		M 25 . . . . .	75
Murphy, <i>Elementary Education Acts</i> 7 . . . . .	238	Seymour v. Coulson, <i>County Court</i> 26 . . . . .	204
—, Bolton v. . . . .	300, 649	—, Dennis v. . . . .	489
— v. Faulconer, <i>Charity</i> 27 . . . . .	109	"Sfacteria," <i>The, Admiralty</i> 43 . . . . .	17
— v. Harvey, <i>Elementary Education</i>		Shaftoe's Charity, in re, <i>Endowed Schools</i>	
<i>Acts</i> 6 . . . . .	238	<i>Act</i> 2 . . . . .	240
— v. St. Mary, Islington, <i>Metropolis</i> 7 . . . . .	367	Shakespeare Walk School, in re, <i>Lands</i>	
Schrader, Higgs v. . . . .	600	<i>Clauses</i> Act 38 . . . . .	321
Schroeder v. Cleugh, <i>Practice</i> R 6 . . . . .	457	Shand v. Bowes, <i>Sale of Goods</i> 1 . . . . .	548
—, Henty v. . . . .	647	—, in re; ex parte Corbett, <i>Bankruptcy</i>	
Schuster v. Fletcher, <i>Shipping Law</i> L 6 . . . . .	588	D 20 . . . . .	52
Schwerdtfeger, in the goods of, <i>Probate</i> 10 . . . . .	502	Shanklin Local Board v. Miller, <i>Public</i>	
Scott, Hargreaves v. . . . .	388	<i>Health</i> 18 . . . . .	515
—, Hayward v. . . . .	408	Shanks, ex parte; in re Swinbank, <i>Bank-</i>	
—, Horder v. . . . .	20	<i>ruptcy</i> A 17 . . . . .	42
—, Leask v. . . . .	555	—, <i>Solicitor</i> 7 . . . . .	595
— v. Legg, <i>Metropolis</i> 4 . . . . .	366	Shannon, Davey v. . . . .	266
—, Padwick v. . . . .	473	Sharp v. Dawes, <i>Company</i> D 47 . . . . .	146
—, Pearson v. . . . .	611	— v. Lush, <i>Administration</i> 46 . . . . .	11
—, Reg. v. . . . .	425	— v. —, <i>Executor</i> 12 . . . . .	250
— v. Royal Wax Candle Co., <i>Practice</i>		Sharpe v. Metropolitan District Railway	
R 1 ( <i>Signing Judgment</i> ) . . . . .	456	Co., <i>Lands Clauses Act</i> 16 . . . . .	319
— v. —, <i>Practice</i> BB 18 ( <i>Service</i> ) . . . . .	480	— v. —, <i>Statute</i> 12 . . . . .	610
Scotter, Southwell v. . . . .	315	—, Newby v. . . . .	207
Scotto, Kelly v. . . . .	413	—, Quincey v. . . . .	342
Scrimgour, Harper v. . . . .	221	Sharpley v. Louth and East Coast Railway	
Scully v. Lord Dundonald, <i>Compromise</i> 3 . . . . .	173	Co., <i>Company</i> D 76 . . . . .	151
Scutt v. Freeman, <i>County Court</i> 13 . . . . .	203	Sharrock v. London and North Western	
Sea Insurance Co., Dixon v. . . . .	356	Railway Co., <i>County Court</i> 23 . . . . .	203
"Seaham," <i>The, Admiralty</i> 30 . . . . .	16	Shaw, ex parte; in re Diamond Rock	
Seaman v. Netherclift, <i>Libel</i> 5 . . . . .	333	Boring Co., <i>Company</i> D 82 . . . . .	152
— v. —, <i>Slander</i> 2 . . . . .	593	—, ex parte; in re Shaw, <i>Bill of Sale</i> 14 . . . . .	90
Sebright, Baker v. . . . .	654	—, in re; ex parte Piers, <i>Company</i> D 82 . . . . .	152
Seckham, Allen v. . . . .	338	—, in re; Topham v. Burgoyne, <i>Parti-</i>	
Second Commercial Benefit Building So-		<i>tion</i> 23 . . . . .	412
cietv (Lim.), in re, <i>Company</i> H 4 . . . . .	159	—, Brown v. . . . .	204
Secretary of State for India, Grant v. . . . .	212	— v. Ford, <i>Executory Devise</i> 1 . . . . .	252
—, Kinloch v. . . . .	97	— v. —, <i>Will Construction</i> I 7 . . . . .	672
Seddon, Apsden v. . . . .	371	— v. —, <i>Will Construction</i> P . . . . .	680
Sedgwick v. Ahearn, <i>Landlord and Tenant</i>		— v. Hudson, <i>Practice</i> FF 1 . . . . .	483
16 . . . . .	315	— v. Jersey, Earl of, <i>Injunction</i> 14 . . . . .	298
—, Chatfield v. . . . .	194	— v. Thompson, <i>Church and Clergy</i> 1 . . . . .	112
See, in the goods of, <i>Probate</i> 6 . . . . .	502	Sheard, Tolson v. . . . .	435, 633
Seear v. Lawson, <i>Bankruptcy</i> F 19 . . . . .	58	Shearman v. Robinson; in re Johnson,	
Seeley, Isaac v. . . . .	404	<i>Executor</i> 21 . . . . .	251
Selby v. Whittaker, <i>Will Construction</i> L 2 . . . . .	674	Sheehy, in re, <i>Divorce</i> 22 . . . . .	230
Selkirk, Sherwin v. . . . .	7	Sheen, ex parte; in re Winstanley, <i>Bank-</i>	
Sellar, Atwood v. . . . .	357, 588	<i>ruptcy</i> B 7 . . . . .	43
Sellon, Venour v. . . . .	565	—, ex parte; in re Wright, <i>Bankruptcy</i>	
Sendall, in re; ex parte Cochrane, <i>Bank-</i>		D 14 . . . . .	51
<i>ruptcy</i> M 14 . . . . .	74	Sheffield, ex parte; in re Austin, <i>Bank-</i>	
Senior v. Hereford, <i>Partition</i> 5 . . . . .	410	<i>ruptcy</i> H 14 . . . . .	65
Serjeant v. Dale, <i>Church</i> 26 . . . . .	116	— v. Eden, <i>Solicitor</i> 19 . . . . .	596
Sevenoaks Railway Co., Rouch v. . . . .	36	— v. Fulham Board of Works, <i>Metro-</i>	
—, Maidstone and Tunbridge Railway		<i>polis</i> 14 . . . . .	368

	PAGE		PAGE
Sheffield, Runtz v. . . . .	443	Sidgreaves v. Brewer; in re Fleetwood, <i>Trust A 5</i> . . . . .	629
Sheffield and Rotherham Joint-Stock Bank- ing Co., ex parte; in re Terrell; ex parte Terrell, <i>Bankruptcy K 7, L 4</i> . . . . .	66, 69	Siebert v. Findlater, <i>Trade Mark 23</i> . . . . .	624
Sheffield Silver and Nickel Plating Co. v. . . . .		Siggers, Gray v. . . . .	616
Unwin, <i>Company D 2</i> . . . . .	136	Silber, Sugg v. . . . .	423
Sheffield Wagon Co. v. Stratton, <i>Bankruptcy F 42</i> . . . . .	62	— Light Co. v. Silber, <i>Company E 5</i> . . . . .	155
Sheffield Waterworks Co. v. Wilkinson, <i>Waterworks 1</i> . . . . .	655	"Silesia," The, <i>Shipping Law T 3</i> . . . . .	591
Sheil, ex parte; in re Lonergan, <i>Mort- gage 7</i> . . . . .	378	Silkstone Fall Colliery Co., in re, <i>Company H 102</i> . . . . .	171
Shelford v. Louth and East Coast Railway Co., <i>Practice II 18</i> . . . . .	490	Sillence, in re; ex parte Roy, <i>Bankruptcy F 6</i> . . . . .	57
Shenton, Trowell v. . . . .	651	—, in re; ex parte Sillence, <i>Bankruptcy M 12</i> . . . . .	74
Shephard v. Beane, <i>Practice W 64</i> . . . . .	472	Silvester, Bulbeck v. . . . .	629
Shepherd, in the goods of, <i>Will Construc- tion E 13</i> . . . . .	664	Simeon v. Watson, <i>Contract 29</i> . . . . .	182
— v. Beetham, <i>Charity 1</i> . . . . .	106	Sim v. Anglo-American Telegraph Co., <i>Company D 91</i> . . . . .	153
— v. —, <i>Legacy 10</i> . . . . .	329	Simmins, Daun v. . . . .	458
Shepherd, ex parte; in re Dixon, <i>Bank- ruptcy A 8 (Jurisdiction)</i> . . . . .	41	— v. Shirley, <i>Mortgage 10</i> . . . . .	378
—, <i>Bankruptcy P 6 (Costs)</i> . . . . .	79	Simmons, ex parte; in re Lister, <i>Bank- ruptcy M 16</i> . . . . .	74
—, ex parte; in re Shepherd, <i>Bank- ruptcy M 29</i> . . . . .	76	—, in re; ex parte Kelly, <i>Bankruptcy A 16</i> . . . . .	42
—, <i>Husband and Wife 6</i> . . . . .	279	—, Mayor of Yarmouth v. . . . .	426
—, in re; ex parte Ball, <i>Bankruptcy D 37</i> . . . . .	55	— v. Storer, <i>Costs 83</i> . . . . .	199
—, in re; ex parte Turquand, <i>Bank- ruptcy D 37</i> . . . . .	55	Simpson, in re; ex parte Morgan, <i>Bank- ruptcy M 36</i> . . . . .	76
—, Dawson v. . . . .	194	—, Cooke v. . . . .	673
—, Dodds v. . . . .	306	— v. Denny, <i>Partition 3</i> . . . . .	409
— v. Kottgen, <i>Shipping Law L 2</i> . . . . .	587	—, Hargreaves v. . . . .	388
Sherry, Newton v. . . . .	250	—, Higginson v. . . . .	180
Sherwin v. Selkirk, <i>Administration 11</i> . . . . .	7	— v. London and North Western Rail- way Co., <i>Carrier 13</i> . . . . .	102
Sheward v. Lord Lonsdale, <i>Practice P 20</i> . . . . .	455	— v. —, <i>Damages 4</i> . . . . .	215
—, Reg. v. . . . .	104	—, Middleton v. . . . .	387
Shiers, in re; ex parte Shiers, <i>Bankruptcy L 26</i> . . . . .	72	— v. Thomson, <i>Marine Insurance 29</i> . . . . .	358
Shillingford, Penfold v. . . . .	617	Simpson, Davies & Sons' Trade Mark, in re, <i>Trade Mark 11</i> . . . . .	622
Shillito v. Thompson, <i>Municipal Corpora- tion 14</i> . . . . .	389	Sims, ex parte; in re Grubb, <i>Bankruptcy B 21</i> . . . . .	46
— v. —, <i>Nuisance 19</i> . . . . .	400	—, —, <i>Sheriff 5</i> . . . . .	572
Shipperdson's Trusts, in re, <i>Trustee Acts 6</i> . . . . .	637	Sinclair, Davidson v. . . . .	560
Shippey v. Grey, <i>Solicitor 43</i> . . . . .	600	Sinfield, Ward v. . . . .	248
Shireff v. Hastings; in re Hastings, <i>Ad- ministration 9</i> . . . . .	7	Singer Manufacturing Co. v. Clark, <i>Parer- broker</i> . . . . .	423
Shirley v. Simmins, <i>Mortgage 10</i> . . . . .	378	— v. Loog, <i>Practice HH 22</i> . . . . .	486
Short, Siddons v. . . . .	299	— v. Wilson, <i>Practice R 8</i> . . . . .	457
Shrimpton, James v. . . . .	683	— v. —, <i>Trade Mark 21</i> . . . . .	624
Shropshire Union Railway Co. v. Regina, <i>Mortgage 36</i> . . . . .	383	Singh v. Pattuk, <i>Water 3</i> . . . . .	655
Shubbrook, ex parte; in re Witt, <i>Packer</i> . . . . .	401	Singleton v. Tomlinson, <i>Trust E 3</i> . . . . .	635
Shuter, Ogg v. . . . .	552	— v. —, <i>Will Formalities 6</i> . . . . .	682
Shutt, Ballard v. . . . .	648	"Sinquasi," The, <i>Shipping Law R 5</i> . . . . .	590
Shuttleworth, Daubney v. . . . .	458	"Sir Charles Napier," The, <i>Admiralty 19</i> . . . . .	15
Sibley's Trusts, in re, <i>Will Construction N 3</i> . . . . .	677	Sir John Moore Gold Mining Co., in re, <i>Company H 28</i> . . . . .	162
Sickles v. Norris, <i>Practice K 4</i> . . . . .	450	"Sisters," The, <i>Admiralty C 40</i> . . . . .	17
Siddons v. Lawrence, <i>Costs 9</i> . . . . .	191	—, <i>Shipping Law E 29</i> . . . . .	582
— v. —, <i>Slander 4</i> . . . . .	593	Skeat v. Lindsay, <i>Limitations, Statute of, 20</i> . . . . .	342
— v. Short, <i>Injunction 21</i> . . . . .	299	Skelton, in re; ex parte Coates, <i>Bank- ruptcy M 37</i> . . . . .	77
Sidebotham, ex parte; in re Sidebotham, <i>Bankruptcy M 7</i> . . . . .	74	"Skibladner," The, <i>Shipping Law T 10</i> . . . . .	591
Sidebottom, Mellor v. . . . .	467	Slade's Case; Reg. v. Justices of Middlesex, <i>Mandamus 1</i> . . . . .	350
		Slade v. Tucker, <i>Production 7</i> . . . . .	506



	PAGE		PAGE
Slate Co., Tawell v. . . . .	383, 456	Smith v. Green, <i>Damages</i> 23 . . . . .	218
Slater, Mortimore v. . . . .	669	— v. Grindley, <i>Practice</i> B 56 . . . . .	445
—, Perkins v. . . . .	450	— v. Hill, <i>Limitations, Statute of</i> , 12 . . . . .	340
—, Spencer v. . . . .	267	— v. Hopkinson, <i>Probate</i> 37 . . . . .	505
Slater's Trusts, in re, <i>Unconscionable Bargain</i> 2 . . . . .	641	—, Keet v. . . . .	113
Slattery, Dublin, Wicklow and Wexford Railway Co. v. . . . .	396	— v. Kirby, <i>Shipping Law</i> E 30 . . . . .	582
Sloman v. New Zealand, Government of, <i>Practice</i> BB 7 . . . . .	479	—, Lovesey v. . . . .	570
Sly v. Sly, <i>Evidence</i> 5 . . . . .	244	— v. Morgan, <i>Administration</i> 3 . . . . .	6
Small, Sandys v. . . . .	19	— v. Musgrave, <i>Mines</i> 9 . . . . .	372
Smart, Hooper v. . . . .	6	—, Nugent v. . . . .	100
Smee v. Smee, <i>Will Formalities</i> 1 . . . . .	681	—, Parry v. . . . .	393
Smith, ex parte; Reg. v. Justices of Chertsey Division of Surrey, <i>Alehouse</i> 5 . . . . .	23	— v. Pilgrim, <i>Bankruptcy</i> B 18 . . . . .	45
—, ex parte; ex parte Langley; in re Bishop, <i>Bankruptcy</i> N 6 . . . . .	78	— v. —, <i>Practice</i> K 20 . . . . .	451
—, —, —, <i>Telegraph</i> 3 . . . . .	614	— v. Reg., <i>Colonial Law</i> 39 . . . . .	125
—, ex parte; in re Albezette, <i>Bankruptcy</i> M 13, P 3 . . . . .	74, 79	—, Reg. v. . . . .	23, 430
—, ex parte; in re Collie, <i>Bankruptcy</i> N 1 . . . . .	77	— v. Richardson, <i>Practice</i> U 5 . . . . .	460
—, in re, <i>Debtors Act</i> 1 . . . . .	220	—, Riding v. . . . .	592
—, in re; ex parte Bright, <i>Bankruptcy</i> F 7 . . . . .	57	— v. Robinson, <i>Vendor and Purchaser</i> 7 . . . . .	644
—, in re; ex parte Horsford, <i>Bankruptcy</i> M 44 . . . . .	77	— v. Union Bank of London, <i>Bill of Exchange</i> 2 . . . . .	81
—, in re; ex parte Kelly & Co., <i>Bankruptcy</i> B 3 . . . . .	43	—, Venables v. . . . .	363
—, in re; Hutchinson v. Ward, <i>District Registry</i> 3 . . . . .	226	— v. Walton, <i>Master and Servant</i> 18 . . . . .	363
—, in re; in re the "City of Mecca," <i>Admiralty</i> 5 . . . . .	14	— v. Webster, <i>Frauds, Statute of</i> 14 . . . . .	264
— v. Anderson, <i>Company</i> C 4 . . . . .	135	— v. —, <i>Specific Performance</i> 11 . . . . .	603
— v. Archibald, <i>Scotch Law</i> 19 . . . . .	560	— v. West Derby Local Board, <i>Highway</i> 16 . . . . .	276
— v. Barnham, <i>Nuisance</i> 18 . . . . .	400	— v. Wheatcroft, <i>Specific Performance</i> 14 . . . . .	603
—, Birmingham Estates Co. v. . . . .	472	— v. Widlake, <i>Landlord and Tenant</i> 1 . . . . .	313
— v. Brown, <i>Injunction</i> 16 . . . . .	298	— v. Wilson, <i>Practice</i> II 4 . . . . .	488
—, Brown v. . . . .	286, 291	—, Wilson v. . . . .	198
— v. Buller, <i>Costs</i> 96 . . . . .	200	— v. Woolston, <i>Parliament</i> 25 . . . . .	407
— v. Butcher, <i>Will Construction</i> H 27 . . . . .	670	Smith's Case; in re Norwich and Norfolk Provident Permanent Benefit Building Society, <i>Friendly Society</i> 1 . . . . .	267
— v. Chadwick; Robinson v. Chadwick, <i>Practice</i> G 2 . . . . .	448	—; in re South Durham Iron Co., <i>Company</i> D 16 . . . . .	139
—, Chambers v. . . . .	561	Smith's Estate, in re; Clifford v. Washington, <i>Husband and Wife</i> 7 . . . . .	279
— v. Charrington, <i>Practice</i> B 60 . . . . .	445	—, <i>Tenant for Life</i> 7 . . . . .	616
— v. Cheese, <i>Bill of Sale</i> 26 . . . . .	91	—, in re, <i>Will Construction</i> E 7 . . . . .	663
— v. Conder, <i>Advancement</i> 5 . . . . .	21	Smith's Trusts, in re, <i>Will Construction</i> H 2 . . . . .	667
— v. Cook, <i>Agistment</i> . . . . .	22	Smith, Fleming & Co., in re; ex parte Harding, <i>Principal and Agent</i> 2 . . . . .	497
— v. —, <i>Negligence</i> 1 . . . . .	391	—, in re; ex parte Kelly & Co., <i>Bankruptcy</i> B 3 . . . . .	43
— v. Crabtree, <i>Legacy</i> 6 . . . . .	329	—, <i>Fraudulent Conveyance</i> 4 . . . . .	267
— v. —, <i>Will Construction</i> H 6 . . . . .	667	Smithers, Whithead v. . . . .	658
— v. Day, <i>Injunction</i> 30 . . . . .	301	Smyth v. Smyth, <i>Will Construction</i> E 3 . . . . .	662
— v. Dobbin, <i>Practice</i> C 4 . . . . .	446	—, in re, <i>Lunatic</i> 9 . . . . .	347
— v. Egmont, Earl of, <i>Auction and Auctioneer</i> 4 . . . . .	37	Sneary v. Abdy, <i>Bankruptcy</i> L 20 . . . . .	71
— v. —, <i>Specific Performance</i> 24 . . . . .	605	— v. —, <i>Sheriff</i> 4 . . . . .	571
— v. —, <i>Vendor and Purchaser</i> 27 . . . . .	647	Sneesby v. Lancashire and Yorkshire Railway Company, <i>Negligence</i> 14 . . . . .	394
—, Eyre v. . . . .	475	Sneezum, in re; ex parte Davies, <i>Bankruptcy</i> F 45 . . . . .	62
—, Fisher v. . . . .	358	Snell, in re, <i>Solicitor</i> 28, 30 . . . . .	598
—, Fletcher v. . . . .	372	Snelling, Nevill v. . . . .	641
—, Gilbert v. . . . .	410, 467	Snelus, Pullen v. . . . .	266
— v. Great Western Railway Co., <i>Lands Clauses Act</i> 11 . . . . .	318	Snickerifabrik, Westman, v. . . . .	480
—, Great Western Railway Co. v. . . . .	325, 523	Snowdon Slate Quarries, Elias v. . . . .	370, 653

	PAGE		PAGE
Solicitor, in re a, <i>Attachment</i> 15 (45 Law J. Rep. C.P. 86)	37	Spiller, Plimpton v.	418, 419, 423
—, <i>Attachment</i> 17 (49 Law J. Rep. Chanc. 295)	37	Spon Lane Co. v. Baker, <i>Coal Mines</i> 2	119
—, <i>Debtors Act</i> 6 (Ibid.)	220	Spradbury's Mortgage, in re, <i>Vendor and Purchaser</i> 36	649
Solomon, in re; ex parte Dressler, <i>Bankruptcy</i> F 43	62	Spratt's Patent v. Ward & Co., <i>Practice</i> HH 21	486
Somerset and Walker's Patent, in re, <i>Patent</i> 15	420	Sprunt v. Pugh, <i>Practice</i> AA 1	478
Somervail, Cree v.	143	— v. —, <i>Receiver</i> 16	538
Soper v. Basingstoke, Mayor of, <i>Municipal Corporation</i> 5	387	Spurling, Anglo-American Telegraph Co. v.	153
"Sophia Cook," The, <i>Admiralty</i> 34	16	Spurr v. Hall, <i>Practice</i> V 2	464
Sottomayer v. De Barros, <i>Divorce</i> 13	228	Spurway's Settled Estates, in re, <i>Settled Estates Acts</i> 6	565
— v. —, <i>Domicil</i> 5	234	Spurway, Prowse v.	360
South Durham Iron Co., in re; Smith's Case, <i>Company</i> D 16	139	Squier, Gale v.	647
South Eastern Railway Co., Burke v.	103	Stace v. Gage, <i>Partition</i> 2	409
—, Cohen v.	102	Stacey v. Lintell, <i>Bastardy</i> 1	80
—, Gabell v.	101	Stachlschmidt v. Wilford, <i>Practice</i> G 3	448
—, Hunt v.	525	Stallard v. Marks, <i>Alehouse</i> 16	24
—, Lambkin v.	121	Stallybrass, Balmer & Co., Hood v.	127
—, Le Tailleur v.	345	Stamp, Scaramanga v.	577
—, Parker v.	101	Standard Bank of British South Africa v. Stokes, <i>Metropolis</i> 1	366
— v. Railway Commissioners, <i>Railway</i> 37	531	—, <i>Party Wall</i>	417
—, Saunders v.	526	Standard Discount Co. v. La Grange, <i>Practice</i> B 30	441
South Kensington Hotel Co., Luke v.	383, 451	Standard Investment Co., Berkeley v.	168, 454
South Llanharan Colliery Co., in re; ex parte Jegon, <i>Company</i> D 21, 36	140, 143	Standerling v. Hall, <i>Partition</i> 22	411
South Wales Atlantic Steamship Co., <i>Company</i> H 15	160	Stanes v. Stanes, <i>Divorce</i> 21	229
Southampton Gas Co. v. Southampton Union, <i>Arbitration</i> 25	33	Stanhope Silkstone Collieries Co., in re, <i>Attachment</i> 12	36
Southwark and Vauxhall Water Co. v. Quick, <i>Production</i> 5	506	Stanlake & Son, in re; ex parte Priestley, <i>Debtors Act</i> 19	222
Southwell v. Bowditch, <i>Broker</i> 1	97	Stanley, Craven v.	676
— v. —, <i>Principal and Agent</i> 12	494	— v. Stanley, <i>Husband and Wife</i> 32	283
— v. Scotter, <i>Landlord and Tenant</i> 15	315	Stannanought v. Hazeldine, <i>Municipal Corporation</i> 10	388
Southwold Railway Company's Bill, in re; ex parte Depositors, <i>Parliamentary Deposit</i> 2	408	Stansfield, in re; Stansfield v. Stansfield, <i>Will Construction</i> H 3	667
Sowler, Purcell v.	333	Stantial, Bowyer v.	99
Sowton, Wilberforce v.	203	Stanton, Baring v.	496
Spaight v. Farnworth, <i>Shipping Law</i> K 5	586	— v. Richardson, <i>Shipping Law</i> D 15	577
Spalding, Reinhardt v.	621	Stapleford Colliery Co., in re; Barrow's Case, <i>Company</i> D 62	148
Spanton, in re; ex parte Jarvis, <i>Bankruptcy</i> C 14	48	—, in re; ex parte Chatteris, <i>Company</i> D 13	138
Sparks, in re, <i>Trustee Acts</i> 20	638	Staples v. Young, <i>Costs</i> 2	190
Speakman, in re; Unsworth v. Speakman, <i>Will Construction</i> H 7	667	Stapleton, ex parte; in re Nathan, <i>Sale of Goods</i> 21	552
Spear v. Bodmin Union, <i>Rates</i> 11	534	"Star of India," The, <i>Damages</i> 11	216
Speer's Trusts, in re, <i>Lands Clauses Act</i> 22	320	—, <i>Shipping Law</i> E 28	582
Spence, Davis v.	489	State Line Steamship Co., Steel v.	577
—, Pearson v.	125	Stead v. Mellor, <i>Trust</i> A 11	630
Spencer v. Clarke, in re Clarke, <i>Insurance</i> 3	302	Stead's Mortgaged Estates, in re, <i>Lands Clauses Act</i> 35	321
— v. —, <i>Mortgage</i> 22	380	Steamship Co. "Norden" v. Dempsey, <i>Evidence</i> 8	243
— v. Harrison, <i>Parliament</i> 12	404	Steel v. Lester, <i>Negligence</i> 21	395
— v. Slater, <i>Fraudulent Conveyance</i> 3	267	—, Reg. v.	210
Sperling v. Rochfort; in re Van Hagen, <i>Power</i> 12	433	— v. State Line Steamship Co., <i>Shipping Law</i> D 14	577
Spice v. Bacon, <i>Innkeeper</i> 3	301	Steel's Case; in re Whitley & Co., <i>Company</i> D 80	151
Spiers, Poussard v.	183	Steele, Hawley v.	299
Spike v. Harding, <i>Boundaries</i>	97	—, v. McKinlay, <i>Bill of Exchange</i> 11	83
Spiller v. Paris Skating Rink Co., <i>Company</i> A 2	131	Steggles, Moody v.	235, 490

	PAGE		PAGE
Stenning, Child v. . . . .	216, 460, 487	Straker v. Kidd, <i>Shipping Law</i> G 3 . . .	584
Stephen, Aiton v. . . . .	272, 559, 608, 620	Strangeways, Campbell v. . . . .	223
Stephens, ex parte, <i>Trade Mark</i> 1 . . .	621	"Strathnaver," The, <i>Shipping Law</i> V 2 . .	592
—, ex parte; in re Lavies, <i>Bankruptcy</i> F 40 . . .	62	Stratton, Sheffield Waggon Co. v. . . . .	62
—, <i>Fiatures</i> 4 . . . . .	256	Street v. Gover; Gover v. Street, <i>Practice</i> W 69 . . . . .	473
—, ex parte; in re Pearson, <i>Voluntary Settlement</i> 9 . . . . .	652	Strelley v. Pearson, <i>Costs</i> 38 . . . . .	194
—, Montreal, Corporation of, v. . . . .	121	— v. —, <i>Lease</i> 6 . . . . .	324
Stephenson, Dawkins v. . . . .	334, 482	— v. —, <i>Practice</i> O 3 . . . . .	453
Stephenson's Case; in re British, Colonial and Foreign Property Insurance Corporation, <i>Company</i> D 5 . . . . .	137	Stribley v. Imperial Marine Insurance Co., <i>Marine Insurance</i> 2 . . . . .	352
Stern, Bessela v. . . . .	246	Stringer v. Sykes, <i>Locomotive</i> 1 . . . . .	344
—, Williams v. . . . .	94	Stringer's Estate, in re; Shaw v. Jones-Ford, <i>Will Construction</i> I 7 . . . . .	672
Steuart v. Gladstone, <i>Evidence</i> 23, 32 . .	246, 247	Strong, Bank of British North America v. 332, 349	452, 508
— v. —, <i>Partnership</i> 9 . . . . .	414	Strousberg, Republic of Costa Rica v. . .	674
— v. —, <i>Practice</i> K 25 . . . . .	452	Strugnell, Bolding v. . . . .	217
Stevens, Bray v. . . . .	9	Stuart, Sanders v. . . . .	161
— v. Emson, <i>Alehouse</i> 12 . . . . .	24	Stuart's Trusts, in re, <i>Company</i> H 26 . . .	477
—, Montreal, Mayor of, v. . . . .	121	Stubble v. Boyle, <i>Practice</i> Y 3 . . . . .	10
— v. Sampson, <i>Libel</i> 9 . . . . .	333	Stubb's Estate, in re; Hanson v. Stubbs, <i>Administration</i> 39 . . . . .	483
Stevenson, De Hart v. . . . .	463	—, <i>Practice</i> GG 6 . . . . .	571
— v. McLean, <i>Contract</i> 24 . . . . .	181	Sturgeon, Burton v. . . . .	397
— v. Watson, <i>Arbitration</i> 13 . . . . .	27	Sturges v. Bridgman, <i>Nuisance</i> 1 . . . .	245
Stewart, Layland v. . . . .	187	Sturla v. Freccia, <i>Evidence</i> 12 . . . . .	300
— v. Stewart, <i>Will Construction</i> M 2 . .	676	— v. —, <i>Injunction</i> 28 . . . . .	384
—, in re; ex parte Pottinger, <i>Bankruptcy</i> D 40 . . . . .	55	Sugden, British Empire Mutual Life Assurance Society v. . . . .	246
Stirling v. Du Barry, <i>Practice</i> B 47 . . .	443	— v. Lord St. Leonards, <i>Evidence</i> 25 . .	505
—, Peter v. . . . .	127	— v. —, <i>Probate</i> 33 . . . . .	423
Stirling Maxwell v. Cartwright, <i>Administration</i> 30 . . . . .	9	Sugg v. Silber, <i>Patent</i> 33 . . . . .	134
Stock, Ashton v. . . . .	370	Sullivan v. Mitcalfe, <i>Company</i> B 3 . . . .	17
Stockton Iron Furnace Co., in re, <i>Mortgage</i> 1 .	377	"Sully," The, <i>Admiralty</i> 42 . . . . .	589
—, <i>Practice</i> B 23, 37 . . . . .	440, 442	—, <i>Shipping Law</i> O 3 . . . . .	627
—, in re; ex parte Chapman, <i>Company</i> D 94 . . . . .	154	Summerhayes, Paul v. . . . .	6
Stokes v. Bridgman, <i>Power</i> 16 . . . . .	434	Summers, in re; Boswell v. Gurney, <i>Administration</i> 6 . . . . .	271, 389
— v. Grant, <i>Practice</i> W 8 . . . . .	466	Sunderland, Corporation of, A. G. v. . . .	271
—, Standard Bank of British South Africa v. . . . .	366	Sunderland Gas Co., Thompson v. . . . .	432
Stokoe, in re; ex parte Moore, <i>Bankruptcy</i> F 46 . . . . .	62	Susanni's Trusts, in re, <i>Power</i> 6 . . . . .	23, 500
Stone v. City and County Bank; Collins v. Same, <i>Company</i> D 78 . . . . .	151	Surrey Justices, Reg. v. . . . .	500
—, Howes v. . . . .	59	Surrey Treasurer, Mullins v. . . . .	556
— v. Ocean Marine Insurance Co., Limited, of Gothenburg, <i>Marine Insurance</i> 10 .	353	Sutherland, Duke of, v. Ross, <i>Salmon Fishery</i> 4 . . . . .	639
— v. Yeovil, Corporation of, <i>Lands Clauses Act</i> 6 . . . . .	317	Sutton's Trusts, in re, <i>Trustee Relief Act</i> 4 .	675
Stoner v. Todd, <i>Patent</i> 7 . . . . .	419	Swabey v. Goldie, <i>Will Construction</i> L 9 .	410
Stooke v. Taylor, <i>Costs</i> 5 . . . . .	190	Swaine v. Denby, <i>Partition</i> 11 . . . . .	218
Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Co., <i>Shipping Law</i> E 10 . . . . .	579	—, Hart v. . . . .	361
Storer, Simmons v. . . . .	199	Swainson v. North Eastern Railway Co., <i>Master and Servant</i> 5 . . . . .	588
Storey v. Waddle, <i>Practice</i> GG 8 . . . .	483	Swann v. Barber, <i>Shipping Law</i> M 3 . . .	18
—, Harvard v. . . . .	447	"Swansea," The, v. The "Condor," <i>Admiralty</i> 58 . . . . .	580
Storforth Lane Colliery Co., <i>Company</i> H 13 .	160	— v. —, <i>Shipping Law</i> E 13 . . . . .	28
Storr, Newmarch v. . . . .	8	Swansea Bank v. Thomas, <i>Apportionment</i> 1 .	445
Story, ex parte, <i>Merchant Shipping Acts</i> 4 .	365	—, A. G. v. . . . .	316
Strachan, Bridges v. . . . .	673	—, Richards v. . . . .	453
—, in re; ex parte Cooke, <i>Broker</i> 2 . . .	98	Swansea, Mayor of, v. Quirk, <i>Practice</i> P 1 .	268
—, <i>Principal and Agent</i> 14 . . . . .	494	Swansea Royal Friendly Society, in re; ex parte West of England and Swansea District Bank, <i>Friendly Society</i> 2 . . .	88
		—, ex parte; in re West of England Bank, <i>Banking Company</i> 2 . . . . .	

	PAGE		PAGE
Swansea Shipping Co. v. Duncan, <i>Practice</i>		Taylor, ex parte; in re Railway Steel and	
W 82	475	Plant Co., <i>Company</i> H 47	164
Swansea Urban Sanitary Authority, Morgan		—, in re, <i>Infant</i> 22	294
v.	635	—, Ames v.	434
Swanston v. Twickenham Local Board,		—, Ashley v.	468
<i>Public Health Acts</i> 33	518	— v. Batten, <i>Production</i> 16	507
Sweetapple v. Horlock, <i>Covenant</i> 1	205	— v. Bowers, <i>Fraud</i> 3	261
Sweeting v. Prideaux, <i>Will Construction</i> I		— v. —, <i>Trover</i> 2	627
13	673	—, Burgoine v.	446
Swinbanks, ex parte; in re Shanks, <i>Bank-</i>		—, Charles v.	362
<i>ruptcy</i> A 17	42	— v. Coenen, <i>Voluntary Settlement</i> 8	652
—, <i>Solicitor</i> 7	595	— v. Eckersley, <i>Bankruptcy</i> F 28	60
Swindell v. Birmingham Syndicate, <i>Prac-</i>		— v. —, <i>Receiver</i> 9	537
<i>tices</i> B 24 ( <i>Appeal</i> )	441	—, Ford v.	203
— v. —, <i>Practice</i> HH 16 ( <i>Trial</i> )	486	— v. Goodwin, <i>Highway</i> 24	277
Swindon, Marlborough and Andover Rail-		— v. Graham, <i>Scotch Law</i> 31	561
way Co., Wright v.	448	— v. Grange, <i>Partition</i> 1	409
Swindon New Town Local Board, Reg. v.	316, 318	—, Griffiths v., <i>Action</i> 8	5
Swindon Waterworks Co. v. Wilts and		— v. Jones, <i>Lord Mayor's Court</i> 1	345
Herks Canal Co., <i>Water</i> 2	654	— v. —, <i>Practice</i> B 41	443
Swinton v. Bailey, <i>Will Formalities</i> 18	683	— v. Keily, <i>Settled Estates Acts</i> 2	564
Swire v. Francis, <i>Fraud</i> 1	260	— v. Lambert, <i>Legacy</i> 23	331
— v. —, <i>Principal and Agent</i> 3	492	— v. —, <i>Will Construction</i> O 4	679
— v. Redman, <i>Principal and Surety</i> 17	500	— v. McKeand, <i>Bill of Sale</i> 36	92
Sworder v. Dear; Dear v. Sworder, <i>Practice</i>		—, Maden v.	678
W 76	474	— v. Metham Local Board, <i>Highway</i> 17	276
Syers v. Syers, <i>Partnership</i> 3	412	—, Morant v.	310
Sykes v. Beadon, <i>Lottery Acts</i> 1	346	— v. Neville, <i>Copyright</i> 9	187
— v. —, <i>Voluntary Association</i> 2	650	— v. Nicholls, <i>Prohibition</i> 2	510
— v. Firth, <i>Practice</i> GG 13 ( <i>Transfer of</i>		— v. Oldham, Corporation of, <i>Public</i>	
<i>Actions</i> )	484	<i>Health Act</i> 29	517
— v. —, <i>Practice</i> HH 15 ( <i>Trial</i> )	486	— v. —, <i>Statute</i> 10	609
— v. Howarth, <i>Patent</i> 22, 32	422, 423	— v. Oliver, <i>Production</i> 14	507
—, Reg. v.	22	— v. St. Helens, <i>Deed</i> 1	222
— v. Schofield, <i>Partition</i> 8	410	—, Stooke v.	190
—, Stringer v.	344	— v. Taylor, <i>Settled Estates Acts</i> 2	564
Symes v. Ouvillier, <i>Colonial Law</i> 7	121	— v. —; in re Wilford's Estate, <i>Joint</i>	
Symmons, ex parte; in re Jordan, <i>Bill of</i>		<i>Tenants</i>	307
<i>Sale</i> 44	93	—, Thatcher v.	5
Symons v. Rees, <i>County Court</i> 1	201	—, Tribe v.	496
		— v. Witham, <i>Evidence</i> 10	244
T —, in re, <i>Trustee Relief Act</i> 10	640	Taylor's Case; in re Ambrose Lake Tin and	
Tabor v. Brooks, <i>Trust</i> D 11	634	Copper Co., <i>Company</i> D 60, H 76	148, 168
—, Hudson v.	212	—, <i>Practice</i> B 52	443
Taite v. Gosling, <i>Covenant</i> 23	209	Tea Company, The, Hodson v.	161
Talbot v. Frere, <i>Executor</i> 7	249	Teasdale v. Braithwaite, <i>Voluntary Settle-</i>	
Tal y Drws Slate Co., in re; Mackley's Case,		<i>ment</i> 3	651
<i>Company</i> H 56	166	Telford, Lows v.	349
"Talca," The, <i>Admiralty</i> 11	14	Temple Church Lands, in re, <i>Lands Clauses</i>	
Tamplin v. James, <i>Specific Performance</i> 16	604	<i>Act</i> 28	320
Tappenbeck, in re; ex parte Banner, <i>Bill of</i>		Tenby, Mayor of, Williams v.	388
<i>Exchange</i> 21	85	Tennant, ex parte; in re Howard, <i>Partner-</i>	
Tapley v. Eagleton, <i>Will Construction</i> F 1	664	<i>ship</i> 4	413
Tarry v. Ashton, <i>Negligence</i> 2	391	— v. Rawlins, <i>County Court</i> 18	203
Tassell v. Ovenden, <i>Alcouse</i> 14	24	Tennant's Case; in re City of Glasgow	
Tatlock, Reg. v.	239	Bank, <i>Company</i> D 75	150
Taunton v. Morris, <i>Husband and Wife</i> 18	281	Tenterden Union v. Saint Mary, Islington,	
Tawell v. Slate Co., <i>Mortgage</i> 40	383	<i>Poor Law</i> 9	428
— v. —, <i>Practice</i> Q 6	456	Tepper, Hall v.	446
Taylor, ex parte; ex parte Moss; ex parte		—, Turner v.	449
Ambrose Tin and Copper Mining Co.,		—, Widgery v.	280, 446, 449, 461
<i>Company</i> D 23	140	Terraz, in re, <i>Extradition</i> 1	252
—, ex parte; in re Grason, <i>Bankruptcy</i>		Terrell, in re; ex parte Terrell; ex parte	
D 12	50	Sheffield and Rotherham Joint-Stock	
		Banking Co., <i>Bankruptcy</i> K 7, L 4	66, 69

## TABLE OF CASES.

757

	PAGE		PAGE
Terrell, Willcock v. . . . .	478	Thornburgh, Weatherall v. . . . .	619
Terry, Crew v. . . . .	48	Thorne, ex parte; in re Jones, <i>Bankruptcy</i>	
Tewkesbury Election Petition, in re, <i>Parliament</i> 4 . . . . .	403	B 28 . . . . .	46
Thacker v. Hardy, <i>Contract</i> 13 . . . . .	180	Thorp v. Houldsworth, <i>Practice</i> W 9 . . . . .	466
—, Manson v. . . . .	644	Threapleton, in re; ex parte Carter, <i>Bill of Sale</i> 31 . . . . .	91
Thames and Mersey Marine Insurance Co., Pickup v. . . . .	357	Threlfall, in re; ex parte Williamson, <i>Bankruptcy</i> B 10 . . . . .	44
Tharp, in re, <i>Lunatic</i> 15 . . . . .	347	Thrift, in re; ex parte Kimber, <i>Bankruptcy</i> F 2 . . . . .	56
—, in the goods of, <i>Husband and Wife</i> 27 . . . . .	282	— v. Youle, <i>Shipping Law</i> B 1 . . . . .	573
—, <i>Probate</i> 15 . . . . .	503	Throckmorton, in re; ex parte Ryston, <i>Annuit</i> 5 . . . . .	27
Tharsis Sulphur and Copper Co. v. McElroy, <i>Contract</i> 33 . . . . .	183	— in re; ex parte Paterson, <i>Bankruptcy</i> F 47 . . . . .	62
Thatcher, Palmer v. . . . .	23	Thwaites, Denny v. . . . .	276, 349
— v. Taylor, <i>Action</i> 8 . . . . .	5	Tibbetts, Darrell v. . . . .	305
Théberge v. Laudry, <i>Colonial Law</i> 14 . . . . .	122	Tiias v. Byers, <i>Shipping Law</i> F 1 . . . . .	582
Theed v. Debenham, <i>Light and Air</i> 6 . . . . .	338	Tildesley v. Harper, <i>Practice</i> W 32 . . . . .	468
"Theodor Körner," The, <i>Admiralty</i> 41 . . . . .	17	Timms, in re, <i>Practico</i> GG 7 . . . . .	483
— <i>Production</i> 10 . . . . .	507	Tinkler's Estate, in re, <i>Tenant for Life</i> 4 . . . . .	615
This v. Byers, <i>Shipping Law</i> F 1 . . . . .	582	Tinling, Parsons v. . . . .	191
Thoday, ex parte; in re Ellis, <i>Bankruptcy</i> M 4 . . . . .	73	Tipton Green Colliery Co. v. Tipton Moat Colliery Co., <i>Mortgage</i> 59 . . . . .	386
Thomas v. Atherton, <i>Partnership</i> 18 . . . . .	414	"Tirzah," The, <i>Shipping Law</i> E 12 . . . . .	580
— v. Birmingham Canal Co., <i>Negligence</i> 10 . . . . .	392	Titmarsh, Barton v. . . . .	510
— v. Brown, <i>Estoppel</i> 5 . . . . .	242	Tobin, Ruston v. . . . .	468, 486
— v. Ellis, <i>Practice</i> U 38 . . . . .	464	Todd, Kipling v. . . . .	156
— v. Elsom; in re Elsom, <i>Costs</i> 56 . . . . .	196	—, Northumberland, Duke of, v. . . . .	449
— v. Lewis, <i>Shipping Law</i> U . . . . .	592	—, Stoner v. . . . .	419
—, Morgan v. . . . .	330	—, in re, <i>Alehouse</i> 6 . . . . .	23
— v. Price, <i>Husband and Wife</i> 31 . . . . .	283	Toffield, Greaves v. . . . .	27, 381
— Swansea Bank v. . . . .	28	Toleman, in re; ex parte Bramble, <i>Solicitor</i> 35 . . . . .	599
— v. Williams, <i>Libel</i> 15 . . . . .	334	Tolson v. Sheard, <i>Power</i> 23 . . . . .	435
Thompson, in re; ex parte Williams, <i>Bankruptcy</i> D 39 . . . . .	55	— v. —, <i>Trust</i> D 6 . . . . .	633
—, <i>Bill of Sale</i> 8 . . . . .	89	Tombs v. Magrath, <i>Volunteer Act</i> . . . . .	653
— v. Bennett; in re Poole's Estate, <i>Ecclesiastical</i> 6 . . . . .	249	Tomey, Crossley v. . . . .	422
— v. —, <i>Husband and Wife</i> 45 . . . . .	284	Tomkins v. Colthurst, <i>Administration</i> 23 . . . . .	8
—, Dudgeon v. . . . .	278, 423	— v. Saffery; ex parte Saffery; in re Cooke, <i>Bankruptcy</i> B 1 . . . . .	42
— v. Gardiner, <i>Broker</i> 4 . . . . .	98	— v. —, <i>Stock Exchange</i> 1 . . . . .	610
—, Goddard v. . . . .	482	Tomkinson, Guardians of Nottingham Union v. . . . .	245
—, Randall, Saunders & Co. v. . . . .	30	Tomline, A. G. v. . . . .	185, 211, 376, 457
—, Shaw v. . . . .	112	— v. Regina, <i>Petition of Right</i> 2 . . . . .	425
—, Shillito v. . . . .	389, 400	Tomlinson v. Bullock, <i>Bastardy</i> 3 . . . . .	80
— v. Sunderland Gas Co., <i>Gasworks Clauses Acts</i> 2 . . . . .	271	— v. —, <i>Statute</i> 1 . . . . .	608
—, Wingrove v. . . . .	464	—, Singleton v. . . . .	635, 682
— v. Woodfine; in re Thompson, <i>Practice</i> K 16 . . . . .	451	Toogood, Crawford v. . . . .	604
Thompson's Trusts, in re, <i>Will Construction</i> H 23 . . . . .	669	Tooth, Hudson v. . . . .	116
Thomson, Dudgeon v. . . . .	278, 423	Toomer v. London, Chatham and Dover Railway Co., <i>Railway</i> 35 . . . . .	530
— v. Eastwood, <i>Costs</i> 25 . . . . .	193	Tootal's Estate, in re; Hankin v. Kilburn, <i>Will Construction</i> E 18 . . . . .	664
— v. —, <i>Limitations, Statute of</i> , 6 . . . . .	339	Topham v. Burgoyne; in re Shaw, <i>Partition</i> 23 . . . . .	412
— v. —, <i>Trust</i> C 2 . . . . .	631	Torbain, Edinburgh Street Tramways Co. v. . . . .	561
—, Simpson v. . . . .	358	Torrens, Lester v. . . . .	25
Thomson's Estate, in re; Herring v. Barrow, <i>Will Construction</i> I 10 . . . . .	672	Tottenham v. Barry, <i>Practice</i> BB 14 . . . . .	480
Thoren v. Attorney-General, <i>Scottish Law</i> 15 . . . . .	559	—, Vicar, &c. of, Reg. v. . . . .	650
Thorley's Cattle Food Co. v. Massam, <i>Injunction</i> 4 . . . . .	297	— Local Board of Health v. Rowell, <i>Public Health</i> 26 . . . . .	516
— v. — <i>Libel</i> 13 . . . . .	334	— (No. 2), <i>Public Health</i> 27 . . . . .	516
Thorn v. London, Corporation of, <i>Contract</i> 38 . . . . .	184	Tottie, English v. . . . .	506

	PAGE		PAGE
Tourret v. Cripps, <i>Frauds, Statute of</i> , 10 . . . . .	263	Turner, Crush v. . . . .	439
Tovey, in the goods of, <i>Will Formalities</i> 7 . . . . .	682	— v. Great Western Railway Company, <i>County Court</i> 17 . . . . .	203
Townsend, in re; ex parte Hall, <i>Bankruptcy</i> F 21 . . . . .	59	— v. —, <i>Practice</i> B 7 . . . . .	439
Tozer v. Lake, <i>Hastard</i> 2 . . . . .	80	—, Hankin v. . . . .	505
Trail v. Jackson, <i>Practice</i> B 26 . . . . .	441	— v. Hednesford Gas Co., <i>Practice</i> W 68 . . . . .	473
— v. —, <i>Tenant for Life</i> 14 . . . . .	617	— v. Heyland, <i>Costs</i> 10 . . . . .	191
Travers v. Blundell, <i>Will Construction</i> D 2 . . . . .	660	—, Howes v. . . . .	387
Treadgold, Reg. v. . . . .	239	— v. Samson, <i>Bill of Exchange</i> 15 . . . . .	84
Treberge v. Laundry, <i>Colonial Law</i> 14 . . . . .	122	— v. Tepper, <i>Practice</i> I 3 . . . . .	449
Treffry, Meredith v. . . . .	205, 438, 667	— v. Turner; Hall v. Turner, <i>Release</i> . . . . .	540
Tregent, Butter v. . . . .	468	Turner and Skelton, in re, <i>Vendor and Purchaser</i> 9 . . . . .	645
Treherne, Highton v. . . . .	441	Turner's Claim; in re Rio Grande Do Sul Steamship Co., <i>Shipping Law</i> M 1 . . . . .	588
Treleaven v. Bray, <i>Practice</i> W 75 . . . . .	474	Turquand, ex parte; in re Fothergill, <i>Bankruptcy</i> K 20 . . . . .	68
Trestail v. Mason, <i>Administration</i> 13 . . . . .	7	—, <i>Principal and Surety</i> 10 . . . . .	498
Trethewy v. Helyar, <i>Administration</i> 17 . . . . .	8	—, ex parte; in re Shepherd, <i>Bankruptcy</i> D 37 . . . . .	55
— v. —, <i>Legacy</i> 2 . . . . .	328	— v. Fearon, <i>Practice</i> U 22 ( <i>Parties</i> ) . . . . .	463
— v. —, <i>Will Construction</i> H 32 . . . . .	670	— v. —, <i>Practice</i> W 2 ( <i>Pleading</i> ) . . . . .	466
Trethowan, in re; ex parte Tweedy, <i>Bill of Sale</i> 9 . . . . .	89	— v. Wilson, <i>Practice</i> A 2 . . . . .	437
—, <i>Fixtures</i> 1 . . . . .	256	Tussaud v. Tussaud; in re Tussaud's Estate, <i>Portions</i> 4 . . . . .	431
Trevor, ex parte; in re Burghardt, <i>Bankruptcy</i> B 8 . . . . .	43	Tweddell, Lyon v. . . . .	454
Tribe, Green v. . . . .	684	Tweed, Huggons v. . . . .	473
— v. Taylor, <i>Principal and Agent</i> 23 . . . . .	496	Tweedale v. Tweedale, <i>Power</i> 7 . . . . .	432
Trimble v. Hill, <i>Contract</i> 15 . . . . .	180	Tweedy, ex parte; in re Trethowan, <i>Bill of Sale</i> 9 . . . . .	89
Trimmer, Martin v. . . . .	636	—, <i>Fixtures</i> 1 . . . . .	256
Trinsmaran Iron Co., Peek v. . . . .	162, 537	Twickenham Local Board, Swanston v. . . . .	518
Trist, Watney v. . . . .	413, 417	"Two Brothers," The, <i>Admiralty</i> 23 . . . . .	15
Troke, Coultbert v. . . . .	25	Twycross v. Dreyfus, <i>Foreign Government</i> 1 . . . . .	257
Trood, Roach v. . . . .	435	— v. Grant, <i>Action</i> 1 . . . . .	3
Trotman, Brown v. . . . .	600	— v. —, <i>Company</i> A 3 . . . . .	131
Trotter v. Maclean, <i>Evidence</i> 13 . . . . .	245	— v. —, <i>Practice</i> U 31 . . . . .	464
— v. —, <i>Mines</i> 14 . . . . .	373	Tyacke, Church v. . . . .	676
Trotter's Claim; in re Hull and County Bank, <i>Practice</i> II 32 . . . . .	488	Tye, Warden v. . . . .	25
Trowell v. Shenton, <i>Voluntary Settlement</i> 5 . . . . .	651	Tyndall, Bright v. . . . .	481
Truelove, Reg. v. . . . .	401	Tyne Coal Co. v. Wallsend, Overseers of, <i>Rates</i> 8 . . . . .	533
Tucker, ex parte; in re Tucker, <i>Bankruptcy</i> M 18 . . . . .	74	Tynte, ex parte; in re Tynte, <i>Bankruptcy</i> C 15 . . . . .	49
—, <i>Practice</i> B 58 . . . . .	444	Tyssen Amherst, Baylis v. . . . .	128
—, Reg. v. . . . .	511	Underhill v. Roden, <i>Will Construction</i> L 11 . . . . .	675
—, Slade v. . . . .	506	Underwood, Finch v. . . . .	324
Tufnell, in re, <i>Army</i> . . . . .	33	Ungley v. Ungley, <i>Frauds, Statute of</i> , 18 . . . . .	265
—, <i>Petition of Right</i> 1 . . . . .	425	— v. —, <i>Specific Performance</i> 12 . . . . .	603
Tully, Fisher v. . . . .	125	Union Bank of Australia, Irvine v. . . . .	141
— v. Howling, <i>Contract</i> 34 . . . . .	184	Union Bank of Canada v. Cole, <i>Banking Company</i> 5 . . . . .	39
— v. —, <i>Shipping Law</i> D 4 . . . . .	575	Union Bank of Kingston-upon-Hull, in re, <i>Company</i> H 105 . . . . .	172
Tunbridge Wells Local Board v. Akroyd, <i>Public Health</i> 19 . . . . .	515	Union Bank of London v. Lenanton, <i>Sale of Goods</i> 18 . . . . .	552
— v. Bishopp, <i>Public Health Acts</i> 41 . . . . .	519	— v. —, <i>Shipping Law</i> A . . . . .	573
Tunstall, in re; ex parte Burton, <i>Bankruptcy</i> B 17 . . . . .	45	— v. Manby, <i>Production</i> 25 . . . . .	508
Turnine, Reg. v. . . . .	238	—, Smith v. . . . .	81
Turnbull v. Janson, <i>Costs</i> 102 . . . . .	201	United Hand in Hand, Australasia, Bank of, v. . . . .	126, 386
— v. Robertson, <i>Attachment</i> 10 . . . . .	36	United Kingdom Electric Telegraph Co., in re; Allen's Executors' Claim, <i>Company</i> H 84 . . . . .	169
— v. "Strathnaver," Owners of the, <i>Shipping Law</i> V 2 . . . . .	592		
Turner, in re; ex parte Attwater, <i>Bankruptcy</i> M 3 . . . . .	73		
—, —, <i>Bill of Sale</i> 41 . . . . .	93		
—, Bacon v. . . . .	480		
—, Bell v. . . . .	12, 478		
—, Chasemore v. . . . .	342		
— v. Crush, <i>Inclosure</i> 3 . . . . .	288		

## TABLE OF CASES.

759

	PAGE		PAGE
United Patriots' National Benefit Building Society, in re, <i>Friendly Society</i> 8 . . .	269	Verrall, Reg. v. . . . .	534
United Ports Co., in re; ex parte Etna Insurance Co., <i>Company</i> H 69 . . .	168	Vicker's Trusts, in re, <i>Lunatic</i> 1 . . .	346
United States Direct Cable Co., in re, <i>Arbitration</i> 21 . . .	33	—, <i>Trustee Acts</i> 2 . . .	637
Universal Non-Tariff Fire Insurance Co., in re; Ritso's Case, <i>Company</i> D 81 . . .	152	"Victoria," The, <i>Admiralty</i> 53 . . .	18
University College, Oxford, Yates v. . .	278, 679	Victoria, Master in Equity of Supreme Court of, Bell v. . . . .	127
Unsworth v. Speakman; in re Speakman, <i>Will Construction</i> H 7 . . .	667	Victoria Graving Dock Co., Jones v. . .	32, 264
Unwin, Sheffield Silver Nickel and Plated Co. v. . . . .	137	—, Harrington v. . . . .	179
Upsall, Hickman v. . . . .	340, 378	Villar, Bagnall v. . . . .	378
Upton v. Brown, <i>Settlement</i> 13 . . .	568	Villars, Cannon v. . . . .	657
Urquhart v. Macpherson, <i>Fraud</i> 6 . . .	261	—, Norman v. . . . .	228
Uruguay Central and Hygueritas Railway Co. of Monte Video, in re, <i>Company</i> H 2 .	159	Vincent, Pashler v. . . . .	69
Usherwood, Foster v. . . . .	202	Vine, ex parte; in re Wilson, <i>Bankruptcy</i> F 54 . . .	63
Usill v. Brearley; Usill v. Clarke; Usill v. Hayes, <i>Costs</i> 68 . . .	197	Viney, ex parte; in re Gilbert, <i>Bankruptcy</i> M 10 . . .	74
— v. Hales, <i>Libel</i> 7 . . . . .	333	Viser, Esdaile v. . . . .	221
Val de Travers Asphalte Paving Co., Fisher v. . . . .	217, 438	"Vivar," The, <i>Admiralty</i> 1, 2 . . .	13
— v. London Tramways Co., <i>Practice</i> U 21 . . .	463	Von Heyden v. Neustadt, <i>Patent</i> 19 . . .	421
Vale v. Oppert, <i>Costs</i> 74 . . . . .	198	Voss, in re; King v. Voss, <i>Husband and Wife</i> 46 . . . . .	284
— v. —, <i>Practice</i> H 3 . . . . .	448	W., falsely called R., v. R., <i>Divorce</i> 11 . .	228
Vale of Neath Colliery Co. v. Furness, <i>Frauds, Statute of</i> , 8 . . .	263	Waddell, ex parte; in re Lutscher, <i>Witness</i> —, Ancona v. . . . .	259
Valin v. Langlois, <i>Colonial Law</i> 15 . . .	122	—, Banco de Portugal v. . . . .	52
Vallance v. Birmingham and Midland Land and Investment Corporation, <i>Practice</i> U 23 . . .	463	— v. Blockey, <i>Damages</i> 3 . . .	215
Van Haansbergen, Lister v. . . . .	576	—, Dundas v. . . . .	560
Van Hagen, in re; Sperling v. Rochfort, <i>Power</i> 12 . . .	433	—, Wilson v. . . . .	372
Van Mining Co. v. Llanidloes, Overseers of, <i>Mines</i> 24 . . . . .	375	Waddell's Contract, in re, <i>Bankruptcy</i> K 23 . . .	68
— v. —, <i>Rates</i> 5 . . . . .	532	Waddle, Storey v. . . . .	483
Vance v. Lowther, <i>Bill of Exchange</i> 1 . .	81	Wade-Gery v. Handley, <i>Will Construction</i> D 10 . . .	661
Vanderzee, Frederici v. . . . .	489	Wadling v. Oliphant, <i>Bankruptcy</i> F 55 . .	63
Vane, in re; ex parte Greener, <i>Bankruptcy</i> B 13 . . .	44	Wadsworth v. Pickles, <i>Bankruptcy</i> H 5 . .	64
— v. Vane, <i>Evidence</i> 20 . . . . .	245	Wagstaff v. Anderson, <i>Shipping Law</i> N 1 .	589
— v. —, <i>Lunatic</i> 3 . . . . .	346	Wahlberg v. Young, <i>Shipping Law</i> E 24 . .	581
—, Witham v. . . . .	475	Wake, Carter v. . . . .	383
Varah, Wake v. . . . .	678	— v. Varah, <i>Will Construction</i> N 10 . . .	678
Vaughan, in re; ex parte Fletcher, <i>Bankruptcy</i> E 1 . . . . .	56	Wakefield, Galatti v. . . . .	33
—, Trotter v. . . . .	373	Wakefield Bank, Bent v. . . . .	544
Vavasseur v. Krupp, <i>Patent</i> 29 . . . . .	422	Wakefield Sanitary Authority v. Mander, <i>Public Health Act</i> 20 . . .	515
— v. —, <i>Practice</i> G 4 . . . . .	448	Wakefield Local Board of Health v. Lee, <i>Public Health</i> 24 . . . . .	516
Veale's Trusts, in re, <i>Power</i> 2 . . . . .	432	Walden, in re; ex parte Odell, <i>Bill of Sale</i> 4 . . . . .	88
Velati & Co. v. Braham, <i>Practice</i> O 2 . . .	453	—, Cooch v. . . . .	288, 660
Venables v. Smith, <i>Master and Servant</i> 13 .	363	Wale, Boddy v. . . . .	467
Venour v. Sellon; in re Venour's Settled Estates, <i>Settled Estates Acts</i> 7 . . .	565	— v. Commissioners of Inland Revenue, <i>Stamp</i> 2 . . . . .	606
Verdin v. Wray, <i>Public Health Act</i> 2 . . .	512	Walker v. Banagher Distillery Co., <i>Company</i> H 81 . . .	169
Vernon v. Cooke, <i>Bill of Sale</i> 29 . . . .	91	— v. —, <i>Injunction</i> 8 . . . . .	297
Vernon v. Vestry of St. James, Westminster, <i>Nuisance</i> 11 . . . . .	399	—, Beer v. . . . .	549
— v. —, <i>Practice</i> K 18 . . . . .	451	— v. Budden, <i>Practice</i> B 8 . . . . .	439
		—, Cheavin v. . . . .	623
		— v. Clay, <i>Bill of Sale</i> 35 . . . . .	92
		—, Evans v. . . . .	540
		—, Fowlers v. . . . .	337
		— v. Hicks, <i>Practice</i> II 3 . . . . .	488
		— v. Horner, <i>Highway</i> 23 . . . . .	277
		—, Lamb v. . . . .	216

	PAGE		PAGE
Walker, Levy v. . . . .	414	Ward v. Sinfeld, <i>Evidence</i> 37 . . . . .	248
— v. London and North Western Railway Co., <i>Contract</i> 35 . . . . .	184	—, Spratt's Patent v. . . . .	486
— v. London Tramways Co., <i>Company</i> D 3 . . . . .	197	— v. Ward, <i>Annuity</i> 10 . . . . .	27
— v. Presbytery of Arbroath, <i>Scotch Law</i> 4 . . . . .	557	— v. —, <i>Husband and Wife</i> 9 . . . . .	280
—, Western of Canada Oil, Land and Works Co. v. . . . .	197	— v. Wyld, <i>Practice</i> GG 14 . . . . .	484
—, Woodhouse v. . . . .	654	Warden, Edwards v. . . . .	95
Walker's Estate, in re; Church v. Tyacke, <i>Will Construction</i> L 19 . . . . .	676	—, Hyde v. . . . .	176, 324, 537, 604
— Mortgage Trusts, in re, <i>Mortgage</i> 56 . . . . .	385	— v. Tye, <i>Alchouse</i> 22 . . . . .	25
Wall, Bishop v. . . . .	284	Wardley, ex parte; in re Miller, <i>Bankruptcy</i> D 3 . . . . .	49
—, Boddy v. . . . .	467	Ware, in re; ex parte Carter, <i>Bankruptcy</i> F 60 . . . . .	64
—, Hart v. . . . .	332	—, in re; ex parte Drake, <i>Detinue</i> 3 . . . . .	224
—, Isaac v. . . . .	617	Warner v. Murdock; Murdock v. Warner, <i>Practice</i> HH 30 . . . . .	487
Wallace, Reg. v. . . . .	275	Warre, Harris v. . . . .	334
—, Capper v. . . . .	583	Warwick Canal Co. v. Birmingham Canal Co., <i>Railway</i> 36 . . . . .	530
Wallain, Wilson v. . . . .	63	Warwick Union, Hereford Union v. . . . .	348, 428
Wallingford v. The Mutual Society, <i>Lottery Acts</i> 2 . . . . .	346	Washer v. Elliott, <i>Debtors Act</i> 2 . . . . .	220
— v. —, <i>Mortgage</i> 4 . . . . .	377	— v. —, <i>Lord Mayor's Court</i> 4 . . . . .	345
— v. —, <i>Practice</i> B 56 ( <i>Appeal</i> ) . . . . .	444	Washington, Clifford v. . . . .	279, 616
— v. —, <i>Practice</i> W 55 ( <i>Pleading</i> ) . . . . .	471	Waterhouse, Bevan v. . . . .	615, 662
— v. —, <i>Practice</i> II 13 ( <i>Trial</i> ) . . . . .	489	Watkin, ex parte; in re Anglo-Moravian Hungarian Junction Railway Co., <i>Company</i> H 24 . . . . .	161
Wallingford Election Petition, in re; Wells v. Wren, <i>Parliament</i> 5 . . . . .	403	Watkins, in re; ex parte Evans, <i>Bankruptcy</i> D 24 . . . . .	53
Wallington v. Cook, <i>Interest</i> 2 . . . . .	305	—, <i>Judgment</i> 3 . . . . .	308
Wallis, Fox v. . . . .	443	— v. Great Western Railway Co., <i>Negligence</i> 16 . . . . .	394
— v. Wallis, <i>Divorce</i> 8 . . . . .	228	— v. Price, <i>Game</i> 1 . . . . .	270
Wallsend, Overseers of, Tyne Coal Co. v. . . . .	533	—, Roberts v. . . . .	283
Walrond v. Fulford, <i>Jointure</i> . . . . .	307	Watney, Forwood v. . . . .	30
—, Hawkins v. . . . .	315	— v. Musgrave, <i>Income Tax</i> 3 . . . . .	289
— v. Rosslyn, <i>Conversion</i> . . . . .	185	—, Porteous v. . . . .	584
Walsall, Overseers of, v. London and North Western Railway Co., <i>Public Health Act</i> 14 . . . . .	514	— v. Trist, <i>Partnership</i> 8, 27 . . . . .	413, 417
— v. —, <i>Rates</i> 25 . . . . .	536	Watson, ex parte; in re Love, <i>Sale of Goods</i> 27 . . . . .	554
Walsh, Hampden v. . . . .	179	—, ex parte; in re Roberts, <i>Bankruptcy</i> H 3 . . . . .	64
— v. Pemberton, <i>Landlord and Tenant</i> 20 . . . . .	316	—, ex parte; in re Watson, <i>Bankruptcy</i> N 5 . . . . .	78
Walshaw, Fielding v. . . . .	681	—, Cox v. . . . .	385
Walter, ex parte; in re Webb, <i>Bankruptcy</i> K 4, M 1 . . . . .	66, 73	—, Danby v. . . . .	288
Walters v. Woodbridge, <i>Administration</i> 47 . . . . .	12	— v. Gray, <i>Tenant in Common</i> 1 . . . . .	618
— v. —, <i>Trust</i> D 19 . . . . .	635	—, Irvine v. . . . .	493
Walton, in re; ex parte Reddish, <i>Practice</i> B 19 . . . . .	440	—, Kusel v. . . . .	323, 601
—, Smith v. . . . .	363	—, London, Brighton, &c. Railway Co. v. . . . .	526
Wandsworth District Board of Works, A. G. v. . . . .	367	—, Melhado v. . . . .	70
Warburton v. Haslingden Local Board, <i>Arbitration</i> 19 . . . . .	32	— v. Rodwell, <i>Costs</i> 78 . . . . .	198
Ward, ex parte; in re Ward, <i>Bankruptcy</i> M 22 . . . . .	75	— v. —, <i>Evidence</i> 30 . . . . .	247
—, in re; Bemment v. Balls, <i>Practice</i> U 16 . . . . .	462	— v. —, <i>Practice</i> W 4 . . . . .	466
—, Cook v. . . . .	234, 515	— v. —, <i>Solicitor</i> 22 . . . . .	597
—, Davey v. . . . .	291	—, Simeon v. . . . .	182
— v. Eyre, <i>Solicitor</i> 15 . . . . .	596	—, Stevenson v. . . . .	27
— v. Hobbs, <i>Contagious Diseases</i> 1 . . . . .	176	— v. Watson; in re Loveman, <i>Legacy</i> 19 . . . . .	330
—, Hutchinson v. . . . .	226	— v. Woodman, <i>Limitations, Statute of</i> , 22 . . . . .	342
— v. Pilley, <i>Practice</i> Y 6 . . . . .	477	Watt, in re; ex parte Josselyne, <i>Attachment</i> 11 . . . . .	36
— v. Robinson; Robinson v. Findlay, <i>Trade Mark</i> 17 . . . . .	623	— v. Barnett, <i>Practice</i> BB 6 . . . . .	479
		—, McPherson v. . . . .	596
		Watts, Parrott v. . . . .	244
		— v. Watts, <i>Practice</i> K 1 . . . . .	449



	PAGE		PAGE
Waugh, in re; ex parte Dickin, <i>Bankruptcy</i> F 29 . . . . .	60	Wendt, Hingston v. . . . .	588
Waugh's Trusts, in re, <i>Tenant for Life</i> 16 . . . . .	617	Wentworth, London and South Western Bank v. . . . .	82
Way v. Great Eastern Railway Co., <i>Carrier</i> 5 . . . . .	100	Werburgh, Overseers of, v. Hutchinson, <i>Rates</i> 2 . . . . .	532
Wayne's Merthyr Coal Co. v. Morewood, <i>Sale of Goods</i> 14 . . . . .	551	West v. Baker, <i>Bankruptcy</i> C 11 . . . . .	48
Wear Commissioners v. Adamson, <i>Harbours, &amp;c. Clauses Act</i> 3 . . . . .	272	— v. — <i>Set-off</i> 7 . . . . .	564
Wearing, Harrison v. . . . .	200	— v. Donnman, <i>Public Health</i> 29 . . . . .	517
Weatherall v. Thornburgh, <i>Theilsson Act</i> . . . . .	619	—, Edwards v. . . . .	316, 325
Webb, in re; ex parte Walker, <i>Bankruptcy</i> K 4, M 1 . . . . .	66, 73	— v. Houghton, <i>Damages</i> 16 . . . . .	217
— v. Bomford, <i>Practice</i> P 21 . . . . .	456	—, Meiklereid v. . . . .	365, 592
— v. East, <i>Production</i> 13 . . . . .	507	— v. Orr, <i>Will Construction</i> N 1 . . . . .	677
— v. Giddy, <i>Colonial Law</i> 21 . . . . .	123	— v. White, <i>Practice</i> HH 5 . . . . .	485
—, Heather v. . . . .	66	West Bromwich School Board, in re, <i>Elementary Education Acts</i> 3 . . . . .	238
— v. Knight, <i>Adulteration of Food</i> 1 . . . . .	19	West Cumberland Iron and Steel Co., De Oleaga v. . . . .	550
— v. Mansell, <i>Costs</i> 53 . . . . .	196	— v. Kenyon, <i>Mines</i> 10 . . . . .	372
Webb's Trusts, in re, <i>Settlement</i> 23 . . . . .	569	— v. —, <i>Water</i> 1 . . . . .	654
Webster v. British Mutual Life Assurance Co., <i>Insurance</i> 5 . . . . .	303	West Derby Local Board, Smith v. . . . .	276
—, Gatti v. . . . .	384	West Hartlepool Iron Co., in re; Gray's Case, <i>Company</i> H 53 . . . . .	165
—, Herbert v. . . . .	541	West Jewell Tin Mining Co., in re; Little's Case, <i>Practice</i> B 20 . . . . .	440
—, Kinnaird v. . . . .	39, 85	—, Weston's Case, <i>Company</i> H 77 . . . . .	168
—, Kirkwood v. . . . .	200	West Mostyn Coal and Iron Co., Mostyn v. . . . .	873, 472
— v. Petre, <i>Principal and Surety</i> 14 . . . . .	499	West of England and South Wales District Bank, in re; ex parte Booker, <i>Banking Company</i> 1 . . . . .	38
—, Smith v. . . . .	264, 603	—, in re; ex parte Branwhite, <i>Company</i> H 67 . . . . .	167
— v. Wetherall, <i>Production</i> 9 . . . . .	507	—, in re; ex parte Brown, <i>Company</i> H 50 . . . . .	165
— v. Whewal, <i>Production</i> 9 . . . . .	507	—, in re; ex parte Budden and Roberts, <i>Company</i> H 54 . . . . .	165
Wedderburn v. Pickering, <i>Practice</i> HH 23 . . . . .	487	—, in re; ex parte Dale & Co., <i>Principal and Agent</i> 7 . . . . .	493
Wedderburn's Trusts, in re, <i>Trusts</i> B 6 . . . . .	631	—, in re; ex parte Hatcher, <i>Company</i> H 55 . . . . .	165
Wedgwood Coal and Iron Co., in re; Anderson's Case, <i>Company</i> D 58 . . . . .	147	—, <i>Husband and Wife</i> 56 . . . . .	286
Weekes, Garratt v. . . . .	668	— v. Canton Insurance Co., <i>Production</i> 30 . . . . .	509
Wegmann v. Corcoran, <i>Patent</i> 12 . . . . .	420	— v. Nickolls, <i>Mortgage</i> 61 . . . . .	386
Weguelin, Cordillo v. . . . .	95	West of England and Swansea District Bank, in re; ex parte Swansea Royal Friendly Society, <i>Banking Company</i> 2 . . . . .	38
Weidner v. Hoggett, <i>Principal and Agent</i> 13 . . . . .	494	—, <i>Friendly Society</i> 2 . . . . .	268
Weil, ex parte; in re Mentrop, <i>Bankruptcy</i> L 24 . . . . .	72	West Riding of Yorkshire (Justices of), Reg. v. . . . .	514
Weir v. Barnett; Weir v. Bell, <i>Company</i> D 41 . . . . .	144	Westbourne Grove Drapery Co., in re, <i>Company</i> H 33 . . . . .	162
Welch, Collins v. . . . .	191	Westbury-on-Severn Union, Guardians of, v. Barrow-in-Furness, Overseers of, <i>Poor Law</i> 7 . . . . .	428
—, Reg. v. . . . .	104, 349	Westby, in re; ex parte Lancaster Banking Corporation, <i>Bankruptcy</i> F 32 . . . . .	61
Welchman, ex parte; in re Hare, <i>Bankruptcy</i> F 31 . . . . .	61	Westcott, Bristol Corporation v. . . . .	325
Weldon v. Dicks, <i>Copyright</i> 3 . . . . .	186	Western of Canada Oil Lands and Works Co., in re, <i>Company</i> H 89 . . . . .	170
Wellesley, Cowley, Lord, v. . . . .	633	—, in re, <i>Practice</i> K 23 . . . . .	451
Wellings, Reg. v. . . . .	248	—, in re; Carling, Hespeler and Walsh's Cases, <i>Company</i> D 67 . . . . .	149
Wellington Reversionary Annuity and Life Assurance Society; in re European Assurance Society; Conquest's Case, <i>Company</i> G 6 . . . . .	158	— v. Walker, <i>Costs</i> 60 . . . . .	197
Wells v. Chelmsford Local Board, <i>Lands Clauses Act</i> 5 . . . . .	317	Westhead v. Westhead, <i>Probate</i> 34 . . . . .	505
—, Fenton v. . . . .	8		
— v. London, Tilbury and Southend Railway Co., <i>Railway</i> 7 . . . . .	523		
— v. Mitcham Gas Light Co., <i>Costs</i> 99 . . . . .	201		
— v. Row, <i>Administration</i> 22 . . . . .	8		
— v. Wren (Wallingford Election Petition), <i>Parliament</i> 5 . . . . .	403		
Welman v. Welman, <i>Settlement</i> 31 . . . . .	570		
Welpley v. Buhl, <i>County Court</i> 14 . . . . .	203		

	PAGE		PAGE
Westman v. Snickarifabrik, <i>Practice</i> BB 17	480	Whitehead v. Holdsworth, <i>Coal Mines</i> 3	119
Westminster Chambers Association, A. G. v.	295	— v. Smithers, <i>Wild Fowl</i>	658
Weston v. Savage, <i>Vendor and Purchaser</i> 21	647	Whitehouse, in re; ex parte Duce, <i>Bankruptcy</i> K 17	68
Weston's Case; in re West Jewell Tin Mining Co., <i>Company</i> H 77	168	Whitehouse & Co., in re, <i>Company</i> H 66	167
Wetherall, ex parte; Middleton v. Pollock, <i>Solicitor</i> 12	595	Whiteley v. Pepper, <i>Master and Servant</i> 14	363
Weymouth, Justices of, Regina v.	310	Whiteman v. Hawkins, <i>Solicitor</i> 14	596
Whaley Bridge Calico Printing Co. v. Green, <i>Company</i> A 5	132	Whitfield v. Langdale, <i>Will Construction</i> G 8	665
Wharnccliffe, Earl of, Labouchere v.	118	Whitley, Partners, in re; Steel's Case, <i>Company</i> D 80	161
Wharton Saltworks Co., Golding v.	466, 471	Whiting and Loomes, in re, <i>Stamp</i> 3	607
Whatmore, Rishton v.	263	Whittaker, Day v.	226
Wheat United Wood Mining Co., in re; Chynoweth's Case, <i>Company</i> D 96	154	—, Selby v.	674
Wheatcroft, in re, <i>Solicitor</i> 10	595	Whittall, Benecke v.	123
—, Smith v.	603	Whitting, in re; ex parte Hall, <i>Stamp</i> 4	607
Wheatley, Thacker v.	180	—, in re; ex parte Rowell, <i>Bankruptcy</i> F 57	63
Wheeldon v. Burrows, <i>Easement</i> 4	236	Whittingham, Cooper v.	187, 609
Wheeler, in the goods of, <i>Will Formalities</i> 14	683	Whittle, Matthews v.	285
Wheelwright, in the goods of, <i>Probate</i> 14	503	Whitton, ex parte; in re Greaves, <i>Bankruptcy</i> M 15	74
Whelan, in re; ex parte Sadler, <i>Bankruptcy</i> C 13	48	Whitworth, Crookes v.	410
—, <i>Bankruptcy</i> M 6	75	—, Dixon v.	356
Wherly, in re; ex parte Hirst, <i>Bankruptcy</i> N 2	78	—, in re; ex parte Gibbes, <i>Sale of Goods</i> 26	553
Whetham, Pooley v.	253	—, Mackenzie v.	352
Whetstone v. Dewis, <i>Practice</i> Q 2	456	Wickens, Hampshire v.	324
Whewal, Webster v.	507	Wickham v. Wickham, <i>Divorce</i> 17	229
Whichcord, Associated Home Co. v.	474	Widgery v. Tepper, <i>Husband and Wife</i> 11	280
Whidborne v. Ecclesiastical Commissioners for England, <i>Land Tax</i> 1	312	— v. —, <i>Practice</i> D 2 ( <i>Charging Order</i> )	446
Whistler v. Hancock, <i>Practice</i> H 7	449	— v. —, <i>Practice</i> U 9 ( <i>Parties</i> )	461
Whitaker v. Forbes, <i>Venue</i>	649	— v. —, <i>Practice</i> I 3 ( <i>Enrolment</i> )	449
White, in re, <i>Shelley's Case</i>	571	Widlake, Smith v.	313
— <i>Will Construction</i> I 5	672	Wigg, Brooke v.	450
—, in re; ex parte Dear, <i>Bankruptcy</i> D 16	51	Wiggs, ex parte; in re Johnson, <i>Bankruptcy</i> M 19	75
—, in re; ex parte Mason, <i>Bankruptcy</i> M 8	74	Wightman v. Costine, <i>Scottish Law</i> 8	558
—, Bath v.	23	Wilberforce v. Hearfield, <i>Evidence</i> 15	245
—, Bustros v.	506	— v. Sowton, <i>County Court</i> 19	203
— v. Cox, <i>Husband and Wife</i> 16	281	Wilcocks' Settlement, in re, <i>Settlement</i> 16	568
— v. —, <i>Settlement</i> 26	570	—, <i>Will Construction</i> O 5	679
— v. Fox, <i>Justice of the Peace</i> 2	309	Wilcockson, Graham v.	87
— v. Francé, <i>Master and Servant</i> 16	363	Wilcox v. Redhead, <i>Contract</i> 19	181
— v. —, <i>Negligence</i> 18	394	— v. —, <i>Specific Performance</i> 4	602
— v. Hight, <i>Will Construction</i> L 17	676	Wildsmith, ex parte; in re Lancaster, <i>Bankruptcy</i> M 41	77
—, London Chartered Bank of Australia v.	89, 500	Wilford, Stachlschmidt v.	448
—, Moase v.	661	Wilford's Estate, in re; Taylor v. Taylor, <i>Joint Tenants</i>	307
—, Beg. v.	519	Wilkes, ex parte; in re Lewes; ex parte Garrard, <i>Trust</i> C 9	632
—, Richmond v.	249	— v. Saunton, <i>Mortgage</i> 58	385
—, West v.	485	Wilkins v. Jodrell, <i>Annuity</i> 2	26
— v. Witt, <i>Practice</i> B 29	441	Wilkinson v. Alston, <i>Principal and Agent</i> 22	496
White's Case; in re Government Security Fire Insurance Co., <i>Company</i> D 65	149	—, Armytage v.	126
White and Hindley's Contract, in re, <i>Will Construction</i> I 5	672	— v. Calvert, <i>Landlord and Tenant</i> 19	316
White Moss Colliery Co., Rourke v.	362	—, Sheffield Waterworks v.	655
Whitechapel Union, Vestry of Mile End v.	367	Willans v. Ayres, <i>Bill of Exchange</i> 19	85
Whitehaven, Bank of, Dawson v.	287, 498	Willcock v. Terrell, <i>Practice</i> AA 2	478
		Willcock's Settlement, in re, <i>Settlement</i> 16	568
		—, <i>Will Construction</i> O 5	679
		"William Frederick," The, The "Byfoged Christensen," <i>Shipping Law</i> E 19	580
		"Williamina," The, <i>Admiralty</i> 45	17

	PAGE		PAGE
Williams, ex parte; in re Thompson, <i>Bankruptcy</i> D 39	55	Wilson v. Church, <i>Practice</i> U 3 ( <i>Parties</i> )	460
—, <i>Bill of Sale</i> 8	89	— v. —, <i>Practice</i> U 27 ( <i>Parties</i> )	463
—, in re, <i>Charity</i> 12	106	—, Dean v.	478
—, in re; ex parte Railway Steel and Plant Co., <i>Company</i> H 47	164	—, Etherington v.	109
— v. Arkle, <i>Will Construction</i> H 33	670	—, Etty v.	458
—, Biddulph v.	630	— v. Finch Hatton, <i>Landlord and Tenant</i> 2	313
— v. Bolland, <i>County Court</i> 16	203	— v. General Iron Screw Colliery Co., <i>Damages</i> 22	218
—, Davies v.	484	— v. Hill.	586
— v. Ellis, <i>Turnpike</i> 3	640	—, Huckle v.	269
— v. Evans, <i>Furious Driving</i>	270	—, Kopitoff v.	100, 577
—, Fourth City Mutual Benefit Building Society v.	268	— v. Lord Bury, <i>Company</i> D 28	141
—, Goodhew v.	650	— v. Morley, <i>Legacy</i> 7	329
—, Harding v.	244	—, National Bolivian Co. v.	257
— v. Hathway, <i>Covenant</i> 24	209	—, Patent Safety Gun Cotton Co. v.	82
—, Jones v.	270	—, Reg. v.	221, 252
— v. Jordan, <i>Frauds, Statute of</i> , 6	263	— v. Rhodes, <i>Trust</i> C 4	631
— v. North China Insurance Co., <i>Marine Insurance</i> 5, 14	353, 354	—, Singer Manufacturing Co. v.	457, 624
—, Powell v.	485	— v. —, <i>Costs</i> 73	198
— v. Raggett, <i>Damages</i> 20	218	—, Smith v.	488
— v. Stern, <i>Bill of Sale</i> 48	94	—, Turquand v.	437
— v. Tenby, Mayor of, <i>Municipal Corporation</i> 12	388	— v. Waddell, <i>Mines</i> 11	372
—, Thomas v.	334	— v. Wallani, <i>Bankruptcy</i> F 50	63
— v. Williams, <i>Will Construction</i> D 15	662	Wilson and Armstrong, in re; ex parte Fenning, <i>Bankruptcy</i> K 21	68
Williams' Case; in re Humber Ironworks and Shipbuilding Co., <i>Company</i> H 51	165	Wilts and Berks Canal Navigation, Swindon Waterworks Co. v.	654
Williamson, ex parte, <i>Solicitor</i> 4	594	Wiltshire Justices, Reg. v.	536
—, in re; ex parte Threlfall, <i>Bankruptcy</i> B 10	44	Wimbledon and Putney Commons Conservators v. Dixon, <i>Way</i> 7	657
— v. Barbour, <i>Principal and Agent</i> 20	496	Wimbledon Local Board, Hunt v.	513
—, Hodgson v.	283	Wimshurst, Hollick & Co. v. Barrow Shipbuilding Co., <i>Arbitration</i> 23	33
— v. London and North Western Railway Co., <i>Practice</i> W 89	475	— v. —, <i>Costs</i> 23	193
Willis v. Kymer, <i>Trust</i> A 7	630	Wincham Shipbuilding and Boiler Co., in re; Poole, Jackson and Whyte's Case, <i>Company</i> D 24	141
— v. MacLachlan, <i>Parliament</i> 30	408	—, Hallmark's Case, <i>Company</i> D 38	144
— v. Oxford, Bishop of, <i>Church</i> 32	117	Winder, ex parte, <i>Lands Clauses Act</i> 32	321
Willis, Percival & Co., in re; ex parte Morier, <i>Bankruptcy</i> E 3	56	—, ex parte; in re Winstanley, <i>Bankruptcy</i> B 7	43
Willmott v. Barber, <i>Specific Performance</i> 18	604	Wingate, Birrell & Co. v. Foster, <i>Marine Insurance</i> 8	353
Willoughby, Cox v.	414	Wingfield, ex parte; in re Florence, <i>Bankruptcy</i> F 11	37
Wills, De Gruchy v.	286	— v. Wingfield, <i>Will Construction</i> H 30	670
—, Evans v.	202, 221	Wingrove v. Thompson, <i>Practice</i> U 32	464
—, Fenton v.	8	Winn v. Bull, <i>Specific Performance</i> 3	601
Willshire, A. G. v.	453	—, in re; ex parte Russell, <i>Bankruptcy</i> L 21	72
Willson, in re; ex parte Nicholson, <i>Bankruptcy</i> M 35	76	Winser, Eade v.	36
Willyams v. Matthews, <i>Mortgage</i> 48	384	Winson, in re; ex parte Masters, <i>Bankruptcy</i> P 2	79
Wilson, in re; ex parte Nicholson, <i>Bankruptcy</i> M 35	76	Winstanley, in re; ex parte Sheen, <i>Bankruptcy</i> B 7	43
—, in re; ex parte Vine, <i>Bankruptcy</i> F 54	63	—, in re; ex parte Winder, <i>Bankruptcy</i> B 7	43
— v. Bank of India, <i>Inhabited House Duty</i> 4	296	Winstone's Case; in re Albion Life Assurance Society, <i>Insurance</i> 9	304
—, Bentham v.	670	Winter, in re; ex parte Bolland, <i>Bankruptcy</i> E 2	56
— v. Breslau, <i>Bankruptcy</i> L 12	70	Winterfeld v. Bradnum, <i>Costs</i> 64	197
— v. Canada Shipping Co., <i>Shipping Law</i> E 6	579	Wirral Highway Board, Mason v.	203
— v. Church, <i>Bond</i> 2	96	Wirth's Patent, in re, <i>Patent</i> 5	419
— v. —, <i>Practice</i> B 69 ( <i>Appeal</i> )	445		
— v. —, <i>Practice</i> P 2 ( <i>Interrogatories</i> )	453		

	PAGE		PAGE
Wise, Harnett v. . . . .	191	"Woosung," Cargo ex, <i>Shipping Law</i> T 2 . . .	590
— v. Piper, <i>Trust</i> A 8 . . . . .	630	Worcester, Corporation of, v. Droitwich	
Wiseman v. Booker, <i>Railway</i> 27 . . . . .	529	Assessment Committee, <i>Rates</i> 15 . . . . .	534
—, Fryer v. . . . .	450	Wormald, Curteis v. . . . .	635
Witham v. Taylor, <i>Evidence</i> 10 . . . . .	244	Worms v. De Valdor, <i>Conflict of Laws</i> 2 . . .	174
— v. Vane, <i>Practice</i> W 85 . . . . .	475	Wormsley, Baines v. . . . .	12, 199
Witt, in re; ex parte Shubbrook, <i>Packer</i>	401	— v. Hill; in re Wormsley's Estate, <i>Ad-</i>	
— v. Corcoran, <i>Practice</i> B 16 . . . . .	440	ministration 14 . . . . .	8
— v. Parker, <i>Interpleader</i> 5 . . . . .	306	Worraker v. Pryer, <i>Administration</i> 34 . . .	10
—, White v. . . . .	441	Worrall, Ditcham v. . . . .	293
Wollaston v. Berkeley, <i>Husband and Wife</i>		Worsdell, in re; ex parte Barrow, <i>Sale of</i>	
10 . . . . .	280	Goods 28 . . . . .	554
— v. Wollaston, <i>Administration</i> 1 . . . . .	6	Worth, Collier v. . . . .	519
— v. —, <i>Administration</i> 49 . . . . .	12	Worthington v. Curtis, <i>Advancement</i> 2 . . .	20
Wood, ex parte; in re Wright, <i>Bankruptcy</i>		— v. —, <i>Insurance</i> 1 . . . . .	302
K 16 . . . . .	68	—, ex parte; in re Cumberland, <i>Bank-</i>	
—, in re; ex parte M'Hattie, <i>Bill of Sale</i>		ruptcy D 1 . . . . .	49
23 . . . . .	91	Worthington & Co.'s Trade Mark, in re,	
—, in re; ex parte Musgrave, <i>Bankruptcy</i>		<i>Trade Mark</i> 9 . . . . .	622
A 5 . . . . .	41	Wortley, in re; Culley v. Wortley; Harvard	
—, Barber v. . . . .	666	v. Storey, <i>Practice</i> E 1 . . . . .	447
— v. Beard, <i>Frauds, Statute of</i> , 2 . . . . .	262	Wray, Verdin v. . . . .	512
— v. —, <i>Lease</i> 3 . . . . .	324	Wreck Recovery and Salvage Co., in re,	
—, Bedwell v. . . . .	31	<i>Company</i> H 29 . . . . .	162
—, Besant v. . . . .	287	Wreford, Knapman v. . . . .	9
— v. Hopper, <i>Parliament</i> 8 . . . . .	404	Wren, Wells v. . . . .	403
—, Mason v. . . . .	91	Wright, in re; ex parte Arnold, <i>Bank-</i>	
—, Metzler v. . . . .	487, 624	ruptcy F 27 . . . . .	60
— v. Murton, <i>Mortgage</i> 16 . . . . .	379	—, in re; ex parte Sheen, <i>Bankruptcy</i>	
Wood & Ivory, Limited, v. Hamblett, <i>Prac-</i>		D 14 . . . . .	51
tice HH 8 . . . . .	485	—, in re; ex parte Wood, <i>Bankruptcy</i>	
Woodard v. Billericoy Highway Board,		K 16 . . . . .	68
<i>Highway</i> 22 . . . . .	277	— v. Clifford, <i>Practice</i> C 9 . . . . .	446
Woodbridge, Walters v. . . . .	12, 635	—, Creen v. . . . .	190, 361
Woodgate v. Godfrey, <i>Bill of Sale</i> 6 . . . . .	88	— v. Davies, <i>Church</i> 7 . . . . .	113
Woodline, in re; Thompson v. Woodline,		—, Foster v. . . . .	256
<i>Practice</i> K 16 . . . . .	451	— v. Freeman, <i>Interpleader</i> 2 . . . . .	305
Woodhead, Askew v. . . . .	615	—, Higham v. . . . .	374
Woodhouse v. Walker, <i>Waste</i> 2 . . . . .	654	— v. Lambert, <i>Tenant for Life</i> 19 . . . . .	617
Woodley v. Metropolitan District Railway		— v. London and North Western Rail-	
Co., <i>Negligence</i> 19 . . . . .	395	way Co., <i>Negligence</i> 17 . . . . .	394
Woodman, Watson v. . . . .	342	— v. London General Omnibus Co.,	
Woods, in re; ex parte Ditton, <i>Bankruptcy</i>		<i>Action</i> 6 . . . . .	4
A 15 ( <i>Jurisdiction</i> ). . . . .	42	— v. —, <i>Master and Servant</i> 17 . . . . .	363
— <i>Bankruptcy</i> D 10 ( <i>Proof</i> ). . . . .	50	— v. Monarch Investment Building So-	
— <i>Bankruptcy</i> F 39 ( <i>Trustee</i> ). . . . .	62	ciety, <i>Friendly Society</i> 7 . . . . .	268
— <i>Bankruptcy</i> M 2 ( <i>Practice</i> ). . . . .	73	—, Olivant v. . . . .	196, 567, 676
— v. M'Innes, <i>Practice</i> BB 25 . . . . .	481	—, Oriental Bank Corporation v. . . . .	123
Woodstock Union v. St. Pancras, <i>Poor Law</i>		—, Raper v. . . . .	36
12 . . . . .	429	— v. Redgrave, <i>Injunction</i> 5 . . . . .	297
Woodward v. London and North Western		— v. Swindon, Marlborough and Andover	
Railway Co., <i>Carrier</i> 3 . . . . .	100	Railway Co., <i>Practice</i> H 1 . . . . .	448
Wooler v. Knott, <i>Covenant</i> 10 . . . . .	207	Wyld, Ward v. . . . .	484
—, Patterson v. . . . .	195, 450	Wymer v. Dodds, <i>Practice</i> U 35 . . . . .	464
—, Pattison v. . . . .	450	Wyndham v. Cole, <i>Church</i> 24 . . . . .	115
Woolf v. Horne, <i>Auction and Auctioneer</i> 1 . . .	37	Wynn, Owen v. . . . .	509
— v. Pemberton, <i>Practice</i> T 16 . . . . .	460	Wynne, Arthur v. . . . .	569
Woolley v. Attorney-General of Victoria,		— v. Forrester, <i>Mines</i> 21 . . . . .	374
<i>Colonial Law</i> 46 . . . . .	126	Wynyard, Dawkins v. . . . .	334, 482
Woolrich, in re; Harris v. Harris, <i>Will Con-</i>			
struction N 2 . . . . .	677	Yalden, ex parte; in re Austin, <i>Solicitor</i>	
Woolston, Smith v. . . . .	407	32 . . . . .	598
Woolverton's Mortgaged Estates, in re, <i>Will</i>		Yarmouth, Guardians of, v. Clerk of the	
<i>Construction</i> G 5 . . . . .	665	Peace of London, <i>Poor Law</i> 11 . . . . .	428
Woolwich Building Society, Button v. . . . .	203		

## TABLE OF CASES.

765

	PAGE		PAGE
Yarmouth, Mayor of, v. Simmons, <i>Piers and Harbours</i> 2	426	York Union, Finch v. . . . .	348
Yarrow v. Knightley, <i>Will Construction</i> I 2	671	York Union Banking Co. v. Artley, <i>Mortgage</i> 38	383
Yates, in re; ex parte Brown, <i>Bankruptcy</i> A 13	42	Yorkshire Banking Co. v. Beatson, <i>Partnership</i> 16	414
—, Bartlam v. . . . .	440	Yorkshire Railway Waggon Co. v. Newport and Abercarn Coal Co., <i>Costs</i> 34	194
— v. Finn, <i>Partnership</i> 24	416	Youle, Roberts v. . . . .	666
— v. University College, Oxford, <i>House of Lords</i> 4	278	—, Thrift v. . . . .	573
— v. —, <i>Will Construction</i> O 3	679	Young, Adair v. . . . .	422, 445
Yearwood's Trusts, in re, <i>Evidence</i> 16	245	— v. Brassey, <i>Practice</i> BB 15	480
Yeatman v. Yeatman, <i>Administration</i> 2	6	— v. Cook, <i>Excise</i> . . . . .	248
Yeovil, Corporation of, Stone v. . . . .	317	—, Howes v. . . . .	59
Yettis v. Foster, <i>Practice</i> T 8	459	—, Hunter v. . . . .	251
Yewdall, in re; ex parte Braithwaite, <i>Bankruptcy</i> D 27	53	— v. Kitchen, <i>Practice</i> W 50	471
Yglesias, in re; ex parte General South American Co., <i>Bill of Exchange</i> 20	85	— v. —, <i>Set-off</i> 3	563
— v. Mercantile Bank of the River Plate, <i>Bill of Exchange</i> 27	86	—, Piercey v. . . . .	30, 485
— v. Yglesias, <i>Divorce</i> 32	231	—, Staples v. . . . .	190
York, Holloway v. . . . .	483	—, Wahlberg v. . . . .	581
		Zetland, Earl of, v. Lord Advocate, <i>Succession Duty</i> 6	612













